PHILIPPINE REPORTS

VOL. 846

JANUARY 23, 2019 TO FEBRUARY 12, 2019

VOLUME 846

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

JANUARY 23, 2019 TO FEBRUARY 12, 2019

SUPREME COURT
MANILA
2020

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2020

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. No. 201302. January 23, 2019]

HYGIENIC PACKAGING CORPORATION, *petitioner, vs.* **NUTRI-ASIA, INC., doing business under the name and style of UFC PHILIPPINES (FORMERLY NUTRI-ASIA, INC.),** *respondent.*

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; AS PART OF THEIR FREEDOM TO CONTRACT, PARTIES ARE ALLOWED TO CONSTITUTE ANY STIPULATION ON THE VENUE OR MODE OF DISPUTE RESOLUTION. —** Parties are allowed to constitute any stipulation on the venue or mode of dispute resolution as part of their freedom to contract under Article 1306 of the Civil Code of the Philippines, which provides: ARTICLE 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy. Here, however, the records lack any written contract of sale containing the specific terms and conditions agreed upon by the parties. The parties failed to provide evidence of any contract, which could have contained stipulations on the venue of dispute resolution.

2. **REMEDIAL LAW; CIVIL PROCEDURE; VENUE OF ACTIONS; ABSENT CONTRACTUAL STIPULATION ON THE VENUE OF DISPUTE RESOLUTION, THE 1997**

REVISED RULES OF CIVIL PROCEDURE ON VENUE OF ACTIONS SHALL GOVERN THE VENUE OF PERSONAL ACTION.— Petitioner and respondent may have entered into a contract of sale with respect to petitioner's merchandise. However, the case records do not show that they have a contract in relation to the venue of any civil action arising from their business transaction. *Cathay Metal Corporation v. Laguna West Multi-Purpose Cooperative, Inc.* provides, "[f]or there to be a contract, there must be a meeting of the minds between the parties." Here, no evidence shows that petitioner and respondent had a meeting of minds and agreed to submit any future issue either to the trial court or to arbitration. Since there is no contractual stipulation that can be enforced on the venue of dispute resolution, the venue of petitioner's personal action will be governed by the 1997 Revised Rules of Civil Procedure.

3. ID.; ID.; ID.; AN ACTION FOR COLLECTION OF SUM OF MONEY IS A PERSONAL ACTION, THE VENUE OF WHICH IS WHERE THE PLAINTIFF OR ANY OF THE PRINCIPAL PLAINTIFFS RESIDES, OR WHERE THE DEFENDANT OR ANY OF THE PRINCIPAL DEFENDANTS RESIDES, AT THE ELECTION OF THE PLAINTIFF; FOR A CORPORATION, ITS RESIDENCE IS CONSIDERED THE PLACE WHERE ITS PRINCIPAL OFFICE IS LOCATED AS STATED IN ITS ARTICLES OF INCORPORATION.— In *City of Lapu-Lapu v. Philippine Economic Zone Authority*: [V]enue is "the place of trial or geographical location in which an action or proceeding should be brought." In civil cases, venue is a matter of procedural law. A party's objections to venue must be brought at the earliest opportunity either in a motion to dismiss or in the answer; otherwise the objection shall be deemed waived. When the venue of a civil action is improperly laid, the court cannot *motu proprio* dismiss the case. The venue of an action depends on whether the action is a real or personal action. Should the action affect title to or possession of real property, or interest therein, it is a real action. The action should be filed in the proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated. *If the action is a personal action, the action shall be filed with the proper court where the plaintiff or any of the principal plaintiffs resides, or*

where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, *at the election of the plaintiff*. It has been consistently held that an action for collection of sum of money is a personal action. Taking into account that no exception can be applied in this case, the venue, then, is "where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, ... at the election of the plaintiff." For a corporation, its residence is considered "the place where its principal office is located as stated in its Articles of Incorporation." In its Complaint, petitioner stated that its principal place of business is on San Vicente Road beside South Superhighway, San Pedro, Laguna. Meanwhile, respondent admitted in its Answer that its principal office is at 12/F Centerpoint Building, Garnet Road corner Julia Vargas Avenue, Ortigas Center, Pasig City. Considering that the amount petitioner claims falls within the jurisdiction of the Regional Trial Court, petitioner may file its Complaint for sum of money either in the Regional Trial Court of San Pedro, Laguna or in the Regional Trial Court of Pasig City.

4. ID.; ID.; ID.; WHILE THE RULES ON VENUE ARE FOR THE CONVENIENCE OF PLAINTIFFS, THESE RULES DO NOT GIVE THEM UNBOUNDED FREEDOM TO FILE THEIR CASES WHEREVER THEY MAY PLEASE.— This Court reminds litigants that while the rules on venue are for the convenience of plaintiffs, these rules do not give them unbounded freedom to file their cases wherever they may please: [T]he rules on venue, like the other procedural rules, are designed to insure a just and orderly administration of justice or the impartial and even-handed determination of every action and proceeding. Obviously, this objective will not be attained if the plaintiff is given unrestricted freedom to choose the court where he may file his complaint or petition. The choice of venue should not be left to the plaintiff's whim or caprice. He [or she] may be impelled by some ulterior motivation in choosing to file a case in a particular court even if not allowed by the rules on venue.

APPEARANCES OF COUNSEL

Malinao Carandang Adan Law Offices for petitioner.
Poblador Bautista Reyes for respondent.

D E C I S I O N

LEONEN, *J.*:

The venue for the collection of sum of money case is governed by Rule 4, Section 2 of the Rules of Court. Unless the parties enter into a written agreement on their preferred venue before an action is instituted, the plaintiff may commence his or her action before the trial court of the province or city either where he or she resides, or where the defendant resides. If the party is a corporation, its residence is the province or city where its principal place of business is situated as recorded in its Articles of Incorporation.[1]

This is a Petition for Review on Certiorari[2] assailing the January 13, 2012 Decision[3] and March 28, 2012 Resolution[4] of the Court of Appeals in CA-G.R. SP No. 119511. The Court of Appeals granted Nutri-Asia, Inc.'s (Nutri-Asia) Petition for Certiorari,[5] and reversed and set aside the May 24, 2010

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[1] See *Pilipinas Shell Petroleum Corporation v. Royal Ferry Services, Inc.* , G.R. No. 188146, February 1, 2017, 816 SCRA 379, 381 [Per *J.* Leonen, Second Division].

[2] *Rollo*, pp. 19-68.

[3] *Id*. at 1022-1035. The Decision was penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Remedios A. Salazar-Fernando and Sesinando E. Villon of the Second Division, Court of Appeals, Manila.

[4] *Id*. at 1103. The Resolution was penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Remedios A. Salazar-Fernando and Sesinando E. Villon of the Second Division, Court of Appeals, Manila.

[5] *Id*. at 884-915.

Order[6] of the Regional Trial Court Branch 46, Manila and the March 14, 2011 Joint Order[7] of the Regional Trial Court Branch 24, Manila in Civil Case No. 09-121849. The trial courts denied Nutri-Asia's Omnibus Motion to Set for Hearing the Affirmative Defenses Pleaded in the Answer and to Refer the Parties to Arbitration in a collection of sum of money case.[8]

Hygienic Packaging Corporation (Hygienic) is a domestic corporation that manufactures, markets, and sells packaging materials such as plastic bottles and ratchet caps.[9] Meanwhile, Nutri-Asia is a domestic corporation that manufactures, sells, and distributes food products such as banana-based and tomato-based condiments, fish sauce, vinegar, soy sauce, and other sauces.[10]

From 1998 to 2009, Hygienic supplied Nutri-Asia with KG Orange Bottles and Ratchet Caps with Liners (plastic containers) for its banana catsup products.[11] Every transaction was covered by a Purchase Order issued by Nutri-Asia.[12] The Terms and Conditions on the Purchase Order provided:

TERMS AND CONDITIONS

The following terms and conditions and any of the specifications, drawings, samples and additional terms and conditions which may be incorporated herein by reference or appended hereto are part of this Purchase Order. By accepting this Purchase Order or any part thereof the Seller agrees to and accepts all terms and conditions.

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[6] *Id*. at 759-769. The Order was issued by Judge Aida E. Layug of Branch 46, Regional Trial Court, Manila.

[7] *Id*. at 883. The Joint Order was issued by Judge Antonio M. Eugenio, Jr. of Branch 24, Regional Trial Court, Manila.

[8] *Id*. at 769.

[9] *Id*. at 71 and 73.

[10] *Id*. at 72 and 418.

[11] *Id*. at 73 and 1023.

[12] *Id*. at 1023.

1. The number of this Purchase Order must appear on the corresponding Sales Invoice, Shipping papers and other pertinent documents and the Seller's VAT No., when applicable, must be on all Invoices/Delivery receipts.

2. NO Payment will be made unless original sales invoice received by Buyer's accounting Department.

. . . . . .

8. The Seller warrants that the Goods delivered to the Buyer will be merchantable, of commercial standard and that the Goods will conform with (*sic*) the written specifications and requirements of the Buyer. The Buyer shall have the right to reject or return any or all items found not in conformity with such standards[,] [s]pecifications or requirements. The Seller shall likewise indemnify and hold the Buyer free and harmless from any and all damages incurred by the Buyer as a result of the violation of these warranties.

   The above warranties by the Seller shall also apply in case o[f] Goods consisting of packaging materials or foodstuffs to be used as raw materials or ingredients in the manufacture or processing of foodstuff in ensuring that they shall be fit for human consumption and free from adulteration or foreign materials and shall comply with all the relevant food and hygiene statutes and regulations both in the Buyer's Country and in any other such relevant country as to composition, processing (if any), packaging and description.

. . . . . .

13. Arbitration [of] all disputes arising in connection with this Contract shall be referred to an Arbitration Committee, in accordance with the Philippine Arbitration Law, composed of three members: one (1) member to be chosen by the Buyer; another member to be chosen by the Seller[;] and the third member to be chosen by the other two members. The decision of the Arbitration Committee shall be binding upon the parties.[13]

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[13] *Id.* at 98-114.

From December 29, 2007 to January 22, 2009, Nutri-Asia purchased from Hygienic 457,128 plastic containers, for a total consideration of ₱9,737,674.62.[14] Hygienic issued Sales Invoices[15] and Delivery Receipts[16] to cover these transactions.[17]

On July 29, 2009, Hygienic filed a Complaint[18] for sum of money against Nutri-Asia. It instituted the case before the Regional Trial Court of Manila "pursuant to the stipulation of the parties as stated in the Sales Invoices submitting themselves to the jurisdiction of the Courts of the City of Manila in any legal action arising out of their transaction[.]"[19]

In its Complaint, Hygienic alleged that based on the Purchase Orders and Sales Invoices, Nutri-Asia agreed to pay Hygienic 30 days after every delivery of plastic containers. However, Nutri-Asia refused to pay for the goods delivered from December 29, 2007 to January 22, 2009 after their payment became due, despite oral and written demands from Hygienic.[20]

Hygienic prayed that Nutri-Asia be ordered to pay it the sum of: (1) ₱9,737,674.62 plus 12% interest per annum as the total unpaid cost of the plastic containers; (2) 25% of ₱9,737,674.62 or the amount to be collected from Nutri-Asia as attorney's fees; (3) ₱300,000.00 as their counsel's acceptance fee; (4) ₱4,000.00 as their counsel's appearance fee for each and every appearance of its counsel in court; and (5) costs of suit.[21]

In its Answer with Compulsory Counter-Claim,[22] Nutri-Asia argued that the case should be dismissed as Hygienic failed to

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[14] *Id*. at 73 and 1024.

[15] *Id*. at 115-228.

[16] *Id*. at 229-348.

[17] *Id*. at 74 and 1024.

[18] *Id*. at 71-80.

[19] *Id*. at 72-73.

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

[21] *Id*. at 76-77.

[22] *Id*. at 417-459.

comply with a condition precedent prior to its filing of the Complaint.[23] It claimed that under the Terms and Conditions of the Purchase Orders, Hygienic should have first referred the matter to the Arbitration Committee.[24]

Nutri-Asia alleged that the venue was also improperly laid since the Regional Trial Court of Manila was not the proper venue for the institution of Hygienic's personal action. The Complaint should have been filed either before the trial courts of San Pedro, Laguna or Pasig City, where the principal places of business of Hygienic and Nutri-Asia are located, respectively. The venue of actions as stated in the Sales Invoices could not bind Nutri-Asia since it did not give its express conformity to that stipulation.[25]

Nutri-Asia admitted purchasing the plastic containers, and receiving Hygienic's Demand Letter and Final Demand Letter.[26] However, it countered that Hygienic's claim "has been extinguished on the ground of compensation."[27]

Nutri-Asia claimed that of the 457,128 plastic containers, it only used 327,046 for its products, while the 130,082 pieces were unused.[28] It narrated that since January 21, 2009, it received numerous customer complaints on its UFC Banana Catsup products. Consumers complained that the catsup smelled like detergent and soap and tasted like chemical, soap, plastic, and rubber.[29] After investigation, Nutri-Asia discovered that "the contaminated products were all manufactured on December 15, 2008 and they [were] limited to UFC Banana Catsup in 2 kg.

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[23] *Id*. at 420.

[24] *Id*. at 420-423.

[25] *Id*. at 423-424.

[26] *Id*. at 419.

[27] *Id*. at 448.

[28] *Id*. at 432.

[29] *Id*. at 431.

plastic containers supplied by [Hygienic]."[30] It was compelled to recall the contaminated products.[31]

Nutri-Asia stated that in the meetings held on January 22 and 23, 2009, the officers of Hygienic admitted and confirmed that it "used a different colorant which has a poor Low Density Polyethylene (LDPE) carrier grade or poor bonding of the die/ powder (*sic*) with the carrier."[32] The colorant bleeding in the containers contaminated Nutri-Asia's banana catsup. Hygienic's officers allegedly assured Nutri-Asia representatives that Hygienic will shoulder the expenses that would be incurred in the recall of the contaminated products. Its Sales and Marketing Manager, Judith B. Lim, allegedly reassured the same in an electronic mail.[33]

Nutri-Asia further stated that it sent a Letter dated May 6, 2009 to Hygienic, requesting for the reimbursement of ₱36,304,451.27, representing the recall expenses, product and container costs, freight and rental charges, and brand damage. This amount excludes Nutri-Asia's unrealized income.[34]

Nutri-Asia disclosed that Hygienic, in its June 9, 2009 letter, stated that it could not assess Nutri-Asia's claims as they were not accompanied by any supporting document. It also said that it would consider the case closed if Nutri-Asia failed to provide supporting documents by the end of June 11, 2009 office hours. Nutri-Asia replied that Hygienic had no basis to consider the matter closed since the former did not abandon or waive its reimbursement claim. Nutri-Asia requested for a meeting to further discuss the matter.[35]

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[30] *Id*.

[31] *Id*. at 432.

[32] *Id*. at 433.

[33] *Id*. at 433-434.

[34] *Id* . at 434-435.

[35] *Id*. at 437-439.

Nutri-Asia alleged that it sent Hygienic the supporting documents on June 15, 2009. However, Hygienic stated that the documents it received were insufficient to support Nutri-Asia's reimbursement claim. Nutri-Asia insisted that the documents were sufficient, and again suggested a meeting between the parties.[36]

After a re-computation of its claims, Nutri-Asia informed Hygienic that its request for reimbursement decreased to ₱25,850,759.31. The new amount was due to the reduction of the number of rejects and the reduction in freight charges, rental charges, and additional manpower charges. The parties exchanged several correspondences, until Nutri-Asia received a copy of the Complaint. As of September 4, 2009, Nutri-Asia's expenses increased to ₱26,405,553.95.[37]

In arguing that its obligation was extinguished by compensation, Nutri-Asia contended:

> 10.47 In the instant case, both plaintiff and defendant are bound principally and at the same time a principal creditor of the other; both debts consist in a sum of money; both debts are due, liquidated and demandable; and neither plaintiff [n]or defendant there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.
>
> 10.48 By virtue of compensation, the plaintiff's obligation to defendant for the said losses and damages in the sum of ₱26,405,553.95 is set off to the extent of ₱9,737,674.12 with the defendant's alleged obligation to plaintiff in the sum of ₱9,737,674.12 resulting to the extinguishment of defendant's alleged obligation to plaintiff.[38]

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[36] *Id*. at 440-443.

[37] *Id*. at 443-447-A.

[38] *Id*. at 450.

Due to compensation, Hygienic's unpaid obligation was reduced to ₱l6,667,879.83.[39] Nutri-Asia added that Hygienic's cause of action against it had yet to accrue, and that Nutri-Asia was merely holding the payment of ₱9,737,674.12 as a lien to ensure that Hygienic would pay the losses and damages it incurred.[40]

Lastly, Nutri-Asia alleged that Hygienic did not come to court with clean hands, and that it acted in bad faith when it filed the Complaint.[41] It claimed that the amount charged by Hygienic was "excessive, iniquitious[,] and unconscionable."[42]

After Hygienic filed its Reply,[43] Nutri-Asia filed an Omnibus Motion.[44] Nutri-Asia reiterated its arguments in its Answer, adding that its affirmative defenses could "be resolved on the basis of the pleadings and the documents attached to the complaint without the need of further hearing."[45]

Hygienic opposed Nutri-Asia's Omnibus Motion in its Consolidated or Joint Comment.[46] It countered that the allegation of noncompliance with a condition precedent was incorrect.[47] Moreover, its cause of action was anchored on "the sales invoices and delivery receipts duly acknowledged by [Nutri-Asia] through its authorized representative and that these deliveries made by [Hygienic] were not properly paid by [Nutri-Asia]."[48]

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[39] *Id*. at 450-451.

[40] *Id*. at 451-454.

[41] *Id*. at 454-458.

[42] *Id*. at 458-459.

[43] *Id*. at 594-618.

[44] *Id*. at 625-671.

[45] *Id*. at 760.

[46] *Id*. at 704-728.

[47] *Id*. at 760.

[48] *Id*.

Hygienic claimed that even if the cause of action was based on all attached documents in the Complaint, which included the Purchase Orders, the arbitration clause was "inoperative or incapable of being performed."[49] This is because of the conflict between the arbitration clause in the Purchase Orders and the submission of parties to the Manila courts' jurisdiction in the Sales Invoices. The arbitration clause was merely an offer from Nutri-Asia, which Hygienic rejected in its Sales Invoices. To submit the dispute to arbitration, there should have been an unequivocal agreement between the parties. This agreement was lacking in their case.[50]

In its May 24, 2010 Order,[51] the Regional Trial Court Branch 46, Manila denied the Omnibus Motion.[52] It held that the venue was properly laid. It considered the signatures of Nutri-Asia's representatives in the Sales Invoices as the company's concurrence that any dispute would be raised before the courts of Manila.[53]

The trial court also found that the elements of compensation under the Civil Code were absent. It held that Hygienic and Nutri-Asia were not creditors and debtors of each other. Only Hygienic was the creditor, and only Nutri-Asia was the debtor. Nutri-Asia's Counter-Claim for damages still had to be proven.[54]

The trial court likewise did not give credence to Nutri-Asia's allegation that Hygienic had no cause of action against it.[55] As to the allegation that Nutri-Asia's affirmative defenses could already be resolved without going through trial, the trial court

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[49] *Id*. at 761.

[50] *Id*.

[51] *Id*. at 759-769.

[52] *Id*. at 769.

[53] *Id*. at 762.

[54] *Id*. at 762-764.

[55] *Id*. at 764-765.

held that the issues Nutri-Asia raised "must be heard in a full blown trial."[56] It held:

> It is the view of the court that the arguments presented are factual in nature. Trial therefore is essential for the court to best appreciate the facts presented. It cannot be done by mere reading, study and evaluation of the documents attached to the complaint and the arguments presented in their respective motions and comments to prevent miscarriage of justice.
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> . . . . . .
>
> [Rule 16, Section 6 of the Rules of Civil Procedure] provides that it is discretionary upon the court to conduct a preliminary hearing on the affirmative defenses as a ground for dismissal.
>
> Considering therefore that it is discretionary upon the court to allow the hearing on special and affirmative defenses[,] this court would rather conduct a full blown trial so it could evaluate the respective issues raised by the parties.[57]

The trial court ruled that Nutri-Asia's Counter-Claim was permissive in nature; thus, it could not acquire jurisdiction over the Counter-Claim unless the filing fees were paid.[58]

The dispositive portion of the trial court's May 24, 2010 Order read:

> Considering the above premises, the Omnibus Motion is hereby denied.
>
> Defendant is directed to pay the appropriate docket fees on its permissive counterclaim within thirty (30) days from receipt of this order.
>
> Let the pre-trial of the above case be set on July 28, 2010 at 8:30 A.M.

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[56] *Id*. at 767.

[57] *Id*. at 767.

[58] *Id*. at 768-769.

Notify Attys. Malinao and Po of this order.

SO ORDERED.[59]

Nutri-Asia filed a Motion for Reconsideration.[60] However, in its March 14, 2011 Joint Order,[61] the Regional Trial Court Branch 24, Manila denied the Motion. It also endorsed the case for mediation to the Philippine Mediation Center and set a pre-trial conference on May 11, 2011, in case mediation was unsuccessful.[62]

Thus, Nutri-Asia filed a Petition for Certiorari[63] before the Court of Appeals.

In its January 13, 2012 Decision,[64] the Court of Appeals granted the Petition.[65] It held:

> Here, the trial courts rendered the assailed *Orders* deferring a ruling on the issues of venue and compliance with a condition precedent, which is the arbitration clause. No trial was necessary to resolve them. All the trial courts ought to know could be determined from the documents on record, namely, the sales invoices, the purchase orders, the respective places of business of petitioner and private respondent, and the jurisprudence on these issues. We cannot envision any factual question, and the trial courts did not mention any, to be threshed out before they can rule on these affirmative defenses. The error in refusing to resolve them violates so basic and elemental precepts on what and how discretion is to be exercised. We have to set aside and reverse these Orders.[66] (Emphasis in the original)

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[59] *Id*. at 769.

[60] *Id*. at 770-791.

[61] *Id*. at 883.

[62] *Id*.

[63] *Id*. at 884-915.

[64] *Id*. at 1022-1035.

[65] *Id*. at 1034-1035.

[66] *Id*. at 1032.

The Court of Appeals also found that "the trial courts committed grave abuse of discretion in allowing the complaint to stand and stay in Manila."[67] It held that since the signature of Nutri-Asia's employee in the Sales Invoices was only for the receipt of goods, Nutri-Asia did not agree to be bound by the venue stipulation in the Sales Invoices. Meanwhile, Hygienic did not deny that an arbitration clause was written on the Purchase Orders.[68] Its representative even "acknowledged its conformity to the purchase orders."[69] Since Hygienic "availed of the advantages and benefits of the purchase orders when it acted on them[,]"[70] it is thus estopped from rebuffing the arbitration clause.[71]

The Court of Appeals held that Nutri-Asia should have submitted its Counter-Claim to arbitration for resolution. Thus, whether the Counter- Claim was permissive or compulsory was irrelevant.[72]

The dispositive portion of the Court of Appeals January 13, 2012 Decision read:

ACCORDINGLY, the petition is **GRANTED**. The *Orders* dated May 24, 2010 and March 14, 2011 of the Regional Trial Court, Branches 46 and 24, in Civil Case No. 09-121849, are **REVERSED AND SET ASIDE**. The complaint and the counterclaim in Civil Case No. 09-121849 are **DISMISSED WITHOUT PREJUDICE**to referral of the disputes between petitioner Nutri-Asia, Inc. and private respondent Hygienic Packaging Corporation to arbitration, as stipulated in the purchase orders. No costs.

SO ORDERED.[73] (Emphasis in the original)

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[67] *Id*.

[68] *Id*. at 1032-1033.

[69] *Id*. at 1033.

[70] *Id*.

[71] *Id*. at 1033-1034.

[72] *Id*. at 1034.

[73] *Id*. at 1034-1035.

Hygienic filed a Motion for Reconsideration,[74] but it was denied by the Court of Appeals in its March 28, 2012 Resolution.[75]

On May 14, 2012, Hygienic filed a Petition for Review on Certiorari[76] against Nutri-Asia before this Court. It prayed that the Court of Appeals January 13, 2012 Decision and March 28, 2012 Resolution be reversed and set aside, and the trial court's May 24, 2010 Order and March 14, 2011 Joint Order be reinstated.[77] Respondent filed its Comment[78] on August 22, 2012, while petitioner filed its Reply[79] on September 4, 2013.

In its October 7, 2013 Resolution,[80] this Court gave due course to the Petition and required the parties to submit their respective memoranda.[81] Petitioner filed its Memorandum of Arguments[82] on December 12, 2013, while respondent filed its Memorandum[83] on December 19, 2013.

Petitioner argues that the decision of the Court of Appeals to dismiss the Complaint and deny its Motion for Reconsideration is improper. It claims that the Court of Appeals did not discuss the issues it raised in its pleadings.[84] Moreover, if the arbitration clause was found to be valid, the Court of Appeals should have "referred the matter to arbitration and suspended the proceedings of the case."[85]

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[74] *Id*. at 1060-1087.

[75] *Id*. at 1103.

[76] *Id*. at 19-68.

[77] *Id*. at 63.

[78] *Id*. at 1109-1129.

[79] *Id*. at 1139-1154.

[80] *Id*. at 1171-1174.

[81] *Id*. at 1171.

[82] *Id*. at 1186-1238.

[83] *Id*. at 1242-1268.

[84] *Id*. at 1201-1206.

[85] *Id*. at 1203.

Petitioner maintains that the arbitration clause lacks the elements of a valid arbitration agreement. Although present in writing, it was not properly subscribed, and the person who signed the Purchase Orders was only a messenger, not petitioner's authorized agent. Thus, the arbitration clause cannot bind petitioner.[86]

Petitioner reiterates that the Purchase Orders constitute respondent's offer to petitioner to enter into a contract with it. Meanwhile, the Sales Invoices constitute petitioner's counter-offer rejecting the stipulation clause.[87] Since the parties did not agree on the arbitration agreement, the arbitration clause is "inoperative and incapable of being performed, if not totally null and void."[88]

Petitioner also insists that the venue was properly laid when it filed the Complaint before the trial court in Manila. It claims that when respondent accepted the Sales Invoices without protest, it adhered to the contract, which included the venue stipulation. Petitioner points out that the person who signed the Sales Invoices was a high-ranking officer of respondent, not a mere messenger. By signing the Sales Invoices, respondent's representative bound the company to the venue stipulation.[89]

Petitioner asserts that its Motion for Reconsideration and Petition are not prohibited pleadings. It filed the Motion to question both its Complaint's dismissal and the case's supposed referral to arbitration. Thus, the Motion does not fall under Rule 4.6 of the Special Rules of Court on Alternative Dispute Resolution. There is no basis for this Court to deny outright the Petition, which assails the Court of Appeals Resolution denying the Motion.[90]

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[86] *Id*. at 1206-1211.

[87] *Id*. at 1211-1213.

[88] *Id*. at 1213.

[89] *Id*. at 1218-1220.

[90] *Id*. at 1220-1225.

Petitioner also argues it raised purely questions of law:[91]

> The main contention of the petitioner is that the alleged arbitration agreement between the parties of this case did not comply with the requisites provided in the Rules. This is certainly not a question of fact but rather, a question of law, as it necessitates the interpretation and application of ***Section 4 of [Republic Act No.] 876*** to the attendant facts of the case.
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> . . . . . .
>
> Contrary to the position of the respondent, the specific issue on whether or not the messenger-signatory had the authority to bind petitioner Nutri-Asia with respect to the Arbitration Clause is not at all a question of fact. [Neither the] identity nor the rank of the signatory was not disputed or put in question so as to require further reception of evidence and conduction of trial. The truth or falsehood of the incidents related to the act of signing of the mere messenger is not disputed by the respondent. The issue is only with respect to his very authority to bind petitioner Hygienic as to the alleged agreement on arbitration. In short, the issue is limited to whether or not the messenger acted as a lawful agent of the petitioner — and this is undeniably a pure question of law.
>
> The same rationale applies on the issue raised by the petitioner as to whether or not the document pertaining to the arbitration clause was properly subscribed.
>
> . . . This specific issue merely concerns the correct application of law or jurisprudence as to the construction of the term "subscribed" and does not require the examination of the probative value of evidence pertaining to the document containing the arbitration clause.[92] (Emphasis in the original)

Lastly, assuming that petitioner raised factual issues, it argues that these issues fall under the exceptions provided by law and jurisprudence;[93] specifically, when the Court of Appeals rendered

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[91] *Id*. at 1225-1228.

[92] *Id*. at 1226-1227.

[93] *Id*. at 1228-1231.

its Decision: (1) "based on a misapprehension of facts";[94] and (2) its findings were "contrary to those of the trial court[.]"[95]

Respondent counters that petitioner's Motion for Reconsideration and Petition for Review should have been dismissed outright under Rule 4.6 of the Special Rules of Court on Alternative Dispute Resolution.[96] Since the Court of Appeals referred the dispute to arbitration, it is "immediately executory — not subject to a motion for reconsideration, appeal[,] or petition for certiorari[.]"[97]

Respondent argues that the Court of Appeals correctly dismissed the case since the parties failed to submit the case to arbitration. In any case, since it already found that the venue was improperly laid, the Court of Appeals did not err in dismissing the case.[98]

Respondent further claims that the Petition raises questions of fact.[99] It states that petitioner, in filing the Petition, wants this Court "to review the evidence on record and ascertain the authority of the persons who signed the Purchase Orders, as well as the Sales Invoices."[100] This Court will then have to examine these facts:

(a) The identities of the persons who signed the Purchase Orders and the Sales Invoices;

(b) The positions of the persons in HYGIENIC [NUTRI-ASIA never stipulated on the positions of the said persons] who signed the Purchase Orders;

(c) The positions of the persons who ostensibly signed the Sales Invoices;

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[94] *Id*. at 1229.

[95] *Id*.

[96] *Id*. at 1249-1251.

[97] *Id*. at 1250.

[98] *Id*. at 1251-1253.

[99] *Id*. at 1254-1256.

[100] *Id*. at 1254.

(d) The duties and functions of the persons who signed the Purchase Orders and the Sales Invoices;

(e) Whether the persons who signed the Purchase Orders had the authority to act on behalf of HYGIENIC [To be clear, NUTRI-ASIA never admitted that the persons were not authorized to act on behalf of HYGIENIC];

(f) Whether the persons who signed the Sales Invoices had the authority to act on behalf of NUTRI-ASIA [Again, NUTRI-ASIA never admitted the alleged authority of the persons who signed the Sales Invoices]; and

(g) The circumstances surrounding the signing of the Purchase Orders and the Sales Invoices.[101]

Respondent adds that the conflicting findings of the trial court and the Court of Appeals on the issue of arbitration do not suffice to allow the Petition.[102] It highlights that in resolving the case, the question is "whether the Court of Appeals correctly determined the presence of grave abuse of discretion in the ruling of RTC-Manila[.]"[103]

Contrary to petitioner's assertion, respondent contends that the arbitration clause is operative and capable of being performed. Aside from being in writing, both parties subscribed to the Terms and Conditions of the Purchase Orders.[104] Petitioner's acceptance of the Terms and Conditions, which included the arbitration clause, is "manifested by its issuance of the corresponding Sales Invoices, which made reference to the relevant Purchase Orders."[105] By reflecting in its Sales Invoices the serial numbers of respondent's Purchase Orders, petitioner "effectively

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[101] *Id*. at 1254-1255.

[102] *Id*. at 1255.

[103] *Id*.

[104] *Id*. at 1256-1257.

[105] *Id*. at 1257.

incorporated the Purchase Order and its contents into the Sales Invoice, including the arbitration clause."[106] For failing to refer the case to arbitration — a condition precedent before taking judicial action—the Court of Appeals correctly dismissed the case.[107]

Finally, respondent maintains that "the Sales Invoices and the venue stipulation therein did not constitute a rejection of the arbitration clause in the Purchase Orders."[108] It claims that the persons who signed the Sales Invoices were not respondent's employees, but of a third party contractor for their logistics operations.[109] It notes that above the signature line of the Sales Invoices, the phrase "[r]eceived the above goods in good order and condition"[110] is written. The contractor's employees only signed the Sales Invoices to signify that they received the deliveries. Their signatures cannot bind respondent to the venue stipulation. Assuming that they were authorized by respondent, the venue stipulation cannot supersede the arbitration clause in the Purchase Orders.[111] The Sales Invoices' venue stipulation "does not authorize either party to do away with arbitration before proceeding to the courts to seek relief."[112]

The sole issue for this Court's resolution is whether or not the action for collection of sum of money was properly filed.

Petitioner and respondent differ as to where their dispute should be brought for resolution. On the one hand, petitioner contends that the venue stipulation in the Sales Invoices should be enforced. On the other hand, respondent asserts that the arbitration clause in the Purchase Orders should be carried out.

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[106] *Id*.

[107] *Id*. at 1258-1261.

[108] *Id*. at 1261.

[109] *Id*.

[110] *Id*. at 1262.

[111] *Id*. at 1261-1262.

[112] *Id*. at 1262.

This Court cannot subscribe to either contention.

Parties are allowed to constitute any stipulation on the venue or mode of dispute resolution as part of their freedom to contract under Article 1306 of the Civil Code of the Philippines, which provides:

> ARTICLE 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

Here, however, the records lack any written contract of sale containing the specific terms and conditions agreed upon by the parties. The parties failed to provide evidence of any contract, which could have contained stipulations on the venue of dispute resolution. Nonetheless, petitioner and respondent both claim that the Sales Invoices and the Purchase Orders, respectively, contained a stipulation on where to raise issues on any conflict regarding the sale of plastic containers. Each party also insists that the other party accepted the venue stipulation in the Sales Invoices or the Purchase Orders when its representative signed them.

Upon examination of the Sales Invoices and the Purchase Orders, this Court cannot consider the documents as contracts that would bind the parties as to the venue of dispute resolution.

A closer look at the Sales Invoices issued by petitioner reveals that above the signature of respondent's representative is the phrase, "Received the above goods in good order and condition."[113] Clearly, the purpose of respondent's representative in signing the Sales Invoices is merely to acknowledge that he or she has received the plastic containers in good condition. He or she did not affix his or her signature in any other capacity except as the recipient of the goods. To extend the effect of the signature by including the venue stipulation would be to stretch

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[113] *Id*. at 117-120, 122-168, 170-176, and 183-228.

the intention of the signatory beyond his or her objective. This Court, then, cannot bind respondent to the other stipulations in the Sales Invoices.

A scrutiny of the Purchase Orders issued by respondent also reveals that above the signature of petitioner's representative is the phrase "Acknowledged By (Supplier)."[114] Since the Purchase Orders indicated how many pieces of plastic containers respondent wanted to order from petitioner, the signatory merely affixed his or her signature to acknowledge respondent's order. Moreover, the Purchase Orders included a note stating that the "[Purchase Order] must be DULY acknowledged to facilitate payment."[115]

Thus, it was necessary for petitioner's representative to sign the document for the processing of payment. The act of signing the Purchase Orders, then, was limited to acknowledging respondent's order and facilitating the payment of the goods to be delivered. It did not bind petitioner to the terms and conditions in the Purchase Orders, which included the arbitration clause.

Petitioner and respondent may have entered into a contract of sale with respect to petitioner's merchandise. However, the case records do not show that they have a contract in relation to the venue of any civil action arising from their business transaction.

Cathay Metal Corporation v. Laguna West Multi-Purpose Cooperative, Inc.[116] provides, "[f]or there to be a contract, there must be a meeting of the minds between the parties."[117] Here, no evidence shows that petitioner and respondent had a meeting of minds and agreed to submit any future issue either to the trial court or to arbitration.

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[114] *Id*. at 98-114.

[115] *Id*.

[116] 738 Phil. 37 (2014) [Per J. Leonen, Third Division].

[117] *Id*. at 66.

Since there is no contractual stipulation that can be enforced on the venue of dispute resolution, the venue of petitioner's personal action will be governed by the 1997 Revised Rules of Civil Procedure. Rule 4 provides:

RULE 4
Venue of Actions

SECTION 1. Venue of Real Actions. — Actions affecting title to or possession of real property, or interest therein, shall be commenced and tried in the proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated.

Forcible entry and detainer actions shall be commenced and tried in the Municipal Trial Court of the municipality or city wherein the real property involved, or a portion thereof, is situated.

SECTION 2. Venue of Personal Actions. — All other actions may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff.

SECTION 3. Venue of Actions Against Nonresidents. — If any of the defendants does not reside and is not found in the Philippines, and the action affects the personal status of the plaintiff, or any property of said defendant located in the Philippines, the action may be commenced and tried in the court of the place where the plaintiff resides, or where the property or any portion thereof is situated or found.

SECTION 4. When Rule not Applicable. — This Rule shall not apply —

(a) In those cases where a specific rule or law provides otherwise; or

(b) Where the parties have validly agreed in writing before the filing of the action on the exclusive venue thereof.

In *City of Lapu-Lapu v. Philippine Economic Zone Authority*:[118]

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[118] 748 Phil. 473 (2014) [Per J. Leonen, Second Division].

[V]enue is "the place of trial or geographical location in which an action or proceeding should be brought." In civil cases, venue is a matter of procedural law. A party's objections to venue must be brought at the earliest opportunity either in a motion to dismiss or in the answer; otherwise the objection shall be deemed waived. When the venue of a civil action is improperly laid, the court cannot *motu proprio* dismiss the case.

The venue of an action depends on whether the action is a real or personal action. Should the action affect title to or possession of real property, or interest therein, it is a real action. The action should be filed in the proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated. *If the action is a personal action, the action shall be filed with the proper court where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides*, or in the case of a non-resident defendant where he may be found, *at the election of the plaintiff*.[119] (Emphasis supplied, citations omitted)

It has been consistently held that an action for collection of sum of money is a personal action.[120] Taking into account that no exception can be applied in this case, the venue, then, is "where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, ... at the election of the plaintiff."[121] For a corporation, its residence is considered "the place where its principal office is located as stated in its Articles of Incorporation."[122]

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[119] *Id*. at 523.

[120] See *Consolidated Plywood Industries, Inc. v. Hon. Breva*, 248 Phil. 819, 823 (1988) [Per J. Narvasa, First Division]; *San Miguel Corp. v. Monasterio*, 499 Phil. 702, 709 (2005) [Per J. Quisumbing, First Division]; *Ang v. Sps. Ang*, 693 Phil. 106, 113 (2012) [Per J. Reyes, Second Division]; *Gagoomal v. Sps. Villacorta*, 679 Phil. 441, 453 (2012) [Per J. Perlas-Bernabe, Third Division]; *Ang v. Sps. Ang*, 693 Phil. 106, 113 (2012) [Per J. Reyes, Second Division].

[121] RULES OF COURT, Rule 4, Sec. 2.

[122] *Pilipinas Shell Petroleum Corporation v. Royal Ferry Services, Inc.*, G.R. No. 188146, February 1, 2017, 816 SCRA 379, 381 [Per J. Leonen, Second Division]. See also *Mangila v. Court of Appeals*, 435 Phil. 870, 885 (2002) [Per J. Carpio, Third Division].

In its Complaint, petitioner stated that its principal place of business is on San Vicente Road beside South Superhighway, San Pedro, Laguna.[123] Meanwhile, respondent admitted in its Answer that its principal office is at 12/F Centerpoint Building, Garnet Road corner Julia Vargas Avenue, Ortigas Center, Pasig City.[124] Considering that the amount petitioner claims falls within the jurisdiction of the Regional Trial Court,[125] petitioner may file its Complaint for sum of money either in the Regional Trial Court of San Pedro, Laguna or in the Regional Trial Court of Pasig City.

Petitioner's erroneous belief on the applicability of the venue stipulation in the Sales Invoices led it to file an action before the Regional Trial Court of Manila. This error is fatal to petitioner's case.

One (1) of the grounds for dismissal of an action under Rule 16, Section 1[126] of the 1997 Revised Rules of Civil Procedure is

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[123] *Rollo*, p. 71.

[124] *Id.* at 72 and 418.

[125] Petitioner claims the amount of ₱9,737,674.62. In *Pajares v. Remarkable Laundry and Dry Cleaning* (G.R. No. 212690, February 20, 2017, 818 SCRA 144, 162-164 [Per J. Del Castillo, First Division]), this Court held:

> Paragraph 8, Section 19 of [Batas Pambansa Blg.] 129, as amended by Republic Act No. 7691, provides that where the amount of the demand exceeds ₱100,000.00, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs, exclusive jurisdiction is lodged with the [Regional Trial Court]. Otherwise, jurisdiction belongs to the Municipal Trial Court.
>
> The above jurisdictional amount had been increased to ₱200,000.00 on March 20, 1999 and further raised to ₱300,000.00 on February 22, 2004 pursuant to Section 5 of [Republic Act No.] 7691. (Citations omitted)

[126] RULES OF COURT, Rule 16, Sec. 1(c) provides:

> SECTION 1. Grounds. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
>
> . . . .
>
> (c) That venue is improperly laid[.]

when the venue is improperly laid. Although respondent did not file a Motion to Dismiss on this ground, it cited the improper venue as one (1) of the affirmative defenses in its Answer:[127]

> 9. **The venue of the instant complaint is improperly laid.**
>
> 9.1 The instant complaint for collection of a sum of money, a personal action was filed before the Regional Trial Court of the City of Manila which is not the proper venue for the instant complaint.
>
> . . . . . .
>
> 9.3 In paragraphs 1 and 2 of the instant complaint, the plaintiff had made an admission on the pleading that its principal place of business is located at San Vicente Road beside South Superhighway, San Pedro, [Laguna,] while the principal place of business of defendant is located at 12/F The Centerpoint Building, Garnet Road corner Julia Vargas Avenue, Ortigas Center, Pasig City. With this admission on the pleading, it is clear that the instant complaint should have been filed before the Regional Trial Court of San Pedro, Laguna, where the plaintiff has its principal place of business or before the Regional Trial Court of Pasig City, Laguna where the defendant has its principal place of business.
>
> 9.4 The parties did not validly agree in writing before the filing of the action that the Courts of the City of Manila shall be the exclusive venue thereof.
>
> 9.5 The alleged stipulation in the Sales Invoice that the parties submit themselves to jurisdiction of the Courts of the City of Manila in any legal action out of the transaction between the parties cannot and should not bind defendant in the absence of the express conformity

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[127] *Rollo*, pp. 423-424. See *City of Lapu-Lapu v. Philippine Economic Zone Authority*, 748 Phil. 473, 523 (2014) [Per J. Leonen, Second Division]: "A party's objections to venue must be brought at the earliest opportunity either in a motion to dismiss or in the answer; otherwise the objection shall be deemed waived. When the venue of a civil action is improperly laid, the court cannot *motu proprio* dismiss the case." (Citation omitted)

> by the defendant. The defendant has never signed the said Sales Invoice to signify its conformity to the said stipulation regarding venue of actions.[128] (Emphasis in the original)

This Court finds that the Court of Appeals is partly correct in ruling that the trial court committed grave abuse of discretion in denying respondent's Omnibus Motion. The assailed Court of Appeals January 13, 2012 Decision held:

> On the issue of venue, the trial courts committed grave abuse of discretion in allowing the complaint to stand and stay in Manila. The sales invoices, if viewed to be a contract on venue stipulation, were not signed by petitioner's agent to be bound by such stipulation. The signature has to do with the receipt of the purchased goods "in good order and condition." Petitioner did not, therefore, agree to be restricted to a venue in Manila and was never obliged to observe this unilateral statement in the sales invoices.[129] (Citation omitted)

However, contrary to the Court of Appeals' finding on the validity of the arbitration clause, this Court cannot give the stipulation any effect as discussed earlier.

This Court reminds litigants that while the rules on venue are for the convenience of plaintiffs, these rules do not give them unbounded freedom to file their cases wherever they may please:[130]

> [T]he rules on venue, like the other procedural rules, are designed to insure a just and orderly administration of justice or the impartial and even-handed determination of every action and proceeding. Obviously, this objective will not be attained if the plaintiff is given unrestricted freedom to choose the court where he may file his complaint or petition. The choice of venue should not be left to the

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[128] *Rollo*, pp. 423-424.

[129] *Id*. at 1032-1033.

[130] *Mangila v. Court of Appeals*, 435 Phil. 870, 887 (2002) [Per *J*. Carpio, Third Division]; *Ang v. Spouses Ang*, 693 Phil. 106, 113 and 115 (2012) [Per *J*. Reyes, Second Division].

plaintiff's whim or caprice. He [or she] may be impelled by some ulterior motivation in choosing to file a case in a particular court even if not allowed by the rules on venue.[131] (Citation omitted)

WHEREFORE, premises considered, the Court of Appeals January 13, 2012 Decision and March 28, 2012 Resolution in CA-G.R. SP No. 119511 are **AFFIRMED** insofar as they reversed and set aside the May 24, 2010 Order and March 14, 2011 Joint Order of the Regional Trial Court, Branches 46 and 24, in Civil Case No. 09-121849.

However, the rulings of the Court of Appeals dismissing the Complaint and the Counter-Claim in Civil Case No. 09-121849 without prejudice to referral of the disputes to arbitration are **REVERSED** and **SET ASIDE**.

The Complaint and the Counter-Claim in Civil Case No. 09-121849 are **DISMISSED WITHOUT PREJUDICE** to the refiling of the same claims before the proper court.

SO ORDERED.

Peralta (*Chairperson*), *Reyes, A. Jr., Hernando*, and *Carandang*,[*] *JJ.*, concur.

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[131] *Ang v. Sps. Ang*, 693 Phil. 106, 117 (2012) [Per *J.* Reyes, Second Division].

[*] Designated additional member per Special Order No. 2624 dated November 28, 2018.

THIRD DIVISION

[G.R. No. 210773. January 23, 2019]

GSIS FAMILY BANK EMPLOYEES UNION, represented By its President MS. JUDITH JOCELYN MARTINEZ, *petitioner, vs.* **SEC. CESAR L. VILLANUEVA (In His capacity as the Chairman of the Governance Commission for government-owned or controlled corporations under the Office of the President), MR. EMMANUEL L. BENITEZ (in his capacity as president of the GSIS family bank),** and **ATTY. GERALDINE MARIE BERBERABE-MARTINEZ (in her capacity as chairperson of the board of directors of the GSIS family bank),** *respondents.*

SYLLABUS

1. POLITICAL LAW; JUDICIAL DEPARTMENT; TRADITIONAL AND EXPANDED POWER OF JUDICIAL REVIEW; THE SUPREME COURT'S EXPANDED POWER OF JUDICIAL REVIEW REQUIRES A *PRIMA FACIE* SHOWING OF GRAVE ABUSE OF DISCRETION BY ANY GOVERNMENT BRANCH OR INSTRUMENTALITY.— Judicial power is the court's authority to "settle justiciable controversies or disputes involving rights that are enforceable and demandable before the courts of justice or the redress of wrongs for violations of such rights." This Court's judicial power is anchored on Article VIII, Section 1 of the 1987 Constitution, x x x Judicial power includes the power to enforce rights conferred by law and determine grave abuse of discretion by any government branch or instrumentality. Jurisprudence has consistently referred to these two (2) as the court's traditional and expanded powers of judicial review. Traditional judicial power is the court's authority to review and settle actual controversies or conflicting rights between dueling parties and enforce legally demandable rights. An actual case or controversy exists "when the case presents conflicting or opposite legal rights that may be resolved by the court in a judicial proceeding." On the other hand, the framers of the

1987 Constitution deliberately expanded this Court's power of judicial review to prevent courts from seeking refuge behind the political question doctrine and turning a blind eye to abuses committed by the other branches of government. This Court's expanded power of judicial review requires a prima facie showing of grave abuse of discretion by any government branch or instrumentality. This broad grant of power contrasts with the remedy of certiorari under Rule 65, which is limited to the review of judicial and quasi-judicial acts. Nonetheless, this Court, by its own power to relax its rules, allowed Rule 65 to be used for petitions invoking the courts' expanded jurisdiction.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; IN ORDER FOR A WRIT OF *CERTIORARI* MAY BE ISSUED, THREE (3) THINGS MUST BE ALLEGED IN THE PETITION AND MUST BE PROVEN; ENUMERATED.— Thus, a writ of certiorari may only be issued when the following are alleged in the petition and proven: (1) the writ is directed against a tribunal, a board[,] or any officer exercising judicial or quasi[-]judicial functions; (2) such tribunal, board[,] or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy[,] and adequate remedy in the ordinary course of law.

3. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 10149 (GOCC GOVERNANCE ACT OF 2011); GOVERNANCE COMMISSION; THE GOVERNANCE COMMISSION IS AN ATTACHED AGENCY OF THE OFFICE OF THE PRESIDENT, HENCE, ANY QUESTION TO ITS LEGAL OPINION SHOULD BE ELEVATED TO THE OFFICE OF THE PRESIDENT.— The Governance Commission was created under Republic Act No. 10149. It is attached to the Office of the President and is the "central advisory, monitoring, and oversight body with authority to formulate, implement[,] and coordinate policies" relative to government-owned and controlled corporations. It has no judicial or quasi-judicial authority, as evidenced by its powers and functions under the law. x x x The Governance Commission possesses neither judicial nor quasi- judicial powers; thus, it cannot review or settle actual controversies or conflicting rights between dueling parties and enforce legally demandable rights. It is not a tribunal or board exercising judicial or quasi-judicial functions that may

properly be the subject of a petition for *certiorari*. x x x A careful reading of the March 8, 2013 letter likewise demonstrates its advisory nature with no directive for respondents to refrain from negotiating with petitioner. Further, petitioner failed to prove that it had no other "plain, speedy[,] and adequate remedy in the ordinary course of law" aside from its present Petition. The Governance Commission is an attached agency of the Office of the President; hence, petitioner could have elevated the advisories to the Office of the President to question the Governance Commission's legal opinion.

4. **ID.; ID.; ID.; ID.; AS A COLLEGIAL BODY, ALL MEMBERS OF THE GOVERNANCE COMMISSION SHOULD BE IMPLEADED AS INDISPENSABLE PARTIES OF A PETITION; EFFECT OF FAILURE TO IMPLEAD IN CASE AT BAR.—** The Governance Commission is composed of five (5) members. The chairperson, with a rank of Cabinet Secretary, and two (2) other members, with the rank of Undersecretary, are appointed by the President. The Department of Budget and Management and the Department of Finance Secretaries sit as *ex-officio* members. As a collegial body, all members of the Governance Commission should have been impleaded as indispensable parties in the Petition, since no final determination of the action can be reached without them. As it is, petitioner's failure to implead all members of the Governance Commission should lead to the outright dismissal of this Petition as their non-inclusion is debilitating since this Court cannot exercise its juridical power when an indispensable party is not impleaded.

5. **REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; COURTS GENERALLY DISMISS CASES ON THE GROUND OF MOOTNESS; EXCEPTIONS.—** A case is deemed moot when it ceases to present a justiciable controversy due to a supervening event. The lack of an actual or justiciable controversy means that the court has nothing to resolve, and will, in effect, only render an advisory opinion. Courts generally dismiss cases on the ground of mootness unless any of the following instances are present: (1) grave constitutional violations; (2) exceptional character of the case; (3) paramount public interest; (4) the case presents an opportunity to guide the bench, the bar, and the public; or (5) the case is capable of repetition yet evading review.

6. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 10149 (GOCC GOVERNANCE ACT OF 2011); GOVERNMENT-OWNED AND CONTROLLED CORPORATION (GOCC); THREE (3) ATTRIBUTES NECESSARY TO BE CLASSIFIED AS A GOVERNMENT-OWNED AND CONTROLLED CORPORATION, ENUMERATED.— On July 25, 1987, then President Corazon C. Aquino issued Executive Order No. 292 or the Administrative Code of 1987, which replaced the 1917 colonial period Administrative Code in effect then, and laid out in a "unified document the major structural, functional[,] and procedural principles and rules of governance[.]" Section 2(13) of Executive Order No. 292 defined a government-owned or controlled corporation: x x x This definition was echoed in Section 3(o) of Republic Act No. 10149: x x x Thus, a government-owned or controlled corporation is: (1) established by original charter or through the general corporation law; (2) vested with functions relating to public need whether governmental or proprietary in nature; and (3) directly owned by the government or by its instrumentality, or where the government owns a majority of the outstanding capital stock. Possessing all three (3) attributes is necessary to be classified as a government-owned or controlled corporation. x x x Republic Act No. 10149 defines a non-chartered government-owned or controlled corporation as a government-owned or controlled corporation that was organized and is operating under the Corporation Code. It does not differentiate between chartered and non-chartered government-owned or controlled corporations; hence, its provisions apply equally to both: x x x Section 9 of Republic Act No. 10149 also categorically states, "Any law to the contrary notwithstanding, no [government-owned or controlled corporation] shall be exempt from the coverage of the Compensation and Position Classification System developed by the [Governance Commission] under this Act." Furthermore, Republic Act No. 10149 directed the Governance Commission to develop a Compensation and Position Classification System, to be submitted for the President's approval, which shall apply to all officers and employees of government-owned or controlled corporations, whether chartered or non-chartered.

7. ID.; BILL OF RIGHTS; RIGHT TO SELF-ORGANIZATION; WHILE THE RIGHT TO SELF-ORGANIZATION IS ABSOLUTE, THE RIGHT OF GOVERNMENT

EMPLOYEES TO COLLECTIVE BARGAINING AND NEGOTIATION IS SUBJECT TO LIMITATIONS; ELUCIDATED.— The right of workers to self-organization, collective bargaining, and negotiations is guaranteed by the Constitution under Article XIII, Section 3: x x x The right to self-organization is not limited to private employees and encompasses all workers in both the public and private sectors, as shown by the clear declaration in Article IX(B), Section 2(5) that "the right to self-organization shall not be denied to government employees." Article III, Section 8 of the Bill of Rights likewise states, "[t]he right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged." While the right to self-organization is absolute, the right of government employees to collective bargaining and negotiation is subject to limitations. Collective bargaining is a series of negotiations between an employer and a representative of the employees to regulate the various aspects of the employer-employee relationship such as working hours, working conditions, benefits, economic provisions, and others. Relations between private employers and their employees are subject to the minimum requirements of wage laws, labor, and welfare legislation. Beyond these requirements, private employers and their employees are at liberty to establish the terms and conditions of their employment relationship. In contrast with the private sector, the terms and conditions of employment of government workers are fixed by the legislature; thus, the negotiable matters in the public sector are limited to terms and conditions of employment that are not fixed by law. *Social Security System Employees Association v. Court of Appeals* explains that instead of a collective bargaining agreement or negotiation, government employees must course their petitions for a change in the terms and conditions of their employment through the Congress for the issuance of new laws, rules, or regulations to that effect: x x x When it comes to collective bargaining agreements and collective negotiation agreements in government-owned or controlled corporations, Executive Order No. 203 unequivocally stated that while it recognized the right of workers to organize, bargain, and negotiate with their employers, "the Governing Boards of all covered [government-owned or controlled corporations], whether Chartered or Non-chartered, may not

negotiate with their officers and employees the economic terms of their [collective bargaining agreements]."

APPEARANCES OF COUNSEL

Dela Cruz Entero & Associates for petitioner.

Office of the Government Corporate Counsel for respondents E.L. Benitez & G.M. Berberabe-Martinez.

D E C I S I O N

LEONEN, *J.*:

Officers and employees of government-owned or controlled corporations without original charters are covered by the Labor Code, not the Civil Service Law. However, non-chartered government-owned or controlled corporations are limited by law in negotiating economic terms with their employees. This is because the law has provided the Compensation and Position Classification System, which applies to all government-owned or controlled corporations, chartered or non-chartered.

This Court resolves a Petition[1] for Certiorari, Prohibition, and Mandamus filed by the GSIS Family Bank Employees Union (GSIS Union), praying that GSIS Family Bank be declared outside the coverage of Republic Act No. 10149 and, therefore, be directed to negotiate a new collective bargaining agreement with its employees.

On July 22, 1969, Royal Savings Bank was organized and incorporated as a thrift bank. It began operating on February 8, 1971, with former Cavite Representative Renato Dragon as its President and Board Chairman.[2]

On June 28, 1984, Royal Savings Bank filed an application with the Central Bank of the Philippines (Central Bank) for the appointment of a conservator.[3]

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[1] *Rollo*, pp. 3-31.

[2] *Id*. at 103.

[3] *Id*. at 51.

On July 6, 1984, the Central Bank denied Royal Savings Bank's application for conservatorship, prohibited it from doing business, and placed it under receivership.[4]

Royal Savings Bank filed several complaints against the Central Bank for grave abuse of discretion. To amicably settle the cases, then Central Bank Governor Jose B. Fernandez, Jr. offered to reopen and rehabilitate Royal Savings Bank if it would drop all its complaints against the Central Bank and transfer all its shares of stock to Commercial Bank of Manila, a wholly-owned subsidiary of the Government Service Insurance System.[5]

On September 7, 1984, Royal Savings Bank and Commercial Bank of Manila entered into a Memorandum of Agreement to rehabilitate and infuse capital into Royal Savings Bank. Royal Savings Bank was renamed Comsavings Bank.[6]

Sometime in December 1987, the Government Service Insurance System transferred its holdings from Commercial Bank of Manila to Boston Bank. Comsavings Bank was not included in the transfer. Due to Boston Bank's acquisition of Commercial Bank of Manila, the Government Service Insurance System took over the control and management of Comsavings Bank.[7]

On July 19, 1993, Comsavings Bank and the Government Service Insurance System executed a Memorandum of Agreement where the latter committed to infuse an additional capital of ₱2.5 billion into Comsavings Bank. After the infusion of funds, the Government Service Insurance System effectively owned 99.55% of Comsavings Bank's outstanding shares of stock.[8]

Sometime in July 2001, Comsavings Bank changed its name to GSIS Family Bank.[9]

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[4] *Id*.

[5] *Id*.

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

[7] *Id*. at 52.

[8] *Id*.

[9] *Id*. at 6.

On May 25, 2004,[10] acting on a request for opinion from GSIS Family Bank, the General Counsel of Bangko Sentral ng Pilipinas opined that GSIS Family Bank could not be categorized as a government bank:

> [GSIS Family Bank], when it was still [Royal Savings Bank], was organized as a private stock savings and loan association organized under the general corporation law. Thus, at its inception, the bank was set up for private needs. When GSIS invested in the bank, it was the result of a business decision on its part to be an equity owner in a thrift bank. The case of [GSIS Family Bank] is unlike that of government banks, such as Development Bank of the Philippines, the Land Bank of the Philippines or Al-Amanah Islamic Development Bank[,] the charters of which were enacted by the lawmaking authority for the purpose of addressing public needs....
>
> It is true that P.D. No. 2029 simply defines a GOCC as "a stock or non-stock corporation, whether performing governmental or proprietary functions, which is charted by special law or if organized under the general corporation law is owned by the government directly or indirectly through a parent corporation or subsidiary corporation to the extent of at least a majority of its outstanding capital . . . stock or of its outstanding voting capital stock". We believe however that this definition, which merely requires ownership by the government for an entity to qualify as a GOCC, has been qualified by the subsequent promulgation of E.O. No. 292 . . . which requires, in addition, that the institution was organized to serve public needs.
>
> In view of the foregoing, we find insufficient basis to categorize [GSIS Family Bank] as a government bank.[11]

On September 8, 2010, then President Benigno S. Aquino III (President Aquino) issued Executive Order No. 7,[12] which placed an indefinite moratorium on increases in salaries and benefits

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[10] *Id.* at 88-89. The opinion was written by Director Candon B. Guerrero of the Supervision and Examination Department III, Bangko Sentral ng Pilipinas.

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

[12] Directing the Rationalization of the Compensation and Position Classification System in the Government-Owned and -Controlled Corporations (GOCCs) and Government Financial Institutions (GFIS), and for Other Purposes.

of employees in government-owned or controlled corporations and government financial institutions.[13]

On June 6, 2011, President Aquino signed into law Republic Act No. 10149, or the GOCC Governance Act of 2011.[14] The law created the Governance Commission for Government-Owned or Controlled Corporations (Governance Commission), defined as "a central advisory, monitoring, and oversight body with authority to formulate, implement[,] and coordinate policies"[15] in its governed sector.

On May 2, 2012, Emmanuel L. Benitez (Benitez), GSIS Family Bank's president, sought opinion from the Bangko Sentral ng Pilipinas as to whether GSIS Family Bank may be considered as a government-owned or controlled corporation or government bank under Republic Act No. 10149.[16]

On May 14, 2012, Bangko Sentral ng Pilipinas advised GSIS Family Bank to seek the opinion of the Governance Commission, the implementing agency of Republic Act No. 10149.[17]

On January 15, 2013, GSIS Family Bank met with representatives of the Governance Commission, which clarified that GSIS Family Bank was classified as a government financial institution under Republic Act No. 10149.[18]

On February 11, 2013, Benitez wrote[19] the Governance Commission to seek further clarification on several issues,

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[13] *Rollo*, p. 130.

[14] *Id*. at 131.

[15] Rep. Act No. 10149 (2011), Ch. II, Sec. 5.

[16] *Rollo*, p. 40.

[17] *Id*. at 40-41. The letter was written by Officer-in-Charge Elmore O. Capule of the Office of the General Counsel and Legal Services, Bangko Sentral ng Pilipinas.

[18] *Id*. at 51.

[19] *Id*. at 51-57.

namely: (1) GSIS Family Bank's impending collective bargaining negotiations with its employees; (2) its authority to enter into a collective bargaining agreement with the GSIS Union; and (3) its employees' right to strike.[20] Benitez asked:

> Should a CBA be the proper mode of determining the terms and conditions of employment of the rank-and-file employees, the question as to which matters may be negotiated remains[?]
>
> Did R.A. 10149 effectively amend the provisions of the Labor Code on [collective bargaining agreements] insofar as compensation is concerned? Under said law, management and labor may no longer voluntarily determine the compensation the employees would be entitled to as the law provides for the development of a "Compensation and Position Classification System which shall apply to all officers and employees of the GOCCs whether under the Salary Standardization Law or exempt therefrom and shall consist of classes of positions grouped into such categories as the GCG may determine, subject to approval of the President."[21]

On March 8, 2013,[22] the Governance Commission replied that as a government financial institution, GSIS Family Bank was unauthorized to enter into a collective bargaining agreement with its employees "based on the principle that the compensation and position classification system is provided for by law and not subject to private bargaining."[23]

The Governance Commission further clarified that the right to strike of GSIS Family Bank's employees was not guaranteed by the Constitution, as they were government officers and employees.[24]

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

[21] *Id*. at 54.

[22] *Id*. at 58-74. The Letter was signed by Chairman Cesar L. Villanueva and Commissioners Ma. Angela E. Ignacio and Rainier B. Butalid of the Governance Commission.

[23] *Id*. at 67.

[24] *Id*. at 68.

On December 20, 2013, counsel for the GSIS Union sent GSIS Family Bank a demand letter[25] for the payment of Christmas bonus to its members, as stipulated in their Collective Bargaining Agreement. GSIS Union accused GSIS Family Bank of evading its contractual obligation to its employees by invoking the Governance Commission's opinion that it was no longer authorized to grant incentives and other benefits to its employees, unless authorized by the President of the Philippines.[26]

GSIS Union alleged that Republic Act No. 10149 does not apply to GSIS Family Bank, as it was a private bank created and established under the Corporation Code.[27] It asserted that even if the Government Service Insurance System owned a majority of GSIS Family Bank's outstanding capital stock, the change in ownership of shares did not automatically place the bank under the operation of Republic Act No. 10149.[28]

For GSIS Family Bank's refusal to negotiate a new collective bargaining agreement, the GSIS Union filed a Complaint before the National Conciliation and Mediation Board, and later, a Notice of Strike.[29]

Some bank employees also filed their own Complaints before the National Labor Relations Commission and the Department of Labor and Employment. They aimed to compel GSIS Family Bank to abide by the provisions of their existing Collective Bargaining Agreement.[30]

On January 30, 2014, petitioner GSIS Union filed before this Court a Petition for Certiorari,[31] asserting that GSIS Family

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[25] *Id*. at 75-87.

[26] *Id*. at 75.

[27] *Id*. at 76.

[28] *Id*. at 77.

[29] *Id*. at 9.

[30] *Id*. at 11.

[31] *Id*. at 3-31.

Bank is a private bank; thus, it is not covered by the provisions of Republic Act No. 10149.[32]

Petitioner contends that GSIS Family Bank does not perform functions for public needs since it was created "by private individuals in their own private capacities pursuant to the provisions of the Corporation Code, to advance their own private, personal[,] and economic or financial and business needs or interests."[33]

Petitioner argues that despite the Government Service Insurance System owning the majority of GSIS Family Bank's shares of stock, the bank did not automatically fall within the ambit of Republic Act No. 10149.[34] Further, the law's enactment did not automatically convert it into a government-owned or controlled corporation or a government financial institution.[35]

Petitioner cites *Phil. National Oil Company-Energy Dev't. Corp. v. Hon. Leogardo*,[36] which stated that the employees of the Philippine National Oil Company-Energy Development Corporation, a government-owned or controlled corporation incorporated under the Corporation Code, remained subject to the provisions of the Labor Code.[37]

Finally, petitioner stresses that as a private corporation established under the Corporation Code, GSIS Family Bank and its employees are covered by the applicable provisions of the Labor Code, not the Civil Service Law. Thus, the Collective Bargaining Agreement between petitioner and GSIS Family Bank cannot be impaired by Republic Act No. 10149.[38]

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[32] *Id*. at 14.

[33] *Id*. at 15.

[34] *Id*. at 17.

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

[36] 256 Phil. 475 (1989) [Per *J*. Melencio-Herrera, Second Division].

[37] *Rollo*, pp. 16-17.

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

On April 28, 2014, respondents Benitez and Atty. Geraldine Marie Berberabe-Martinez (Atty. Berberabe-Martinez) filed their Comment.[39] They admit that after the Government Service Insurance System purchased majority of GSIS Family Bank's shares, the bank continued to operate as a private bank, governed by the Corporation Code and the Labor Code. However, they point out that with the enactment of Republic Act No. 10149, GSIS Family Bank's authority to enter into negotiations with its employees was revoked, as confirmed by the Governance Commission.[40]

Respondents Benitez and Atty. Berberabe-Martinez also point out that the Petition for Certiorari, Prohibition, and Mandamus was fatally defective since respondents do not exercise judicial or quasi-judicial functions. Further, they maintain that the Collective Bargaining Agreement provided remedies for the enforcement of rights, of which petitioner supposedly did not avail. Thus, there was a plain, speedy, and adequate remedy available to it, without need to directly resort to this Court with a Rule 65 petition.[41]

Nonetheless, respondents Benitez and Atty. Berberabe-Martinez insist that as a government-acquired bank, GSIS Family Bank is a government-owned or controlled corporation under Republic Act No. 10149.[42] They stress that they merely followed the Governance Commission's directive forbidding them from negotiating the economic terms of a collective bargaining agreement with petitioner.[43] They likewise contend that GSIS Family Bank, a government financial institution covered by the Compensation and Position Classification System, is not at liberty to negotiate economic terms with its employees and cannot set its own salary or compensation scheme.[44]

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[39] *Id*. at 103-121.

[40] *Id*. at 104-106.

[41] *Id*. at 106-108.

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

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

[44] *Id*. at 113-115.

On May 28, 2014, respondent Secretary Cesar L. Villanueva (Villanueva) filed his Comment,[45] where he brings up petitioner's failure to implead several indispensable parties. He states that despite the Governance Commission being a collegial body with five (5) members, only he was impleaded in the Petition as the Governance Commission's chair. He also stresses that GSIS Family Bank is governed by a Board of Directors, yet petitioner only impleaded its President and Board Chairman.[46]

Respondent Villanueva likewise states that petitioner availed of the wrong remedy[47] and violated the rule on judicial hierarchy by directly filing its Petition before this Court.[48]

As for the substantial issues, respondent Villanueva points out that GSIS Family Bank, as a government-owned or controlled corporation, specifically a government financial institution, falls within the ambit of Republic Act No. 10149 and is subject to the Governance Commission's regulatory jurisdiction.[49]

Respondent Villanueva rejects petitioner's argument that Republic Act No. 10149 only applies to corporations with original charters. He emphasizes that the law does not distinguish between chartered and non-chartered corporations:[50]

> All GOCCs, whether chartered or non-chartered, are government corporations brought about by the fact that they are owned and/or controlled by the government. While non-chartered GOCCs are akin to "*private corporation*s" in the sense that their juridical entity and intra-corporate relationships are primarily governed by the Corporation Code and fall within the administrative jurisdiction of the [Securities and Exchange Commission], they remain to be "government corporations" in the sense that they fall within the coverage of GOCCs

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[45] *Id*. at 129-160.

[46] *Id*. at 133-134.

[47] *Id*. at 134-136.

[48] *Id*. at 136-137.

[49] *Id*. at 137-146.

[50] *Id*. at 143-146.

under the Administrative Code of 1987, and now also under R.A. No. 10149.[51] (Emphasis in the original, citation omitted)

Respondent Villanueva explains that Republic Act No. 10149 aimed to standardize or rationalize the compensation framework of government-owned or controlled corporations and government financial institutions to remedy the "severe pay imbalance between personnel of these special entities and the rest of the bureaucracy following the [Salary Standardization Law]."[52] Under Republic Act No. 10149, the Governance Commission submitted a Compensation and Position Classification System to President Aquino for his approval. Thus, pending President Aquino's approval, a moratorium was established on any increase in salaries and benefits, and any salary increase shall be subject to the President's approval.[53]

Finally, respondent Villanueva declares that this Court, in *Galicto v. H.E. President Aquino III, et al.*,[54] recognized the President's power to provide a compensation system for government-owned or controlled corporations.[55]

On January 12, 2015, petitioner filed its Reply.[56] It avers that respondents Villanueva, Benitez, and Atty. Berberabe-Martinez were impleaded as the officers of Governance Commission and GSIS Family Bank who issued and affirmed the assailed directives. Hence, they cannot excuse themselves by "conveniently saying that the rest of the Board of Directors and/or the institutions they represent have not been impleaded in the petition."[57]

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[51] *Id*. at 146.

[52] *Id*. at 152.

[53] *Id*. at 154-155.

[54] 683 Phil. 141 (2012) [Per J. Brion, *En Banc*].

[55] *Rollo*, p. 155.

[56] *Id*. at 169-195.

[57] *Id*. at 170.

Petitioner also insists that the Governance Commission and GSIS Family Bank are not indispensable parties.[58] Further, petitioner stresses that the issue at hand was the correct interpretation of Republic Act No. 10149; thus, the non-inclusion of the Governance Commission and GSIS Family Bank as party respondents was not fatal to its cause. Nonetheless, petitioner concedes that if this Court declares them to be indispensable parties, it will willingly implead them with the proper motion.[59]

Petitioner likewise argues that its Petition for Certiorari, Prohibition, and Mandamus was the correct remedy, as it seeks judicial declaration of the applicability of Republic Act No. 10149 to GSIS Family Bank, and for this Court to compel respondents Benitez and Atty. Berberabe-Martinez to negotiate a new collective bargaining agreement.[60]

Petitioner then reiterates that GSIS Family Bank remains a private bank, outside the coverage of Republic Act No. 10149.[61]

On May 13, 2016, the Bangko Sentral ng Pilipinas Monetary Board, through MB Resolution 826.A,[62] prohibited GSIS Family Bank from doing business and designated the Philippine Deposit and Insurance Corporation as its receiver.

The three (3) issues for this Court's resolution are:

First, whether or not the Petition for Certiorari is the correct remedy;

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[58] *Id*.

[59] *Id*. at 170-171.

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

[61] *Id*. at 177-178.

[62] Bangko Sentral ng Pilipinas, Circular Letter No. CL-2016-036. < http://www.bsp.gov.ph/downloads/regulations/attachments/2016/c1036.pdf > (last accessed on September 13, 2018).

Second, whether or not the closure of GSIS Family Bank has rendered the Petition moot; and

Third, whether or not GSIS Family Bank, a non-chartered government-owned or controlled corporation, can enter into a collective bargaining agreement with its employees.

I

Judicial power is the court's authority to "settle justiciable controversies or disputes involving rights that are enforceable and demandable before the courts of justice or the redress of wrongs for violations of such rights."[63]

This Court's judicial power is anchored on Article VIII, Section 1 of the 1987 Constitution, which provides:

> SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

Judicial power includes the power to enforce rights conferred by law and determine grave abuse of discretion by any government branch or instrumentality. Jurisprudence has consistently referred to these two (2) as the court's traditional and expanded powers of judicial review.[64]

Traditional judicial power is the court's authority to review and settle actual controversies or conflicting rights between

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[63] *Lopez v. Roxas, et al.,* 124 Phil. 168, 173 (1966) [Per *C.J.* Concepcion, *En Banc*].

[64] *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association, Inc., et al.*, 802 Phil. 116, 137-139 (2016) [Per *J.* Brion, *En Banc*]; and *Araullo, et al. v. President Benigno S.C. Aquino III, et al.*, 737 Phil. 457, 525-527 (2014) [Per *J.* Bersamin, *En Banc*].

dueling parties and enforce legally demandable rights. An actual case or controversy exists "when the case presents conflicting or opposite legal rights that may be resolved by the court in a judicial proceeding."[65]

On the other hand, the framers of the 1987 Constitution deliberately expanded this Court's power of judicial review to prevent courts from seeking refuge behind the political question doctrine and turning a blind eye to abuses committed by the other branches of government.[66]

This Court's expanded power of judicial review requires a prima facie showing of grave abuse of discretion by any government branch or instrumentality. This broad grant of power contrasts with the remedy of certiorari under Rule 65, which is limited to the review of judicial and quasi-judicial acts.[67] Nonetheless, this Court, by its own power to relax its rules, allowed Rule 65 to be used for petitions invoking the courts' expanded jurisdiction.[68]

Here, petitioner asserts that the Governance Commission committed grave abuse of discretion amounting to lack or excess of jurisdiction when it prevented respondents Benitez and Atty. Berberabe-Martinez, as the bank's President and Chairperson of the Board of Directors, respectively, from negotiating the economic provisions of the Collective Bargaining Agreement between petitioner and the bank.[69]

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[65] *Rep. of the Phils. v. Moldex Realty, Inc.*, 780 Phil. 553, 560 (2016) [Per *J.* Leonen, Second Division].

[66] See *J.* Leonen, Concurring Opinion in *Belgica, et al. v. Hon. Exec. Sec. Ochoa, Jr., et al.*, 721 Phil. 416, 670-671 (2013) [Per *J.* Perlas-Bernabe, *En Banc*], *citing* RECORDS OF THE CONSTITUTIONAL COMMISSION, Vol. I, July 10, 1986, No. 27.

[67] *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association, Inc., et al.*, 802 Phil. 116, 142 (2016) [Per *J.* Brion, *En Banc*].

[68] *Id.* at 138-139.

[69] *Rollo*, p. 4.

Petitioner claims that in filing its Petition for Certiorari under Rule 65, it has "no plain, speedy[,] and adequate remedy in the ordinary course of law which will promptly and immediately relieve them from the injurious effects of the unconstitutional and patently unwarranted and illegal acts of the Respondents."[70]

Petitioner is mistaken.

Rule 65, Section 1 of the Rules of Civil Procedure reads:

SECTION 1. Petition for Certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

Thus, a writ of certiorari may only be issued when the following are alleged in the petition and proven:

(1) the writ is directed against a tribunal, a board[,] or any officer exercising judicial or quasi[-]judicial functions; (2) such tribunal, board[,] or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy[,] and adequate remedy in the ordinary course of law.[71] (Citation omitted)

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

[71] *Land Bank of the Phils. v. Court of Appeals*, 456 Phil. 755, 784-785 (2003) [Per *J*. Callejo, Sr., Second Division].

The Governance Commission was created under Republic Act No. 10149. It is attached to the Office of the President and is the "central advisory, monitoring, and oversight body with authority to formulate, implement[,] and coordinate policies"[72] relative to government-owned and controlled corporations. It has no judicial or quasi-judicial authority, as evidenced by its powers and functions[73] under the law. Under its charter, the Governance Commission is empowered to:

- oversee the selection and nomination of directors/trustees and maintain the quality of Board Governance;
- institutionalize transparency, accountability, financial viability and responsiveness in corporate performance by monitoring and evaluating GOCCs' performance;
- rationalize the Sector through streamlining, reorganization, merger, as well as recommending to the President of the Philippines the privatization or abolition of a GOCC; and
- establish compensation standards to ensure reasonable and competitive remuneration schemes that attract and retain the right talent.[74]

The Governance Commission possesses neither judicial nor quasi-judicial powers; thus, it cannot review or settle actual controversies or conflicting rights between dueling parties and enforce legally demandable rights. It is not a tribunal or board exercising judicial or quasi-judicial functions that may properly be the subject of a petition for certiorari.

Petitioner refers to the Governance Commission's February 5, 2013[75] and March 8, 2013[76] letters to substantiate its claim that

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[72] Rep. Act No. 10149 (2011), Ch. II, Sec. 5.

[73] Rep. Act No. 10149 (2011), Ch. II, Sec. 5.

[74] *Governance Commission for Government Owned and Controlled Corporations*, Governance Commission, < http://gcg.gov.ph/site/aboutus > (last accessed on January 14, 2019).

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

[76] *Id*. at 58-74.

the Governance Commission forbade respondents Benitez and Atty. Berberabe-Martinez from negotiating the economic terms of their Collective Bargaining Agreement. However, a careful review of the letters convinces this Court that they were merely advisory opinions, rendered in response to the queries of respondents Atty. Berberabe-Martinez and Benitez.

The February 5, 2013 letter read:

Gentlemen:

We write to formally inform you that pursuant to the terms of Republic Act (R.A.) No. 10149, the Governing Boards and Managements of all covered GOCCs, GFIs and GCE/GICPs are without legal authority to enter into negotiations for the economic terms of Collective Bargaining Agreements (CBAs); more so, approving CBAs, whether conditionally or unconditionally, that cover matters involving compensation, allowances, benefits and incentives.

"*Collective Bargaining*" covers matters that can be voluntarily agreed upon by the employer and employees. Presidential Decree (P.D.) No. 1597 and Joint Resolution (J.R.) No. 4 mandate that SSL exempt GOCCs, including Non-Chartered GOCCs, shall observe the policies, parameters and guidelines governing position classification, salary rates, categories and rates of allowances, benefits and incentives, prescribed by the President, and that **any** increase in the existing salary rates, as well as the grant of new allowances, benefits, and incentives in the rates thereof shall be subject to the approval of the President.

Executive Order No. 7 (s.2010) likewise provides for a moratorium on increases in the rates of salaries, and the grant of new allowances, incentives and other benefits, except for salary adjustments pursuant to Executive Order No. 811 (s. 2009) and Executive Order No. 900 (s. 2010), until specifically authorized by the President.

Pursuant to these, compensation matters **cannot** be voluntarily agreed upon by the Board with the union under a CBA, since such matters have to be subjected to policies, guidelines and parameters prescribed and approved by the President.

As you are aware of, Section 8 of R.A. No. 10149 mandates the Commission to develop a Compensation and Position Classification System (CPCS) that strikes a balance between reasonableness and competitiveness, and shall apply to ALL GOCCs, whether SSL-covered or SSL-exempt. The task of undertaking the development of a CPCS for all GOCCs has already commenced and is well underway being already on Phase III of its development. Pending however the formal promulgation and approval of the CPCS, the authority to approve or deny requests for any adjustment pertaining to compensation, additional incentives or benefits, remain with His Excellency.

In view of the foregoing, and pursuant to the fiduciary duties of the members of the Board of Directors and Officers, as well as the principles under R.A. No. 10149, the Commission takes this opportunity to inform Governing Boards and Management within the GOCC Sector of their lack of authority to enter into any negotiations for the economic terms of CBAs with their respective unions.[77] (Emphasis in the original, citation omitted)

A careful reading of the March 8, 2013 letter likewise demonstrates its advisory nature with no directive for respondents to refrain from negotiating with petitioner.

Further, petitioner failed to prove that it had no other "plain, speedy[,] and adequate remedy in the ordinary course of law"[78] aside from its present Petition. The Governance Commission is an attached agency of the Office of the President; hence, petitioner could have elevated the advisories to the Office of the President to question the Governance Commission's legal opinion.

Finally, it has not escaped this Court's attention that petitioner only impleaded respondent Villanueva in his capacity as chairperson of the Governance Commission, and not the four (4) other members of the Governance Commission.

The Governance Commission is composed of five (5) members. The chairperson, with a rank of Cabinet Secretary,

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

[78] RULES OF COURT, Rule 65, Sec. 1 .

and two (2) other members, with the rank of Undersecretary, are appointed by the President. The Department of Budget and Management and the Department of Finance Secretaries sit as *ex-officio* members.[79]

As a collegial body, all members of the Governance Commission should have been impleaded as indispensable parties in the Petition, since no final determination of the action can be reached without them.[80] As it is, petitioner's failure to implead all members of the Governance Commission should lead to the outright dismissal of this Petition as their non-inclusion is debilitating since this Court cannot exercise its juridical power when an indispensable party is not impleaded.[81]

II

Nonetheless, even if all the requirements for the issuance of a writ of certiorari were alleged and proven, and even if all the indispensable parties were impleaded, the closure of GSIS Family Bank has rendered the Petition moot. As seen in the Petition's prayer,[82] this Court is asked to direct GSIS Family Bank's representatives to perform positive acts:

> WHEREFORE, premises considered, Petitioner humbly prays that the Honorable Court rule in favor of the Petitioner and that a judgment be rendered:
>
> 1. Declaring GSIS Family Bank as a private bank and therefore outside the coverage of RA 10149;

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[79] Rep. Act No. 10149 (2011), Ch. II, Sec. 6.

[80] RULES OF COURT, Rule 3, Sec. 7 provides:

SECTION 7. Compulsory Joinder of Indispensable Parties. — Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.

[81] *Caravan Travel and Tours International, Inc. v. Abejar*, 780 Phil. 509, 542 (2016) [Per *J.* Leonen, Second Division] citing *Lucman v. Malawi*, 540 Phil. 289, 302 (2006) [Per *J.* Tinga, Third Division].

[82] *Rollo*, p. 27.

2. Ordering the [Governance Commission] to DESIST from further usurping into matters between the GSIS [Family Bank] and its employees;

3. *Directing GSIS [Family Bank] management to immediate[ly] commence negotiations with the petitioner for a Collective Bargaining Agreement (CBA)*covering the period retroactive January 01, 2012 to December 31, 2015;

4. *Ordering respondent GSIS Family Bank to fully comply with the terms and conditions of the existing [Collective Bargaining Agreement]* until a new [collective bargaining agreement] has been negotiated and signed, *by providing the benefits, allowances and incentives and other rightful claims, including the 2013 Christmas bonus, of the members of the Petitioner union[.]*[83] (Emphasis supplied)

A case is deemed moot when it ceases to present a justiciable controversy due to a supervening event. The lack of an actual or justiciable controversy means that the court has nothing to resolve, and will, in effect, only render an advisory opinion.[84]

Courts generally dismiss cases on the ground of mootness[85] unless any of the following instances are present: (1) grave constitutional violations; (2) exceptional character of the case; (3) paramount public interest; (4) the case presents an opportunity to guide the bench, the bar, and the public; or (5) the case is capable of repetition yet evading review.[86]

Despite GSIS Family Bank's closure, which has effectively rendered the case moot, this Court believes that there is a need to discuss the substantive issues of the case, as it presents an opportunity to guide the bench and bar on how to resolve similar issues arising from similarly situated parties.

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[83] *Id*. at 27.

[84] *Rep. of the Phils. v. Moldex Realty, Inc*., 780 Phil. 553, 560 (2016) [Per *J* . Leonen, Second Division].

[85] *Prof. David v. Pres. Macapagal-Arroyo*, 522 Phil. 705, 754 (2006) [Per *J*. Sandoval-Gutierrez, *En Banc*].

[86] *Rep. of the Phils. v. Moldex Realty, Inc*., 780 Phil. 553, 561 (2016) [Per *J*. Leonen, Second Division].

III

On February 4, 1986, to clarify which of the government entities could be classified as a government-owned or controlled corporation,[87] then President Ferdinand E. Marcos issued Presidential Decree No. 2029, which defined a government-owned or controlled corporation as follows:

> SECTION 2. Definition. — A government-owned or controlled corporation is a stock or a non-stock corporation, whether performing governmental or proprietary functions, which is directly chartered by a special law or if organized under the general corporation law is owned or controlled by the government directly, or indirectly through a parent corporation or subsidiary corporation, to the extent of at least a majority of its outstanding capital stock or of its outstanding voting capital stock;
>
> Provided, that a corporation organized under the general corporation law under private ownership at least a majority of the shares of stock of which were conveyed to a government financial institution, whether by a foreclosure or otherwise, or a subsidiary corporation of a government corporation organized exclusively to own and manage, or lease, or operate specific physical assets acquired by a government financial institution in satisfaction of debts incurred therewith, and which in any case by enunciated policy of the government is required to be disposed of to private ownership within a specified period of time, shall not be considered a government-owned or controlled corporation before such disposition and even if the ownership or control thereof is subsequently transferred to another government-owned or controlled corporation;
>
> Provided, further, that a corporation created by special law which is explicitly intended under that law for ultimate transfer to private ownership under certain specified conditions shall be considered a government-owned or controlled corporation, until it is transferred to private ownership; and

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[87] Pres. Decree No. 2029 (1986). Third Whereas Clause provides:

> WHEREAS, the identification of which government entities shall be considered as government-owned or controlled corporations should now be undertaken on a consistent and identical basis, so that the appropriate service-wide supervisory agencies may be so guided[.]

Provided, finally, that a corporation that is authorized to be established by special law, but which is still required under that law to register with the Securities and Exchange Commission in order to acquire a juridical personality, shall not on the basis of the special law alone be considered a government-owned or controlled corporation.

On July 25, 1987, then President Corazon C. Aquino issued Executive Order No. 292 or the Administrative Code of 1987, which replaced the 1917 colonial period Administrative Code in effect then, and laid out in a "unified document the major structural, functional[,] and procedural principles and rules of governance[.]"[88] Section 2(13) of Executive Order No. 292 defined a government-owned or controlled corporation:

SECTION 2. General Terms Defined. — Unless the specific words of the text, or the context as a whole, or a particular statute, shall require a different meaning:

. . . . . .

(13) Government-owned or controlled corporation refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per

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[88] Exec. Order No. 292 (1987) provides:

WHEREAS, the Administrative Code currently in force was first forged in 1917 when the relationship between the people and the government was defined by the colonial order then prevailing;

WHEREAS, efforts to achieve an integrative and overall recodification of its provisions resulted in the Administrative Code of 1978 which, however, was never published and later expressly repealed;

WHEREAS, the effectiveness of the Government will be enhanced by a new Administrative Code which incorporates in a unified document the major structural, functional and procedural principles and rules of governance; and

WHEREAS, a new Administrative Code will be of optimum benefit to the people and Government officers and employees as it embodies changes in administrative structures and procedures designed to serve the people[.]

> cent of its capital stock: Provided, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations.

This definition was echoed in Section 3(o) of Republic Act No. 10149:

> SECTION 3. Definition of Terms. —
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> . . . . . .
>
> (o) Government-Owned or -Controlled Corporation (GOCC) refers to any agency organized as a stock or nonstock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government of the Republic of the Philippines directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least a majority of its outstanding capital stock: Provided, however, That for purposes of this Act, the term "GOCC" shall include GICP/GCE and GFI as defined herein.

Thus, a government-owned or controlled corporation is: (1) established by original charter or through the general corporation law; (2) vested with functions relating to public need whether governmental or proprietary in nature; and (3) directly owned by the government or by its instrumentality, or where the government owns a majority of the outstanding capital stock. Possessing all three (3) attributes is necessary to be classified as a government-owned or controlled corporation.[89]

There is no doubt that GSIS Family Bank is a government-owned or controlled corporation since 99.55% of its outstanding capital stock is owned and controlled by the Government Service Insurance System.

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[89] *Funa v. Manila Economic And Cultural Office, et al.*, 726 Phil. 63, 90 (2014) [Per *J* . Perez, *En Banc*].

Petitioner cites this Court's ruling in *Phil. National Oil Company-Energy Dev't. Corp.*[90] to substantiate its claim that government-owned and controlled corporations without original charters, or those incorporated under the Corporation Code, are subject to the provisions of the Labor Code, and are thus free to negotiate economic terms with their employers.[91]

Petitioner is again mistaken.

Phil. National Oil Company-Energy Dev't. Corp. involved a decision of the Deputy Minister of Labor upholding his jurisdiction revoking a clearance to dismiss, earlier issued by the Ministry of Labor's Regional Office. The petitioner, despite its earlier application for such issuance, contested the Ministry of Labor's jurisdiction on the ground that it was a government-owned and controlled corporation.

In disposing of the petition, this Court noted that for purposes of coverage under the Civil Service Rules, it was only government-owned and controlled corporations with original charters that were covered:

> Under the laws then in force, employees of government-owned and/or controlled corporations were governed by the Civil Service Law and not by the Labor Code. Thus,
>
> Article 277 of the Labor Code (PD 442) then provided:
>
> "The terms and conditions of employment of all government employees, including employees of government-owned and controlled corporations shall be governed by the Civil Service Law, rules and regulations .."
>
> In turn, the 1973 Constitution provided:
>
> "The Civil Service embraces every branch, agency, subdivision and instrumentality of the government, including government-owned or controlled corporations."

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[90] 256 Phil. 475 (1989) [Per *J.* Melencio-Herrera, Second Division].

[91] *Rollo*, pp. 16-17.

In *National Housing Corporation vs. Juco* (L-64313, January 17, 1985, 134 SCRA 172), we laid down the doctrine that employees of government-owned and/or controlled corporations, whether created by special law or formed as subsidiaries under the general Corporation Law, are governed by the Civil Service Law and not by the Labor Code.

However, the above doctrine has been supplanted by the present Constitution, which provides:

> "The Civil Service embraces all branches, subdivisions, instrumentalities and agencies of the Government, including government-owned or controlled corporations with original charters." (Article IX-B, Section 2 [1])

Thus, under the present state of the law, the test in determining whether a government-owned or controlled corporation is subject to the Civil Service Law is the manner of its creation such that government corporations created by special charter are subject to its provisions while those incorporated under the general Corporation Law are not within its coverage.[92]

However, what was in issue in *Phil. National Oil Company-Energy Dev't. Corp*.[93] was jurisdiction in relation to dismissal of employees. It had nothing to do with the obligation of the government-owned or controlled corporation to collectively bargain in good faith.

Similarly, *Galicto*[94] was a petition filed by an employee of the Philippine Health Insurance Corporation (Philhealth) challenging the validity of an Executive Order issued by the President. The Executive Order imposed a moratorium on increases in compensation and benefits to be given to employees, including government-owned and controlled corporations.[95] Unlike the present case, *Galicto* did not deal with the obligation,

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[92] *Phil. National Oil Company-Energy Dev't. Corp. v. Hon. Leogardo*, 256 Phil. 475, 477-478 (1989) [Per J. Melencio-Herrera, Second Division].

[93] 256 Phil. 475 (1989) [Per J. Melencio-Herrera, Second Division].

[94] 683 Phil. 141 (2012) [Per J . Brion, *En Banc*].

[95] *Id.* at 161-162.

if any, of the management of government-owned or controlled corporations to bargain collectively with its employees in good faith.

Nonetheless, *Galicto* involved Philhealth, a corporation with an original charter, Republic Act No. 7875. More importantly, the case was dismissed due to the improper remedy,[96] lack of standing,[97] and procedural errors[98] of the petitioner. This Court also noted that while the case was pending, Republic Act No. 10149 was promulgated, providing statutory basis for the President to approve the Compensation and Position Classification System for government-owned and controlled corporations.[99]

Galicto did not rule on the legality of any provision of Republic Act No. 10149 as it was not raised as an issue. Further, *Galicto* dismissed the petition against then President Aquino for being moot.[100]

IV

The right of workers to self-organization, collective bargaining, and negotiations is guaranteed by the Constitution under Article XIII, Section 3:

> SECTION 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.
>
> It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

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[96] *Id*. at 165-170.

[97] *Id*. at 170-174.

[98] *Id*. at 174-175.

[99] *Id*. at 176-177.

[100] *Id*. at 175-178.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

The right to self-organization is not limited to private employees and encompasses all workers in both the public and private sectors, as shown by the clear declaration in Article IX(B), Section 2(5) that "the right to self-organization shall not be denied to government employees." Article III, Section 8 of the Bill of Rights likewise states, "[t]he right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged."

While the right to self-organization is absolute, the right of government employees to collective bargaining and negotiation is subject to limitations.

Collective bargaining is a series of negotiations between an employer and a representative of the employees to regulate the various aspects of the employer-employee relationship such as working hours, working conditions, benefits, economic provisions, and others.

Relations between private employers and their employees are subject to the minimum requirements of wage laws, labor, and welfare legislation. Beyond these requirements, private employers and their employees are at liberty to establish the terms and conditions of their employment relationship. In contrast with the private sector, the terms and conditions of employment of government workers are fixed by the legislature; thus, the negotiable matters in the public sector are limited to terms and conditions of employment that are not fixed by law.[101]

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[101] *Alliance of Gov't. Workers (AGW), et al. v. The Honorable Minister of Labor, et al.*, 209 Phil. 1, 15 (1983) [Per *J.* Gutierrez, Jr., *En Banc*].

Social Security System Employees Association v. Court of Appeals[102] explains that instead of a collective bargaining agreement or negotiation, government employees must course their petitions for a change in the terms and conditions of their employment through the Congress for the issuance of new laws, rules, or regulations to that effect:

> Government employees may, therefore, through their unions or associations, either petition the Congress for the betterment of the terms and conditions of employment which are within the ambit of legislation or negotiate with the appropriate government agencies for the improvement of those which are not fixed by law.[103]

In *PCSO v. Chairperson Pulido-Tan, et al.*,[104] the Commission on Audit disallowed the monthly cost of living allowance being received by Philippine Charity Sweepstakes Office's officials and employees.

This Court held that the Philippine Charity Sweepstakes Office's charter does not allow its Board complete liberty to set the salaries and benefits of its officials and employees. This Court emphasized that as a government-owned and controlled corporation, the Philippine Charity Sweepstakes Office is covered by the compensation and position standards issued by the Department of Budget and Management and applicable laws.[105]

PCSO underscored that the power of a government-owned or controlled corporation to fix salaries or allowances of its employees is subject to and must conform to the compensation and classification standards laid down by applicable law:

> Upon the effectivity of R.A. No. 6758, GOCCs like the PCSO are included in the Compensation and Position Classification System because Section 16 of the law repeals all laws, decrees, executive

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[102] 256 Phil. 1079 (1989) [Per *J*. Cortes, Third Division].

[103] *Id*. at 1089.

[104] 785 Phil. 266 (2016) [Per *J*. Peralta, *En Banc*].

[105] *Id*. at 275.

orders, corporate charters, and other issuances or parts thereof, that exempt agencies from the coverage of the System, or that authorize and fix position classification, salaries, pay rates or allowances of specified positions, or groups of officials and employees or of agencies, which are inconsistent with the System, including the *proviso* under Section 2 and Section 16 of P.D. No. 985.[106] (Citation omitted)

Republic Act No. 10149 defines a non-chartered government-owned or controlled corporation as a government-owned or controlled corporation that was organized and is operating under the Corporation Code.[107] It does not differentiate between chartered and non-chartered government-owned or controlled corporations; hence, its provisions apply equally to both:

SECTION 4. Coverage. — This Act shall be applicable to *all GOCCs, GICPs/GCEs, and government financial institutions, including their subsidiaries*, but excluding the Bangko Sentral ng Pilipinas, state universities and colleges, cooperatives, local water districts, economic zone authorities and research institutions: Provided, That in economic zone authorities and research institutions, the President shall appoint one-third (1/3) of the board members from the list submitted by the GCG. (Emphasis supplied)

Section 9 of Republic Act No. 10149 also categorically states, "Any law to the contrary notwithstanding, no [government-owned or controlled corporation] shall be exempt from the coverage of the Compensation and Position Classification System developed by the [Governance Commission] under this Act."

Furthermore, Republic Act No. 10149 directed the Governance Commission to develop a Compensation and Position Classification System, to be submitted for the President's approval, which shall apply to all officers and employees of government-owned or controlled corporations, whether chartered or non-chartered.[108]

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[106] *Id*. at 277-278.

[107] Rep. Act No. 10149 (2011), Ch. I, Sec. 3(p).

[108] Rep. Act No. 10149 (2011), Ch. III, Sec. 8.

On March 22, 2016, President Aquino issued Executive Order No. 203,[109] which approved the compensation and classification standards and the Index of Occupational Services Framework developed and submitted by the Governance Commission.

When it comes to collective bargaining agreements and collective negotiation agreements in government-owned or controlled corporations, Executive Order No. 203 unequivocally stated that while it recognized the right of workers to organize, bargain, and negotiate with their employers, "the Governing Boards of all covered [government-owned or controlled corporations], whether Chartered or Non-chartered, may not negotiate with their officers and employees the economic terms of their [collective bargaining agreements]."[110]

Thus, considering the existing law at the time, GSIS Family Bank could not be faulted for refusing to enter into a new collective bargaining agreement with petitioner as it lacked the authority to negotiate economic terms with its employees.[111] Unless directly challenged in the appropriate case and with a proper actual controversy, the constitutionality and validity of Republic Act No. 10149, as it applies to fully government-owned and controlled non-chartered corporations, prevail.

WHEREFORE, premises considered, the Petition is **DENIED.**

SO ORDERED.

Peralta (*Chairperson*), *Reyes, A. Jr., Hernando*, and *Carandang,*[*] *JJ.*, concur.

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[109] Adopting a Compensation and Position Classification System (CPCS) and a General Index of Occupational Services (IOS) for the GOCC Sector Covered by Republic Act No. 10149 and for Other Purposes.

[110] Exec. Order No. 203 (2016), Sec. 2.

[111] *Rollo*, p. 68.

[*] Designated as additional member per Special Order No. 2624 dated November 28, 2018.

THIRD DIVISION

[G.R. No. 221418. January 23, 2019]

JOSE T. VILLAROSA, CARLITO T. CAJAYON and PABLO I. ALVARO, *petitioners, vs.* **THE HONORABLE OMBUDSMAN and ROLANDO C. BASILIO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; OFFICE OF THE OMBUDSMAN; POWER TO INVESTIGATE AND PROSECUTE PUBLIC OFFICIALS AND GOVERNMENT EMPLOYEES; IT IS THE CONSISTENT POLICY OF THE COURT TO MAINTAIN NON-INTERFERENCE IN THE DETERMINATION BY THE OMBUDSMAN OF THE EXISTENCE OF PROBABLE CAUSE.— "Both the Constitution and [R.A. No.] 6770, or The Ombudsman Act of 1989, give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. As an independent constitutional body, the Office of the Ombudsman is beholden to no one, acts as the champion of the people, and is the preserver of the integrity of the public service." "This Court's consistent policy has been to maintain non-interference in the determination by the Ombudsman of the existence of probable cause. Since the Ombudsman is armed with the power to investigate, it is in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman." "This policy is based not only on respect for the investigatory and prosecutory powers granted by the Constitution to the Ombudsman, but upon practicality as well. Otherwise, innumerable petitions seeking dismissal of investigatory proceedings conducted by the Ombudsman will grievously hamper the functions of the courts, in much the same way that courts will be swamped with petitions if they had to review the exercise of discretion on the part of public prosecutors each time prosecutors decide to file an information or dismiss a complaint by a private complainant."

2. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE, DEFINED AND EXPLAINED; A FINDING OF PROBABLE CAUSE MERELY BINDS THE SUSPECT TO STAND TRIAL; IT IS NOT A PRONOUNCEMENT OF GUILT.— "A preliminary investigation is only for the determination of probable cause." Probable cause is "the existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation. Being based merely on opinion and reasonable belief, it does not import absolute certainty. Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction." x x x It must be remembered that owing to the nature of a preliminary investigation and its purpose, all of the foregoing elements need not be definitively established for it is enough that their presence becomes reasonably apparent. This is because probable cause — the determinative matter in a preliminary investigation — implies mere probability of guilt; thus, a finding based on more than bare suspicion, but less than evidence that would justify a conviction, would suffice. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and was committed by the suspects. Probable cause need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt and, definitely, not on evidence establishing absolute certainty of guilt. As well put in *Brinegar v. United States*, while probable cause demands more than "bare suspicion," it requires "less than evidence which would justify . . . conviction." A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.

3. ID.; ID.; ID.; ID.; THE OMBUDSMAN'S FINDING OF PROBABLE CAUSE TO INDICT PETITIONERS WITH THE CRIME OF TECHNICAL MALVERSATION OF PUBLIC FUNDS PREVAILS OVER THEIR BARE ALLEGATIONS OF GRAVE ABUSE OF DISCRETION.— In this case, the ends of justice will be better served through

the conduct of a full-blown trial as there is no evidence that the Ombudsman acted in a capricious and whimsical exercise of judgment amounting to lack or excess of jurisdiction in its finding of probable cause. The Ombudsman's finding of probable cause to indict petitioners with the crime of Technical Malversation prevails over their bare allegations of grave abuse of discretion. Accordingly, this Court must defer to the exercise of discretion of the Ombudsman, in the absence of actual grave abuse of discretion on the part of the same.

4. ID.; ID.; ID.; ID.; NO PROBABLE CAUSE TO CHARGE PETITIONERS WITH VIOLATION OF SECTION 3 (e) OF R.A. NO. 3019; THE MERE ACT OF USING GOVERNMENT MONEY TO FUND A PROJECT WHICH IS DIFFERENT FROM WHAT THE LAW STATES YOU HAVE TO SPEND IT FOR DOES NOT FALL UNDER THE DEFINITION OF MANIFEST PARTIALITY NOR GROSS INEXCUSABLE NEGLIGENCE.— For an act to be considered as exhibiting "manifest partiality," there must be a showing of a clear, notorious or plain inclination or predilection to favor one side rather than the other. "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property." In this case, the finding of the Ombudsman falls short of that quantum of proof necessary to establish the fact that petitioners acted with manifest partiality or there was a failure to show that there was a clear, notorious or plain inclination or predilection on the part of the petitioners to favor one side rather than the other. Contrary to the view of the Ombudsman, the mere act of using government money to fund a project which is different from what the law states you have to spend it for does not fall under the definition of manifest partiality nor gross inexcusable negligence. It must always be remembered that manifest partiality and gross inexcusable negligence are not elements in the crime of Technical Malversation and simply alleging one or both modes would

not suffice to establish probable cause for violation of Section 3 (e) of R.A. No. 3019, for it is well-settled that allegation does not amount to proof. Nor can we deduce any or all of the modes from mere speculation or hypothesis since good faith on the part of petitioners as with any other person is presumed. The facts themselves must demonstrate evident bad faith which connotes not only bad judgment, but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will.

APPEARANCES OF COUNSEL

Benjamin C. Santos and Ray Montri C. Santos Law Office for petitioner Jose T. Villarosa.

Office of the Solicitor General for public respondent.

D E C I S I O N

PERALTA, *J.*:

For this Court's consideration is the Petition for *Certiorari* under Rule 65 of the Rules of Court dated December 1, 2015 of petitioners Jose T. Villarosa, Carlito T. Cajayon and Pablo I. Alvaro that seeks to reverse and set aside the Joint Resolution[1] dated March 23, 2015 and the Order[2] dated July 29, 2015 of the Office of the Ombudsman (*Ombudsman*) in OMB-L-C-11-0652-J finding probable cause against petitioners for the crime of Technical Malversation and violation of Section 3 (e) of Republic Act (*R.A.*) No. 3019.

Private respondent Rolando C. Basilio filed criminal and administrative complaints dated September 23, 2011 with the Ombudsman against petitioners Villarosa, Municipal Mayor; Alvaro, Municipal Accountant; and Cajayon, Municipal Treasurer; all of San Jose, Occidental Mindoro, for Malversation

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[1] *Rollo*, pp. 225-244.

[2] *Id.* at 267-273.

of Public Funds defined and penalized under Article 220 of the Revised Penal Code (*RPC*); violation of Section 3 (a), (e), (g) and (i) of R.A. No. 3019; violation of R.A. No. 8240; grave abuse of authority; grave misconduct; dishonesty; and conduct prejudicial to the best interest of the service.

According to private respondent Basilio, petitioner Villarosa, together with petitioners Alvaro and Cajayon, approved the use of the municipality's "Trust Fund" derived from tobacco excise taxes (*Tobacco Fund*) under R.A. No. 8240[3] to finance the regular operations of the municipality. It was also alleged that the expenses of the municipality which the Tobacco Fund was made to account for were not within the purpose for which said fund was created. Petitioner Villarosa was further alleged to have procured ten (10) "reconditioned" multi-cab vehicles amounting to ₱2,115,000.00, but the invitation to bid and the contracts executed therefor did not indicate that said vehicles were "reconditioned." Private respondent Basilio, thus, theorized that conspiracy attended the commission of the acts complained of because the disbursements lacked prior budgetary authorization and showed that petitioners misappropriated the funds to the damage and prejudice of the intended beneficiaries.

The Ombudsman, on December 28, 2011, issued an Order directing petitioners to submit their counter-affidavits and other controverting documents in support of their defense in the criminal case.

In their counter-affidavits, petitioners denied having committed the charges against them. Petitioner Alvaro argued that his participation was ministerial in nature considering his lack of discretion in disallowing purchases that passed through the required procedure. He also claimed that the use of the Tobacco Fund did not constitute a violation of any law and that the bulk of the said fund came from Representative Amelita Villarosa (*Rep. Villarosa*), who issued an authority delegating the power to determine how to spend said funds to the Office

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[3] An Act Amending Sections 138, 140 & 142 of the National Internal Revenue Code.

of the Municipal Mayor of San Jose, Occidental Mindoro. According to petitioner Alvaro, given the due delegation of authority and the absence of any prohibition in R.A. No. 8240 regarding the treatment of funds derived from the Tobacco Fund as part of the "General Fund," the issue is already moot.

Petitioner Cajayon also claimed that his act was ministerial considering that he signed the disbursement vouchers after confirming that the supporting documents were complete, and the municipality had funds available. He also argued that his certification of the availability of funds was based on the existence of "allotment for the requisitioned purchases"[4] since said funds were already apportioned by the *Sangguniang Bayan* in Resolutions allowing the appropriations.

For his defense, petitioner Villarosa asserted that the Tobacco Fund came from Rep. Villarosa as Occidental Mindoro's congressional share in the Tobacco Fund, pursuant to R.A. No. 8240, and that the municipality possessed the prerogative to appropriate or use such fund "based on the authority given by Congresswoman Ma. Amelita Villarosa."[5] Thus, according to petitioner Villarosa, given that the statute contained no prohibition for treating funds derived therefrom as part of the "General Fund," there was no violation to speak of. He also justified the purchase of ten (10) multi-cab vehicles, as necessitated by the clamor of different agricultural sectors, for the use of farmers attending seminars and conventions inside and outside the province.

Another Order was also issued on October 1, 2012, directing the parties to submit their position papers for the administrative case. Private respondent Basilio complied while petitioners separately moved for additional time to file their position papers.

In his position paper, private respondent Basilio, aside from reiterating his previous position, also averred that the administrative case filed before the *Sangguniang Panlalawigan*

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[4] *Rollo*, p. 101.

[5] *Id.* at 68.

was already the subject of a Petition for Prohibition to enjoin the *Sanggunian* from proceeding with its investigation. The Ombudsman opted to take cognizance of the administrative complaint and informed the *Sanggunian* of such action considering the corroboration given by the *Sanggunian* of the fact that its investigation had been suspended by virtue of the prohibition case before the Regional Trial Court of Occidental Mindoro.

Another Order was issued by the Ombudsman directing petitioner Villarosa to submit a certified copy of the Escrow Agreement, dated June 10, 2010, mentioned in Annex "G" of his counter-affidavit, which petitioner Alvaro complied with by attaching a copy of Rep. Villarosa's letter to Land Bank of the Philippines (*LBP*) — Trust Banking Group dated February 22, 2010 and the municipality's Subscription Agreement with LBP.

Petitioners failed to file their position papers after a lapse of a reasonable time; hence, the Ombudsman deemed the case submitted for decision.

In its Joint Resolution[6] dated March 23, 2015, the Ombudsman found probable cause to indict petitioners for Technical Malversation and violation of Section 3 (e) of R.A. No. 3019. It also found petitioners guilty of grave misconduct, dishonesty and conduct prejudicial to the best interest of the service. The dispositive portion of the resolution reads, as follows:

> WHEREFORE, it is respectfully recommended that JOSE T. VILLAROSA, PABLO I. ALVARO and CARLITO T. CAJAYON be charged with Technical Malversation and violation of Section 3(e) of Republic Act No. 3019; and that accordingly, the attached Informations be APPROVED for filing before the Sandiganbayan.
>
> It is respectfully recommended, moreover, that the criminal charges for violation of Section 3(a), (g) and (i) of Republic Act No. 3019 against the same respondents be DISMISSED for lack of probable cause.

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[6] *Supra* note 1.

Furthermore, finding substantial evidence against respondents, they are hereby found GUILTY of Grave Misconduct, Dishonesty and Conduct Prejudicial to the Best Interest of the Service and are each meted the penalty of DISMISSAL FROM THE SERVICE, with Cancellation of Eligibility, Forfeiture of Retirement Benefits and Perpetual Disqualification from re-employment in the Government Service.

Let copies of this Joint Resolution be furnished the Honorable Secretary of the Department of Interior and Local Government for his information and for the implementation of the same.

In the event that the penalty of Dismissal can no longer be enforced due to a respondent's separation from the service, the same shall be converted into a Fine in the amount equivalent to respondent's salary for one year, payable to the Office of the Ombudsman, and may be deductible from respondent's retirement benefits, accrued leave credits or any receivable from his/her office.

It shall be understood that the accessory penalties attached to the principal penalty of Dismissal shall continue to be imposed.

SO RESOLVED.[7]

Petitioners filed their motion for reconsideration, but it was denied in the Order dated July 29, 2015 of the Ombudsman.

Hence, the present petition.

In their petition, petitioners relied on the following grounds:

I. The Honorable Public Respondent acted with grave abuse of discretion amounting to lack of jurisdiction and/or without jurisdiction in issuing the questioned Joint Resolution dated 23 March 2015 (Annex "C"), which finds probable cause against the petitioners, and the Order dated 29 July 2015 (Annex "E"), which denied their Motion for Reconsideration.

II. There is no appeal or any plain and speedy remedy in the ordinary course of law other than the instant petition.[8]

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[7] *Id.* at 243.

[8] *Rollo*, p. 9.

It is the contention of the petitioners that they duly explained in their respective counter-affidavits that there was no technical malversation nor was there any violation of the provisions of R.A. No. 3019. Petitioners also claim that their actions were duly supported by public documents and that the expenses incurred are for the constituents of the Municipality of San Jose, Occidental Mindoro's public purpose. They further argue that there was no law or ordinance which earmarked the public funds for a specific purpose and that the provision of Section 8 of R.A. No. 8240 cannot be used as justification in order for them to be held criminally liable. They also assert that their action did not cause any undue injury to any party, including the government, or give any private party unwarranted benefits, advantage or preference in the discharge of their functions.

In its Comment dated June 22, 2016, the Office of the Solicitor General maintains that the Ombudsman did not commit grave abuse of discretion in finding probable cause to indict petitioners of the crime of Technical Malversation and violation of Section 3 (e) of R.A. No. 3019.

The petition is partly meritorious.

"Both the Constitution[9] and [R.A. No.] 6770,[10] or The Ombudsman Act of 1989, give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. As an independent constitutional body, the Office of the Ombudsman is 'beholden to no one, acts as the champion of the people, and is the preserver of the integrity of the public service.'"[11]

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[9] 1987 CONSTITUTION, Article XI. Section 12 provides: "The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof."

[10] An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes (1989).

[11] *Senator Jinggoy Ejercito Estrada v. Office of the Ombudsman, et al.*, G.R. Nos. 212761-62, *John Raymund de Asis v. Conchita Carpio Morales*,

"This Court's consistent policy has been to maintain non-interference in the determination by the Ombudsman of the existence of probable cause. Since the Ombudsman is armed with the power to investigate, it is in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman."[12]

"This policy is based not only on respect for the investigatory and prosecutory powers granted by the Constitution to the Ombudsman, but upon practicality as well. Otherwise, innumerable petitions seeking dismissal of investigatory proceedings conducted by the Ombudsman will grievously hamper the functions of the courts, in much the same way that courts will be swamped with petitions if they had to review the exercise of discretion on the part of public prosecutors each time prosecutors decide to file an information or dismiss a complaint by a private complainant."[13]

"Nonetheless, this Court is not precluded from reviewing the Ombudsman's action when there is a charge of grave abuse of discretion.[14] Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined by law."[15]

G.R. Nos. 213473-74, *Janet Lim Napoles v. Conchita Carpio Morales*, G.R. Nos. 213538-39, July 31, 2018, citing *Reyes v. Office of the Ombudsman*, G.R. No. 208243, June 5, 2017, 825 SCRA 436, 446.

[12] *Id.*

[13] *Id.*

[14] *Id.*, citing *Soriano v. Deputy Ombudsman Fernandez, et al.*, 767 Phil. 226, 240 (2015); *Reyes v. Hon. Ombudsman*, 783 Phil. 304, 332 (2016); and *Ciron v. Ombudsman Gutierrez, et al.*, 758 Phil. 354, 362 (2015).

[15] *Id.*, citing *Duque v. Ombudsman*, G.R. Nos. 224648 and 224806-07, March 29, 2017 (Minute Resolution); and *Dichaves v. Office of the Ombudsman, et al.*, 802 Phil. 564, 591 (2016).

For the present petition to prosper, petitioners must show this Court that the Ombudsman conducted the preliminary investigation in such a way that amounted to a virtual refusal to perform a duty mandated by law, which petitioners have failed to do. "A preliminary investigation is only for the determination of probable cause."[16] Probable cause is "the existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation. Being based merely on opinion and reasonable belief, it does not import absolute certainty.[17] Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction."[18]

This Court finds no grave abuse of discretion on the part of the Ombudsman when it found probable cause to indict petitioners of the crime of Technical Malversation.

In finding probable cause for the crime of Technical Malversation, the Ombudsman based its findings on the strength of the evidence submitted by the private complainant, as well as the weak defense of the petitioners, thus:

> Respondents were **public officers** who received from Occidental Mindoro's Congressional Representative a portion of the province's share in the revenue from the tobacco excise tax for proper administration. **Pursuant to RA 8240, the local government unit's share in the proceeds should be used solely for cooperative, livelihood and/or agro- industrial projects** that enhance the quality of agricultural products, develop alternative farming systems, or enable tobacco farmers to manage and own post-harvest enterprises like

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[16] *Reyes v. Office of the Ombudsman, supra* note 11, at 448, citing *Estrada v. Office of the Ombudsman*, 751 Phil. 821, 863 (2015).

[17] *Chan v. Formaran III, et al.*, 572 Phil. 118, 132 (2008), citing *Ilusorio v. Ilusorio*, 564 Phil. 746 (2007).

[18] *Id.*, citing *Ching v. The Secretary of Justice*, 517 Phil. 151, 171 (2006).

cigarette manufacturing and by-product utilization. The clear intention to limit the use of such proceeds to the above-mentioned specific purposes was further made known to and disseminated among Governors, Municipal and City Mayors, *Sanggunian* Members and all other concerned officials through Joint Circular No. 2009-1 dated 3 November 2009 entitled "Guidelines and Procedure on the Release of the Share of Local Government Units Producing Burley and Native Tobacco Products from the Fifteen Percent (15%) of the Incremental Revenue Collected from the Excise Tax on Tobacco Products."

Notwithstanding the mandate of the law and the circular, respondents **applied the fund to the purchase of vehicles, Christmas lights, meals and snacks of newly-elected Barangay Captains and SK Chairpersons, medicines, and gravel and sand. They also used said fund for the maintenance of a PNP vehicle and other service vehicle, for bus rentals, and various other municipal activities.**

No genius is required to discern the disparity between the Legislature's declared policy and respondents' actual expenditures. The former unequivocally intended the revenue from the tax on tobacco products to benefit local farmers through projects aimed at maximizing agricultural production and tobacco-product utilization. The latter, on the other hand, unabashedly spent a significant portion of said fund for local officials, religious groups, and community matters.

It bears mentioning further that respondents' claim of delegated authority from Representative Amelita Villarosa found no support from the case records. The supposed "Letters of Authority" pertained to the Representative's letters to the Landbank of the Philippines (LBP) requesting the release and transfer of funds from the municipality's escrow account to its regular account. And contrary to respondents' representation, the letters specified the projects for which the funds may be disbursed; none of which covered the expenditures that the funds were actually used for, xxx[.]

x x x x x x x x x

Moreover, each of the Representative's letters bore confirmation of compliance with RA 8240 and Joint Circular No. 2009-1 in the following or similar words preceding the enumeration of authorized programs: "This letter is being issued to confirm that the disbursement of the fund is in accordance with Republic Act No. 8240 and Joint Circular No. 2009-1 xxx, more particularly for the following projects." Clearly, respondents' assertion that the municipality was given

unbridled authority to spend the Tobacco Fund "for whatever purpose [it] may deem proper" is more imagined than real.

Consequently, Alvaro's and Cajayon's defense of merely performing ministerial duties is unavailing. Both were not unaware of the expenses the municipality charged against the Tobacco Fund. As Accountant and Treasurer, both are expected to possess special knowledge of the nature of the different funds under a local government unit's administration, as well as the purposes and limitations for their use. In this instance, both would have known the mandate of RA 8240 and even Joint Circular No. 2009-1; and should have been adamant against using the Tobacco Fund for purposes not conforming therewith.

Stated differently, patent on the face of each disbursement voucher was the preceding code number "300" representing trust funds. Alvaro and Cajayon knew that the Tobacco Fund, as a trust fund ear-marked for specific purposes, was not to be used for regular expenditures of the municipality. They were under obligation to know the proscription against the commingling and indiscriminate use of public funds. As Municipal Accountant, Alvaro's duty called for more than ascertainment of the physical existence of trust funds. His duty included the determination of the availability of a budgetary allotment to which the expenditure may be properly charged, and the review of supporting documents before the preparation of vouchers. As Municipal Treasurer, Cajayon's duty involved the exercise of proper management and disbursement of the municipality's funds. In addition, it is expressly provided that no money shall be disbursed without the accountant obligating the appropriation for such purpose, the treasurer certifying the availability of the appropriate fund, and the administrator of the fund approving the disbursement.

Therefore, respondents' participation in the processing and disbursement of the Tobacco Fund for the purposes in question contravened their duties. Their acts in defiance of basic duties enjoined by law, as shown by the chain of circumstances, reveal a community of criminal design indicative of conspiracy. As accountable officers, there is probable cause to believe that respondents are guilty of technical Malversation and are personally liable therefor.[19] (Emphasis supplied; citations omitted.)

Article 220 of the RPC reads as follows:

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[19] *Supra* note 1, at 231-236.

ARTICLE 220. *Illegal Use of Public Funds or Property*.— Any public officer who shall apply any public fund or property under his administration to any public use other than [that] for which such fund or property were appropriated by law or ordinance shall suffer the penalty of *prision correccional* in its minimum period or a fine ranging from one-half to the total of the sum misapplied, if by reason of such misapplication, any [damage] or embarrassment shall have resulted to the public service. In either case, the offender shall also suffer the penalty of temporary special disqualification.

If no damage or embarrassment to the public service has resulted, the penalty shall be a fine from 5 to 50 [percent] of the sum misapplied.

The crime of Technical Malversation has three (3) elements: "(a) that the offender is an accountable public officer; (b) that he applies public funds or property under his administration to some public use; and (c) that the public use for which such funds or property were applied is different from the purpose for which they were originally appropriated by law or ordinance."[20]

Clearly, from the findings of the Ombudsman, the elements of the crime are present in this case. It must be remembered that owing to the nature of a preliminary investigation and its purpose, all of the foregoing elements need not be definitively established for it is enough that their presence becomes reasonably apparent. This is because probable cause — the determinative matter in a preliminary investigation — implies mere probability of guilt; thus, a finding based on more than bare suspicion, but less than evidence that would justify a conviction, would suffice.[21]

A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and was committed by the suspects.[22] Probable cause need not

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[20] *Ysidoro v. People*, 698 Phil. 813, 817 (2012).

[21] *Reyes v. Hon. Ombudsman, supra* note 14, at 336.

[22] *Sen. Estrada v. Office of the Ombudsman, et al.*, 751 Phil. 821, 868 (2015).

be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt and, definitely, not on evidence establishing absolute certainty of guilt.[23] As well put in *Brinegar v. United States*,[24] while probable cause demands more than "bare suspicion," it requires "less than evidence which would justify . . . conviction."[25] A finding of probable cause merely binds over the suspect to stand trial.[26] It is not a pronouncement of guilt.[27]

In the case of *Unilever Philippines, Inc. v. Tan*,[28] this Court ruled that:

> The determination of probable cause needs only to rest on evidence showing that more likely than not, a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt. What is merely required is "probability of guilt." Its determination, too, does not call for the application of rules or standards of proof that a judgment of conviction requires after trial on the merits. Thus, in concluding that there is probable cause, it suffices that it is believed that the act or omission complained of constitutes the very offense charged.[29] (Citations omitted.)

In this case, the ends of justice will be better served through the conduct of a full-blown trial as there is no evidence that the Ombudsman acted in a capricious and whimsical exercise of judgment amounting to lack or excess of jurisdiction in its finding of probable cause. The Ombudsman's finding of probable cause to indict petitioners with the crime of Technical

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[23] *Id.*

[24] 338 U.S. 160, 175-176 (1949).

[25] *Sen. Estrada v. Office of the Ombudsman, et al., supra* note 22, at 868.

[26] *Id.*

[27] *Id.*

[28] 725 Phil. 486 (2014).

[29] *Id.* at 497-498.

Malversation prevails over their bare allegations of grave abuse of discretion. Accordingly, this Court must defer to the exercise of discretion of the Ombudsman, in the absence of actual grave abuse of discretion on the part of the same.

This Court, however, finds no probable cause to charge petitioners with violation of Section 3 (e) of R.A. No. 3019.

Section 3 (e) of R.A. No. 3019 reads:

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

The elements of Section 3 (e), R.A. No. 3019 are as follows:

(1) the offender is a public officer;

(2) the act was done in the discharge of the public officer's official, administrative or judicial injunctions;

(3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and

(4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.[30]

The Ombudsman, in this regard, found the following:

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[30] *Ampil v. Office of the Ombudsman, et al.*, 715 Phil. 733, 755 (2013), citing *Sison v. People*, 628 Phil. 573, 583 (2010).

The Office also finds probable cause for violation of Sec. 3 (e), RA 3019. Respondents were public officers who acted in evident bad faith by openly defying the mandate of RA 8240 and Joint Circular No. 2009-1. **Their act of expending the Tobacco Fund in favor of local officials and various municipal obligations falls squarely under the definition of manifest partiality, if not gross inexcusable negligence. Naturally, the diversion of funds resulted in the deprivation of farmers who were the intended beneficiaries.**

Far from addressing serious concerns in agriculture and enhancing, as envisioned, opportunities for the farming sectors, the Tobacco Fund catered instead to the gastronomical pleasures of newly elected barangay officials; the commuting convenience of police authorities, local officials, and religious groups; the reveling requirements of unknown constituents, and the pharmacological programs of politicians, among other mundane things. In sum, **the farmers suffered undue injury when their fund was unceremoniously and undeservedly used for parties, politics and public relations**.

It must be noted, however, that not all respondents took part in all the twelve disbursements complained of. The disbursement vouchers attached to the complaints and the Notices of Disallowance annexed to complainant's Position Paper demonstrate who among the respondents participated in each of the transactions. Hence, each of them shall only be indicted for such transactions as they conspired to involve themselves in.[31] (Emphasis supplied; citations omitted.)

According to the Ombudsman, the very act of technical malversation falls under the definition of manifest partiality, if not gross inexcusable negligence. This Court rules otherwise.

For an act to be considered as exhibiting "manifest partiality," there must be a showing of a clear, notorious or plain inclination or predilection to favor one side rather than the other.[32] "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are."[33] "Gross negligence has been so defined

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[31] *Rollo*, pp. 236-237.

[32] *People v. The Hon. Sandiganbayan (4th Div.), et al.*, 642 Phil. 640, 651 (2010).

[33] *Fonacier v. Sandiganbayan*, 308 Phil. 660, 693 (1994).

as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property."[34]

In this case, the finding of the Ombudsman falls short of that quantum of proof necessary to establish the fact that petitioners acted with manifest partiality or there was a failure to show that there was a clear, notorious or plain inclination or predilection on the part of the petitioners to favor one side rather than the other. Contrary to the view of the Ombudsman, the mere act of using government money to fund a project which is different from what the law states you have to spend it for does not fall under the definition of manifest partiality nor gross inexcusable negligence. It must always be remembered that manifest partiality and gross inexcusable negligence are not elements in the crime of Technical Malversation and simply alleging one or both modes would not suffice to establish probable cause for violation of Section 3 (e) of R.A. No. 3019, for it is well-settled that allegation does not amount to proof. Nor can we deduce any or all of the modes from mere speculation or hypothesis since good faith on the part of petitioners as with any other person is presumed.[35] The facts themselves must demonstrate evident bad faith which connotes not only bad judgment, but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will.[36]

WHEREFORE, the Petition for *Certiorari* under Rule 65 of the Rules of Court dated December 1, 2015 of petitioners Jose T. Villarosa, Carlito T. Cajayon and Pablo I. Alvaro is

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[34] *Id.* at 693-694.

[35] *Sistoza v. Desierto*, 437 Phil. 117, 132 (2002).

[36] *Id.,* citing *Llorente, Jr. v. Sandiganbayan*, 350 Phil. 820 (1998).

PARTLY GRANTED. The Joint Resolution dated March 23, 2015 and Order dated July 29, 2015 of the Office of the Ombudsman are **AFFIRMED** only insofar as its finding of probable cause against petitioners for the crime of Technical Malversation.

SO ORDERED.

Leonen, Reyes, A. Jr., Gesmundo,[*] and *Hernando, JJ.*, concur.

FIRST DIVISION

[G.R. No. 224210. January 23, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARYLOU GUMBAN *y* CARANAY and JOEL CHENG NG,** *accused,* **MARYLOU GUMBAN *y* CARANAY,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CUSTODY AND DISPOSITION OF SEIZED ITEMS; PROCEDURE; STRICT COMPLIANCE WITH THE REQUIRED WITNESSES AS MANDATED IN THE PROCEDURE IS NECESSARY BECAUSE OF THE DRUG'S UNIQUE CHARACTERISTIC RENDERING IT

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[*] Designated as additional member, in lieu of Associate Justice Rosmari D. Carandang, who recused from the subject case due to prior participation in the Court of Appeals, per Special Order No. 2624-H dated January 21, 2019.

INDISTINCT, NOT READILY IDENTIFIABLE AND EASILY OPEN TO TAMPERING, ALTERATION OR SUBSTITUTION EITHER BY ACCIDENT OR OTHERWISE.— Section 21, Article II of RA 9165 provides the mandatory procedural safeguards in buy-bust operations, [and] [i]n addition, Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 x x x. Indeed, non-compliance with the procedures x x x delineated and set would not necessarily invalidate the seizure and custody of the dangerous drugs as long as there were justifiable grounds for the non-compliance and the integrity of the *corpus delicti* was preserved. Records of the instant case reveal that the absence of a DOJ representative during the marking, inventory and photographing of the seized items was due to the fact that it was already late at night. This explanation, however, was found unjustifiable and unacceptable in *People v. Miranda* and recently in *People v. Lim*. x x x It is significant to note that the apprehending officers were already enroute to the target area as early as 1:30 p.m. and arrived at 4:00 p.m. Thus, they had more than sufficient time to make the necessary arrangements regarding the presence of a DOJ representative to serve as witness during the inventory and photography of any illegal item that they might seize from the suspect. This omission, to our mind, is a clear violation of the procedure provided by law. Strict compliance with the required witnesses as mandated in the procedure is necessary because of the alleged drug's unique characteristic rendering it indistinct, not readily identifiable and easily open to tampering, alteration or substitution either by accident or otherwise.

2. **ID.; ID.; ID.; CHAIN OF CUSTODY; A TESTIMONY ABOUT A PERFECT CHAIN DOES NOT ALWAYS HAVE TO BE THE STANDARD BECAUSE IT IS ALMOST ALWAYS IMPOSSIBLE TO OBTAIN, BUT AN UNBROKEN CHAIN OF CUSTODY INDEED BECOMES INDISPENSABLE AND ESSENTIAL WHEN THE ITEM OF REAL EVIDENCE IS A NARCOTIC SUBSTANCE.—** "The rule on chain of custody expressly demands the identification of the persons who handle the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they are seized from the accused until the time they are presented in court." In the present case, appellant raised doubt on the identity of the

items confiscated from her arguing that there were other personalities belonging to a so-called Compliance Team who touched and examined the drugs as admitted by IO1 Dealagdon but nobody from the team testified. x x x It bears stressing that the prosecution did not bother to provide the names of the members of the said Compliance Team. Thus, since the seized items were left for some time in the custody and possession of the Compliance Team who failed to describe how and from whom the items were received by them, the distinct possibility that the items were tampered with, contaminated, substituted or pilfered could not be ruled out. Substantial gaps in the chain of custody of the seized drugs would cast serious doubts on the authenticity of the evidence presented in court. "[A]lthough testimony about a perfect chain does not always have to be the standard because it is almost always impossible to obtain, an unbroken chain of custody indeed becomes indispensable and essential when the item of real evidence is a narcotic substance."

3. ID.; CRIMINAL CASES; 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.— [A]ppellant's failure to present any evidence for her defense as she waived her right to do so was inconsequential. The well-entrenched dictum in criminal law is 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." If the prosecution cannot, to begin with, establish the guilt of accused beyond reasonable doubt, the defense is not even required to adduce evidence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

On appeal is the April 24, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R.CR-HC No. 06601 which affirmed the December 3, 2013 Decision[2] of the Regional Trial Court (RTC) of Parañaque City, Branch 259 in Criminal Case No. 12-0901 convicting Marylou Gumban *y* Caranay (appellant) for violation of Section 5, Article II of Republic Act (RA) No. 9165, otherwise known as The Comprehensive Dangerous Drugs Act of 2002.

Antecedent Facts

Appellant, along with Joel Cheng Ng, was charged before the RTC of Parañaque City, Branch 259 with violation of Section 5, Article II of RA 9165 committed as follows:

> That on or about the 31st day of July 2012, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above- named accused, conspiring, confederating together and mutually helping and aiding one another, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport One (1) brown corroborated [sic] box wrapped with packaging tape with markings Exh A CCD 7/31/2012 to poseur-buyer IO1 Cesar C. Dealagdon Jr., containing the following, to wit:
>
> A-1 to A 40-Forty (40) white boxes labeled Nalbin Injection 10 mg with marking[s] Exh A-1 CCD 7/31/12 to A-40 CCD 7/31/2012, each containing ten (10) transparent ampoules of colorless liquid with a net volume of 1.0 ml per ampoule, with the total net volume of 400 ml.

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[1] CA *rollo*, pp. 104-116; penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Franchito N. Diamante and Carmelita Salandanan-Manahan.

[2] *Id*. at 60-73; penned by Presiding Judge Danilo V. Suarez.

A-41-one (1) yellow plastic bag with marking Exh B CCD 7/31/2012 containing thirty (30) bundles of blister packs containing three thousand (3000) [sic] pieces of round blue tablets with a total net weigh of 390 grams.

A-42-0ne (1) yellow plastic bag with marking Exh C CCD 7/31/12 thirty one (31) bundles of blister packs containing three thousand four (3400) pieces of round blue tablet with a total net weight of 442 grams.

A-43 to A-122 Eighty (80) transparent plastic packs with markings Exh D CCD 7/31/12 to Exh D-79 CCD 7/31/12, respectively, each containing five (5) transparent ampoules of colorless liquid with a net volume of 5 ml per ampoule, with a total net volume of 2000 ml and when tested were found to be positive for nalbup[h]ine, Diazepam and Midazolam, all dangerous drug, under RA 9165.

Contrary to law[.][3]

The CA summarized the material points of the testimony of the prosecution's principal witness Intelligence Officer 1 Cesar Dealagdon (IO1 Dealagdon) of the Philippine Drug Enforcement Agency Regional Office, National Capital Region (PDEA-NCR) as follows:

x x x At around 8 o'clock in the morning of 31 July 2012, a Confidential Informant (CI) went to the PDEA-NCR and informed team leader IO2 Leverette Lopez (Lopez) that a certain MARYLOU was selling illegal drugs in *Brgy*. BF Homes, Parañaque City. Lopez told Dealagdon to handle the transaction.

Dealagdon asked the CI to call MARYLOU. The CI x x x called MARYLOU [then] handed the phone to Dealagdon x x x. MARYLOU assured Dealagdon that she could sell illegal drugs or medicine [worth] ₱1,100,000.00. Thereafter, they agreed to meet at Jeek's Restobar, Elsie Gaches corner Kalaw St., *Brgy*. BF Homes, Parañaque City.

x x x Lopez conducted a briefing where Dealagdon was designated as the poseur-buyer and IO2 Aldwin Pagaragan (Pagaragan) as the arresting officer. They agreed that the pre-arranged signal to inform the team that the buy-bust operation had been consummated would

[3] Records, p. 1.

be the raising of Dealagdon's right hand. The evidence custodian provided Dealagdon with two pieces of One Thousand Peso bills where the latter placed his initials 'CCD' on the upper right portion thereof. Subsequently, Dealagdon placed it on the top and bottom of the boodle money.

At around 1:30 x x x in the afternoon of even date, the team x x x proceeded to the subject location. x x x. At 7:00 o'clock in the evening, Dealagdon asked the CI to call MARYLOU to inform her that they were already at Jeek's Restobar. At approximately 7:30 x x x in the evening, MARYLOU x x x called the CI to tell him that she was already in the area. She then invited the CI and Dealagdon [to join her inside her car]. While inside the [vehicle], the CI introduced Dealagdon to MARYLOU who they later learned was Marylou Gumban *y* Caranay. MARYLOU, in turn, introduced to them the driver, Joel.

Posthaste, MARYLOU asked for the agreed amount. Dealagdon replied that he wanted to see the items first. Joel then told him, '*Andun sa likod puntahan mo lang*.' MARYLOU and Dealagdon alighted from the vehicle and went to the compartment. Upon opening it, Dealagdon saw one brown box which MARYLOU opened by removing its scotch tape. When he saw that it contained different tablets, he then gave MARYLOU the money, saying, '*Pakibilang mo na lang*.' In a jiff, he raised his right hand. The team rushed to their location upon seeing the pre-arranged signal. Dealagdon arrested MARYLOU and recovered from her the buy-bust money while Pagaragan effectuated the arrest of JoeL Since the crowd was beginning to grow in number, Lopez instructed the team to proceed to the nearest police station to undertake the markings, listing and taking of photographs of the subject pieces of evidence.

At the police station, Dealagdon prepared the inventory and marked the pieces of evidence. Pictures were taken during the inventory. These proceedings were witnessed by two *Brgy. Kagawad*s, namely, John Carlo Marquez and Alfredo Lazatin as well as JL Asayo, a media representative from TV 5.

After the inventory and marking of the subject pieces of evidence, Dealagdon closed the box and sealed it with a scotch tape. He brought it to the PDEA office for laboratory examination and upon arriving thereat, Dealagdon immediately turned over the box containing the suspected dangerous drugs to the Laboratory Service together with the request for laboratory examination. The specimens were received

by Chemist Jerome Garcia who conducted an examination divulging the following results:

'**FINDINGS:**

Qualitative examination conducted on the above-stated specimens gave the following results:

Specimens **A-1 to A-40** gave **POSITIVE** results for the presence of Nalbuphine.

Specimens **A-41 and A-42** gave **POSITIVE** results for the presence of Diazepam.

Specimens **A-43 to A-122** gave positive result for the presence of Midazolam.

x x x x x x x x x

CONCLUSION:

Specimens **A-1 to A-40** contain **Nalbuphine**, a dangerous drug.

Specimens **A-41 and A-42** contain **Diazepam**, a dangerous drug under RA 9165.

Specimens **A-43 to A-122** contain **Midazolam** a dangerous drug under R.A. 9165.'

When it was the turn of Joel and MARYLOU to prove their innocence, they both waived their right to present evidence.[4]

Ruling of the Regional Trial Court

The RTC gave credence to the testimonies of the prosecution witnesses police officers IO1 Dealagdon, IO1 Aldwin Pagarigan and PDEA Chemist Jerome Garcia. It ruled that the elements of the offense of selling illegal drugs were clearly established; there was substantial compliance with the requirements of Section 21, Article II of RA 9165; and that the *corpus delicti* was properly identified and its integrity and evidentiary value was preserved. With respect to accused Joel Ng, the RTC found the prosecution's evidence insufficient to pronounce a verdict of conviction. Thus, on December 3, 2013, the RTC rendered its Decision, the decretal portion of which reads:

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[4] CA *rollo*, pp. 106-108.

WHEREFORE, premises considered the Court renders judgment as follows:

1. Accused MARYLOU CARANAY GUMBAN in *Criminal Case No. 12-0901* is found GUILTY beyond reasonable doubt for violation of Section 5, Article II of RA 9165 and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Php1,000,000.00.

2. Accused JOEL CHENG NG in the same case is hereby ACQUITTED on ground of reasonable doubt.

It appearing that accused MARYLOU CARANAY GUMBAN is detained at the Parañaque City Jail and considering the penalty imposed, the OIC-Branch Clerk of Court is hereby directed to prepare the *Mittimus* for her immediate transfer from the Parañaque City Jail to the Women's Correctional Institute, Mandaluyong City.

x x x x x x x x x

Considering that the bulk of the specimens have already been turned over to the PDEA for disposal, the remaining representative samples of the specimens subject of this case marked as *Exhibit 'B'* which is ten (10) ampoules of Nalbuphine in the total weight of 26.3 grams, *Exhibit 'B-1'* which is one hundred (100) blue Diazepam tablets, *Exhibit 'B-2'* which is one hundred (100) round blue Diazepam tablets and *Exhibit 'B-3'* which is five (5) ampoules of Midazolam in the total weight of forty-two (42) grams, are forfeited in favor of the government and the OIC-Branch Clerk of Court is likewise directed to turn over the same with dispatch to the Philippine Drug Enforcement Agency (PDEA) for proper disposal pursuant to Section 21[, Article II] of RA 9165 and Supreme Court OCA Circular No. 51-2003.

SO ORDERED.[5]

Appellant appealed to the CA.

Ruling of the Court of Appeals

The CA gave great respect to the RTC's findings that appellant was caught in *flagrante delicto* selling dangerous drugs. It ruled that there was an unbroken chain of custody of the confiscated items since the prosecution was able to maintain their integrity and evidentiary value. The CA rejected appellant's allegation

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[5] *Id*. at 73.

of instigation for being contradictory to her defense of denial. Besides, this defense was only raised on appeal as appellant waived the presentation of her evidence before the RTC. The CA also sustained the RTC's finding that the buy-bust team members were regularly performing their official duty. Thus, in its assailed Decision of April 24, 2015, the CA disposed of appellant's appeal as follows:

> WHEREFORE, the *Appeal* is hereby DENIED. The *Decision* dated 3 December 2013 of the Regional Trial Court of Parañaque City, Branch 259, in Crim[.] Case No. 12-0901, is AFFIRMED.
>
> SO ORDERED.[6]

Hence this appeal.

Our Ruling

The appeal is meritorious.

Section 21, Article II of RA 9165 provides the mandatory procedural safeguards in buy-bust operations, thus:

> SECTION 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof:

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[6] *Id*. at 116.

x x x x x x x x x

In addition, Section 21(a), Article II of the Implementing Rules and Regulations of RA 9165 reads:

x x x x x x x x x

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

x x x x x x x x x

Going over the records, the Court notes that the apprehending officers did not faithfully observe the foregoing mandatory requirements. While admittedly there was marking, inventory and photographing of the seized items, all these were done only in the presence of the elected public officials and media representative. No representative from the Department of Justice (DOJ) appeared as witness thereto as required by law.[7] In addition, the witnesses present during the inventory were not given copies thereof,[8] another mandatory procedural safeguard outlined by the law.

Indeed, non-compliance with the procedures thereby delineated and set would not necessarily invalidate the seizure

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[7] TSN, October 25, 2012, p. 80.

[8] *Id*.

and custody of the dangerous drugs as long as there were justifiable grounds for the non-compliance and the integrity of the *corpus delicti* was preserved.[9] Records of the instant case reveal that the absence of a DOJ representative during the marking, inventory and photographing of the seized items was due to the fact that it was already late at night.[10] This explanation, however, was found unjustifiable and unacceptable in *People v. Miranda*[11] and recently in *People v. Lim*.[12] Moreover, assuming to be true, coordination with the mayor in securing the attendance of a DOJ representative was not tantamount to a genuine and serious attempt to secure the presence of the DOJ representative. No follow up was made as regards the outcome of the alleged coordination; besides, the mayor is not duty-bound to secure the attendance of a DOJ representative. The duty is vested by law on the apprehending officers. It is significant to note that the apprehending officers were already enroute to the target area as early as 1:30 p.m. and arrived at 4:00 p.m. Thus, they had more than sufficient time to make the necessary arrangements regarding the presence of a DOJ representative to serve as witness during the inventory and photography of any illegal item that they might seize from the suspect. This omission, to our mind, is a clear violation of the procedure provided by law. Strict compliance with the required witnesses as mandated in the procedure is necessary because of the alleged drug's unique characteristic rendering it indistinct, not readily identifiable and easily open to tampering, alteration or substitution either by accident or otherwise.[13]

In addition, there was an obvious gap in the chain of custody of the seized items.

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[9] *People v. Miranda*, 788 Phil. 657, 668 (2016).

[10] TSN, November 28, 2012, p. 39.

[11] *Supra* note 9 at 669.

[12] G.R. No. 231898, September 4, 2018.

[13] *People v. Nandi*, 639 Phil. 134, 143 (2010).

In *People v. Cayas*,[14] citing *Mallillin v. People*,[15] the Court explained the importance of the chain of custody of the confiscated drugs as follows:

> 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.
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> x x x x x x x x x
>
> "The rule on chain of custody expressly demands the identification of the persons who handle the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they are seized from the accused until the time they are presented in court."[16]

In the present case, appellant raised doubt on the identity of the items confiscated from her arguing that there were other personalities belonging to a so-called Compliance Team who touched and examined the drugs as admitted by IO1 Dealagdon but nobody from the team testified. According to her "needless to state, as the members of the said Compliance Team touched the illegal drugs, no matter how brief, they were necessary links in the chain of custody and their testimonies as regards the circumstances of such custody [are] indispensable in the

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[14] 789 Phil. 70, 80 (2016).

[15] 576 Phil. 576, 587 (2008).

[16] *People v. Enad*, 780 Phil. 346, 358 (2016) citing *People v. Dalawis*, 772 Phil. 406, 417 (2015).

determination of [her] guilt. It bears stressing that the prosecution did not bother to provide the names of the members of the said Compliance Team."[17] Thus, since the seized items were left for some time in the custody and possession of the Compliance Team who failed to describe how and from whom the items were received by them, the distinct possibility that the items were tampered with, contaminated, substituted or pilfered could not be ruled out. Substantial gaps in the chain of custody of the seized drugs would cast serious doubts on the authenticity of the evidence presented in court. "[A]lthough testimony about a perfect chain does not always have to be the standard because it is almost always impossible to obtain, an unbroken chain of custody indeed becomes indispensable and essential when the item of real evidence is a narcotic substance."[18]

In view of the failure of the arresting officers to comply with a mandatory requirement in Section 21, Article II of RA 9165 coupled with the obvious break in the chain of custody of the seized items as heretofore discussed, a serious doubt arises as to the identity of the seized illegal drugs. There is no absolute certainty if the seized items were the very same drugs object of the sale, transmitted to the crime laboratory and eventually presented in court as evidence.

Indeed, appellant's failure to present any evidence for her defense as she waived her right to do so was inconsequential. The well-entrenched dictum in criminal law is 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."[19] If the prosecution cannot, to begin with, establish the guilt of accused beyond reasonable doubt, the defense is not even required to adduce evidence.[20]

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[17] *Rollo*, p, 31; Supplemental Brief for the Accused-Appellant, pp. 6-7.

[18] *People v. Obmiranis*, 594 Phil. 561, 571 (2008).

[19] *People v. Dacuma*, 753 Phil. 276, 287 (2015).

[20] *People v. Pepino-Consulta*, 716 Phil. 733, 761 (2013).

All told, the totality of the prosecution's evidence presented in this case did not support appellant's conviction for violation of Section 5, Article II, RA 9165 as the prosecution failed to prove beyond reasonable doubt the identity of the object of the sale which is an element of the offense. Consequently, we find no need to discuss the other issues raised by appellant.

WHEREFORE, premises considered, the appeal is **GRANTED**. The April 24, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06601 is **REVERSED and SET ASIDE**. Appellant Marylou Gumban *y* Caranay is hereby **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 another lawful cause.

Let a copy of this Decision be **FURNISHED** the Superintendent of the Correctional Institution for Women, City of Mandaluyong for immediate implementation and is **DIRECTED** to make a report to this Court within five (5) days from receipt of this Decision.

SO ORDERED.

Bersamin, C. J., Perlas-Bernabe,[*] *Gesmundo*, and *Carandang, JJ.*, concur.

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[*] Per October 3, 2018 raffle vice *J.* Jardeleza who recused due to prior participation as Solicitor General.

THIRD DIVISION

[G.R. No. 224548. January 23, 2019]

MARLYN MONTON NULLADA, *petitioner, vs.* **THE HON. CIVIL REGISTRAR OF MANILA, AKIRA ITO, SHIN ITO and ALL PERSONS WHO HAVE OR CLAIM ANY INTEREST,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; DIRECT RECOURSE TO THE COURT FROM THE DECISIONS AND FINAL ORDERS OF THE REGIONAL TRIAL COURT MAY BE TAKEN WHERE ONLY QUESTIONS OF LAW ARE RAISED OR INVOLVED.— [T]he Court explains that it allows the direct recourse from the decision of the RTC on the ground that the petition raises a pure question of law on the proper application of Article 26 of the Family Code. "[D]irect recourse to this Court from the decisions and final orders of the RTC may be taken where only questions of law are raised or involved." In this case, the RTC's resolve to dismiss the petition filed before it delved solely on its application of the statutory provision to the facts undisputed before it. This question of law was directly resolved by the Court in the recent case of *Republic of the Philippines v. Marelyn Tanedo Manalo*, which was promulgated by the Court subsequent to the filing of the present petition.

2. CIVIL LAW; THE FAMILY CODE; MARRIAGE; ARTICLE 26 OF THE FAMILY CODE; A DIVORCE DECREE VALIDLY OBTAINED ABROAD CAPACITATING AN ALIEN SPOUSE TO REMARRY UNDER THE LAWS OF HIS OR HER COUNTRY SHOULD BE RECOGNIZED IN THE PHILIPPINES, WHETHER THE FILIPINO SPOUSE INITIATED THE FOREIGN DIVORCE PROCEEDING OR NOT, OR THE DIVORCE WAS MUTUALLY AGREED UPON BY THE SPOUSES.— In determining whether a divorce decree obtained by a foreigner spouse should be recognized in the Philippines, it is immaterial that the divorce is sought by the Filipino national. The Court reasoned x x x. Paragraph 2

of Article 26 speaks of "*a divorce x x x validly obtained abroad by the alien capacitating him or her to remarry*." Based on a clear and plain reading of the provision, it only requires that there be a divorce validly obtained abroad. **The letter of the law does not demand that the alien spouse should be the one who initiated the proceeding wherein the divorce decree was granted.** It does not distinguish whether the Filipino spouse is the petitioner or the respondent in the foreign divorce proceeding. The Court is bound by the words of the statute; neither can We put words in the mouths of the lawmakers. "The legislature is presumed to know that meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute. *Verba legis non est recedendum*, or from the words of a statute there should be no departure." To reiterate, the purpose of Paragraph 2 of Article 26 is to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after a foreign divorce decree that is effective in the country where it was rendered, is no longer married to the Filipino spouse. The provision is a corrective measure to address an anomaly where the Filipino spouse is tied to the marriage while the foreign spouse is free to marry under the laws of his or her country. Whether the Filipino spouse initiated the foreign divorce proceeding or not, a favorable decree dissolving the marriage bond and capacitating his or her alien spouse to remarry will have the same result: the Filipino spouse will effectively be without a husband or wife. A Filipino who initiated a foreign divorce proceeding is in the same place and in like circumstance as a Filipino who is at the receiving end of an alien initiated proceeding. Therefore, the subject provision should not make a distinction. In both instance, it is extended as a means to recognize the residual effect of the foreign divorce decree on Filipinos whose marital ties to their alien spouses are severed by operation of the latter's national law. While opposition to the foregoing interpretation is commonly raised on the basis of the nationality principle, such principle is not an absolute and unbending rule. The second paragraph of Article 26 of the Family Code should be deemed an exception to the general rule. Applying the foregoing to the present case, the assailed Decision of the RTC warrants the Court's reversal. The dismissal of Marlyn's petition based on the trial court's interpretation of Article 26 of the Family Code is erroneous in light of the Court's

disposition in *Manalo*. The fact that the divorce was by the mutual agreement of Marlyn and Alkira was not sufficient ground to reject the decree in this jurisdiction.

3. REMEDIAL LAW; EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; PROOF OF FOREIGN LAW; BOTH THE DIVORCE DECREE AND THE NATIONAL LAW OF THE ALIEN MUST BE ALLEGED AND PROVEN, AS OUR COURTS DO NOT TAKE JUDICIAL NOTICE OF FOREIGN LAWS AND JUDGMENT.— While Marlyn and Akira's divorce decree was not disputed by the OSG, a recognition of the divorce, however, could not extend as a matter of course. Under prevailing rules and jurisprudence, the submission of the decree should come with adequate proof of the foreign law that allows it. The Japanese law on divorce must then be sufficiently proved. "Because our courts do not take judicial notice of foreign laws and judgment, our law on evidence requires that both the divorce decree and the national law of the alien must be alleged and proven x x x like any other fact." In *ATCI Overseas Corp., et al. v. Echin*, the Court reiterated the following rules on proof of foreign laws: To prove a foreign law, the party invoking it must present a copy thereof and comply with Sections 24 and 25 of Rule 132 of the Revised Rules of Court x x x. Marlyn failed to satisfy the x x x requirements. The records only include a photocopy of excerpts of The Civil Code of Japan, merely stamped LIBRARY, Japan Information and Culture Center, Embassy of Japan, 2627 Roxas Boulevard, Pasay City 1300. This clearly does not constitute sufficient compliance with the rules on proof of Japan's law on divorce.

APPEARANCES OF COUNSEL

Musico Law Office for petitioner.
Office of the Solicitor General for public respondent.

D E C I S I O N

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

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, which seeks to assail the Decision[1] dated January 21, 2016 of the Regional Trial Court (RTC), Branch 43 of Manila in Special Proceedings Case No. 14-132832, that denied the recognition of a foreign divorce that was obtained by petitioner Marlyn Monton Nullada (Marlyn) with Japanese national Akira Ito (Akira).

The Antecedents

The action arose from a Petition[2] for registration and/or recognition of foreign divorce decree and cancellation of entry of marriage that was filed under Rule 108 of the Rules of Court, in relation to Article 26 of the Family Code, by Marlyn in 2014 with the RTC of Manila. She claimed that on July 29, 1997, she and Akira got married in Katsushika-Ku, Tokyo, Japan, as evidenced by a Report of Marriage[3] that was issued by the Philippine Embassy in Tokyo, Japan. The document was registered with both the Office of the Local Civil Registry of Manila and the then National Statistics Office, Civil Registry Division.[4]

The union of Marlyn and Akira resulted in the birth of a child, Shin Ito. Their relationship, however, eventually turned sour and so they later decided to obtain a divorce by mutual agreement. In 2009, Akira and Marlyn secured a divorce decree in Japan. The Divorce Certificate[5] that was issued by the Embassy of Japan in the Philippines reads as follows:

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[1] Rendered by Presiding Judge Roy G. Gironella; *rollo*, pp. 25-29.

[2] *Id*. at 31-36.

[3] *Id*. at 37.

[4] *Id*. at 32.

[5] *Id*. at 39.

Cert. No. **IB12-08573-12**

DIVORCE CERTIFICATE

Name:	**MARLYN MONTON NULLADA**
Date of Birth:	SEPTEMBER 03, 1968
Nationality:	FILIPINO
Name of Spouse:	AKIRA ITO
Date of Marriage:	JULY 29, 1997
Date of Divorce:	NOVEMBER 16, 2009

This is to certify that the above statement has been made on the basis of the Official Family Register issued by the Head of Katsushika-ku, Tokyo, Japan on February 06, 2013. This certificate is issued for the purpose of the process of Notification of Foreign Divorce in the Republic of the Philippines.

Marlyn and Akira's acceptance of the notification of divorce by agreement was supported by an Acceptance Certificate[6] that was issued by the Head of Katsushika-ku in Japan, an English translation of which forms part of the records.

As she sought a recognition of the divorce decree in the Philippines, Marlyn filed with the RTC the petition that ended with the following prayer:

WHEREFORE, premises considered, it is respectfully prayed that, after notice and hearing, judgment be rendered as follows:

1. Recognizing the divorce obtained by [Marlyn and Akira], which was validly decreed in Japan thus dissolving their marriage, to be likewise valid and effective in Philippine jurisdiction;

2. Ordering respondent Hon. Civil Registrar of Manila to cancel the entry of marriage of [Marlyn and Akira] recorded in the Office of the Local Civil Registry of Manila;

3. Ordering respondent Hon. Civil Registrar of Manila to register the Japan divorce decree of [Marlyn and Akira] in the entry

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[6] *Id.* at 41.

of marriage recorded in the Office of the Local Civil Registry of Manila, and;

4. Declaring [Marlyn's] marriage to [Akira] as dissolved with a pronouncement that petitioner [Marlyn] shall have the capacity to remarry under Philippine law.

Petitioner prays for other relief just and equitable under the premises.[7]

The RTC found the petition to be in due form and substance, and thus, issued an Order of Hearing[8] with order for publication. Copies of the petition were also ordered served upon the Office of the Solicitor General (OSG) and Office of the City Prosecutor of Manila.[9] On February 12, 2015, the OSG entered its appearance for the Republic of the Philippines, and then deputized the City Prosecutor of Manila for assistance in all the hearings of the case.[10] Given proof of compliance with the action's jurisdictional requirements, trial before the RTC ensued.[11]

During the trial, Marlyn testified mainly to identify the following pieces of documentary evidence that were submitted to support the petition:

(1) Report of Marriage[12] (Exhibit "H") that was issued by the Embassy of the Republic of the Philippines in Japan on the registration with the embassy of Akira and Marlyn's marriage on July 29, 1997 in Japan;

(2) Authentication Certificate of the Report of Marriage[13] (Exhibit "H-1");

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[7] *Id*. at 34.

[8] Records, pp. 23-25.

[9] *Rollo*, p. 23.

[10] Records, pp. 49-50.

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

[12] *Id*. at 67.

[13] *Id*. at 66.

(3) Divorce Certificate[14] (Exhibit "J") issued by the Embassy of Japan in the Philippines on the basis of the Official Family Register issued by the Head of Katsushika-ku, Tokyo, Japan;

(4) Authentication Certificate of the Divorce Certificate[15] (Exhibit "J-1");

(5) Acceptance Certificate[16] (translated in English) (Exhibit "L"); and

(6) Excerpts of the Japanese Civil Code[17] (Exhibit "M").

Marlyn also identified and submitted a Judicial Affidavit[18] (Exliibits "N," and "N-1"), which was adopted as her direct testimony.[19] Mary Ann Chico, registration officer of the Local Civil Registrar of Manila, also testified in court to present original copies of the divorce and authentication certificates that were filed with local civil registry.[20]

Akira did not file an Answer to the petition, notwithstanding summons by publication. The Republic also did not offer any evidence to rebut the case of Marlyn.[21]

Ruling of the RTC

On January 21, 2016, the RTC rendered its Decision denying the petition. The *fallo* of the RTC decision reads:

ACCORDINGLY, the Petition is DENIED.

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[14] *Id*. at 69.

[15] *Id*. at 68.

[16] *Id*. at 70.

[17] *Id*. at 71-78.

[18] *Id*. at 79-83.

[19] TSN, August 28, 2015, p. 16.

[20] TSN, October 23, 2015, pp. 6-7.

[21] Records, p. 104.

Notify the parties/counsels/Trial Prosecutor and the Office of the Solicitor General.

SO ORDERED.[22]

Under the third paragraph of Article 17[23] of the New Civil Code is a policy of non-recognition of divorce. For the trial court, the fact that Marlyn also agreed to the divorce and jointly filed for it with Akira barred the application of the second paragraph of Article 26 of the Family Code, which would have otherwise allowed a Filipino spouse to remarry after the alien spouse had validly obtained a divorce.[24] While the intent of the law is to equalize Filipinos with their foreigner spouses who are free to marry again after the divorce, the Filipino spouse cannot invoke the intention of equity behind the law when he or she is an initiator or active participant in procuring the divorce.[25]

Dissatisfied, Marlyn moved for reconsideration but her motion was denied by the trial court *via* an Order dated April 26, 2016.[26] This prompted Marlyn to file the present petition for review on *certiorari*.

The Present Petition

Marlyn seeks to justify her immediate recourse to the Court by explaining that the present petition involves a pure question of law based on a lone issue, as follows: Whether or not Article 26, paragraph 2 of the Family Code has a restrictive application so as to apply only in cases where it is the alien spouse who sought

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[22] *Id*. at 107.

[23] Art. 17. x x x.

Prohibitive laws concerning persons, their acts or property, and those which have, for their object, public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country.

[24] *Rollo*, p. 28.

[25] *Id*.

[26] Records, p. 131.

the divorce, and not where the divorce was mutually agreed upon by the spouses.[27]

The Court's Ruling

The Court finds merit in the petition.

At the outset, the Court explains that it allows the direct recourse from the decision of the RTC on the ground that the petition raises a pure question of law on the proper application of Article 26 of the Family Code. "[D]irect recourse to this Court from the decisions and final orders of the RTC may be taken where only questions of law are raised or involved."[28] In this case, the RTC's resolve to dismiss the petition filed before it delved solely on its application of the statutory provision to the facts undisputed before it. This question of law was directly resolved by the Court in the recent case of *Republic of the Philippines v. Marelyn Tanedo Manalo*,[29] which was promulgated by the Court subsequent to the filing of the present petition.

The legal provision that is pertinent to the case is Article 26 of the Family Code, which states:

Art. 26. All marriages solemnized outside the Philippines, in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35 (1), (4), (5) and (6), [36, 37] and 38.

Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall have capacity to remarry under Philippine law. (Underscoring ours)

The facts in *Manalo* are similar to the circumstances in this case. A divorce decree between a Filipino and a Japanese national

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[27] *Rollo*, pp. 13-20.

[28] *Rep. of the Phils. v. Olaybar*, 726 Phil. 378, 384 (2014).

[29] G.R. No. 221029, April 24, 2018.

was obtained by the spouses upon a case that was filed in Japan by Manalo, the Filipino spouse. Initially, the recognition of the divorce decree in the Philippines was rejected by the RTC where the petition for recognition and enforcement of a foreign judgment was filed, as the trial court cited Article 15 of the New Civil Code and reasoned that as a rule, "the Philippine law 'does not afford Filipinos the right to file for a divorce, whether they are in the country or living abroad, if they are married to Filipinos or to foreigners, or if they celebrated their marriage in the Philippines or in another country x x x[.]'" On appeal to the Court of Appeals (CA), however, the RTC decision was overturned. The appellate court held that Article 26 of the Family Code should apply even if it was Manalo who filed for divorce. The decree made the Japanese spouse no longer married to Manalo; he then had the capacity to remarry. It would be unjust to still deem Manalo married to the Japanese who, in turn, was no longer married to her. The fact that it was Manalo who filed the divorce was inconsequential. This ruling of the CA was then affirmed by the Court in *Manalo* upon a petition for review on *certiorari* that was filed by the Republic of the Philippines.

Applying the same legal considerations and considering the similar factual milieu that attended in *Manalo*, the present case warrants a reversal of the RTC's decision that refused to recognize the divorce decree that was mutually obtained by Marlyn and her foreigner spouse in Japan solely on the ground that the divorce was jointly initiated by the spouses. The Court finds no reason to deviate from its recent disposition on the issue, as made in *Manalo*, thus:

> Now, the Court is tasked to resolve whether, under the same provision [Art. 26], a Filipino citizen has the capacity to remarry under Philippine law after initiating a divorce proceeding abroad and obtaining a favorable judgment against his or her alien spouse who is capacitated to remarry. x x x.
>
> We rule in the affirmative.

In the *Manalo* decision, the Court went on to cite jurisprudence wherein the legal effects of a foreign divorce decree, albeit

obtained by a Filipino spouse, were acknowledged in our jurisdiction but limited on the issues of child custody[30] and property relations.[31] In several other jurisprudence,[32] recognition of the effects of a foreign divorce was also implied from the Court's disposition of the cases. The specific issue on the binding effect of a divorce decree obtained by a Filipino spouse on one's marital status was then expressly and directly tackled by the Court. In determining whether a divorce decree obtained by a foreigner spouse should be recognized in the Philippines, it is immaterial that the divorce is sought by the Filipino national. The Court reasoned:

> There is no compelling reason to deviate from the above-mentioned rulings. When this Court recognized a foreign divorce decree that was initiated and obtained by the Filipino spouse and extended its legal effects on the issues of child custody and property relation, it should not stop short in likewise acknowledging that one of the usual and necessary consequences of absolute divorce is the right to remarry. Indeed, there is no longer a mutual obligation to live together and observe fidelity. When the marriage tie is severed and ceased to exist, the civil status and the domestic relation of the former spouses change as both of them are freed from the marital bond.
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> x x x x x x x x x
>
> Paragraph 2 of Article 26 speaks of "*a divorce x x x validly obtained abroad by the alien capacitating him or her to remarry*." Based on a clear and plain reading of the provision, it only requires that there be a divorce validly obtained abroad. **The letter of the law does not demand that the alien spouse should be the one who initiated the proceeding wherein the divorce decree was granted.** It does not distinguish whether the Filipino spouse is the petitioner or the respondent in the foreign divorce proceeding. The Court is bound by the words of the statute; neither can We put words in the mouths of the lawmakers. "The legislature is presumed to know that meaning of the words, to have used words advisedly, and to have expressed

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[30] *Dacasin v. Dacasin*, 625 Phil. 494, 502 (2010).

[31] *Van Dorn v. Judge Romillo, Jr.*, 223 Phil. 357, 360 (1985).

[32] *Fujiki v. Marinay, et al.*, 712 Phil. 524 (2013); and *Medina v. Koike*, 791 Phil. 645 (2016).

its intent by the use of such words as are found in the statute. *Verba legis non est recedendum*, or from the words of a statute there should be no departure."

x x x x x x x x x

To reiterate, the purpose of Paragraph 2 of Article 26 is to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after a foreign divorce decree that is effective in the country where it was rendered, is no longer married to the Filipino spouse. The provision is a corrective measure to address an anomaly where the Filipino spouse is tied to the marriage while the foreign spouse is free to marry under the laws of his or her country. Whether the Filipino spouse initiated the foreign divorce proceeding or not, a favorable decree dissolving the marriage bond and capacitating his or her alien spouse to remarry will have the same result: the Filipino spouse will effectively be without a husband or wife. A Filipino who initiated a foreign divorce proceeding is in the same place and in like circumstance as a Filipino who is at the receiving end of an alien initiated proceeding. Therefore, the subject provision should not make a distinction. In both instance, it is extended as a means to recognize the residual effect of the foreing divorce decree on Filipinos whose marital ties to their alien spouses are severed by operation of the latter's national law. (Emphasis ours)

While opposition to the foregoing interpretation is commonly raised on the basis of the nationality principle, such principle is not an absolute and unbending rule. The second paragraph of Article 26 of the Family Code should be deemed an exception to the general rule.[33]

Applying the foregoing to the present case, the assailed Decision of the RTC warrants the Court's reversal. The dismissal of Marlyn's petition based on the trial court's interpretation of Article 26 of the Family Code is erroneous in light of the Court's disposition in *Manalo*. The fact that the divorce was by the mutual agreement of Marlyn and Akira was not sufficient ground to reject the decree in this jurisdiction.

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[33] *Republic of the Philippines v. Marelyn Tanedo Manalo*, *supra* note 29.

While Marlyn and Akira's divorce decree was not disputed by the OSG, a recognition of the divorce, however, could not extend as a matter of course. Under prevailing rules and jurisprudence, the submission of the decree should come with adequate proof of the foreign law that allows it. The Japanese law on divorce must then be sufficiently proved. "Because our courts do not take judicial notice of foreign laws and judgment, our law on evidence requires that both the divorce decree and the national law of the alien must be alleged and proven x x x like any other fact."[34] In *ATCI Overseas Corp., et al. v. Echin*,[35] the Court reiterated the following rules on proof of foreign laws:

> To prove a foreign law, the party invoking it must present a copy thereof and comply with Sections 24 and 25 of Rule 132 of the Revised Rules of Court which read:
>
> > Sec. 24. *Proof of official record.* The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by his seal of office.
>
> > Sec. 25. *What attestation of copy must state*. Whenever a copy of a document or record is attested for the purpose of the evidence, the attestation must state, in substance, that the copy is a correct copy of the original, if there be any, or if he be the clerk of court having a seal, under the seal of such court.[36]

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[34] *Ando v. Department of Foreign Affairs,* 742 Phil. 37, 48 (2014).

[35] 647 Phil. 43 (2010).

[36] *Id*. at 50.

Marlyn failed to satisfy the foregoing requirements. The records only include a photocopy of excerpts of The Civil Code of Japan, merely stamped LIBRARY, Japan Information and Culture Center, Embassy of Japan, 2627 Roxas Boulevard, Pasay City 1300.[37] This clearly does not constitute sufficient compliance with the rules on proof of Japan's law on divorce. In any case, similar to the remedy that was allowed by the Court in *Manalo* to resolve such failure, a remand of the case to the RTC for further proceedings and reception of evidence on the laws of Japan on divorce is allowed, as it is hereby ordered by the Court.

WHEREFORE, the petition for review on *certiorari* is **GRANTED**. The Decision dated January 21, 2016 of the Regional Trial Court, Branch 43 of Manila in Special Proceedings Case No. 14-132832 is **REVERSED and SET ASIDE**. The case is **REMANDED** to the court of origin for further proceedings and reception of evidence as to the relevant Japanese law on divorce.

SO ORDERED.

Peralta (*Chairperson*), *Leonen, Hernando*, and *Carandang,*[*] *JJ.*, concur.

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[37] Records, pp. 71-78.

[*] Designated Member per Special Order No. 2624, dated November 29, 2018.

THIRD DIVISION

[G.R. No. 233174. January 23, 2019]

RUEL FRANCIS M. CABRAL, *petitioner, vs.* **CHRIS S. BRACAMONTE,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987; OFFICE OF THE SOLICITOR GENERAL; HAS THE SOLE AUTHORITY TO REPRESENT THE STATE IN APPEALS OF CRIMINAL CASES BEFORE THE SUPREME COURT AND THE COURT OF APPEALS; RATIONALE.— Time and again, the Court has held that "the authority to represent the State in appeals of criminal cases before the Supreme Court and the CA is solely vested in the OSG." Section 35(1), Chapter 12, Title III, Book IV of the 1987 Administrative Code explicitly provides that the OSG shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. It shall have specific powers and functions to represent the Government and its officers in the Supreme Court and the CA, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party. The OSG is the law office of the Government. Thus, in criminal cases, the acquittal of the accused or the dismissal of the case against him can only be appealed by the Solicitor General, acting on behalf of the State. The private complainant or the offended party may question such acquittal or dismissal only insofar as the civil liability of the accused is concerned. The rationale behind this rule is that in a criminal case, the party affected by the dismissal of the criminal action is the State and not the private complainant. The interest of the private complainant or the private offended party is limited only to the civil liability. In the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution such that when a criminal case is dismissed by the trial court or if there is an acquittal, an appeal therefrom on the

criminal aspect may be undertaken only by the State through the Solicitor General. The private offended party or complainant may not take such appeal, but may only do so as to the civil aspect of the case.

2. **ID.; ID.; ID.; ID.; ID.; APPEAL OF THE OFFENDED PARTY WITHOUT THE INTERVENTION OF THE OFFICE OF THE SOLICITOR GENERAL, WHEN ALLOWED.—** There have been instances x x x where the Court permitted an offended party to file an appeal without the intervention of the OSG, such as when the offended party questions the civil aspect of a decision of a lower court, when there is denial of due process of law to the prosecution and the State or its agents refuse to act on the case to the prejudice of the State and the private offended party, when there is grave error committed by the judge, or when the interest of substantial justice so requires.

3. **CRIMINAL LAW; CRIMINAL CASES; TERRITORIAL JURISDICTION; FOR JURISDICTION TO BE ACQUIRED BY COURTS IN CRIMINAL CASES, THE OFFENSE SHOULD HAVE BEEN COMMITTED OR ANY ONE OF ITS ESSENTIAL INGREDIENTS SHOULD HAVE TAKEN PLACE WITHIN THE TERRITORIAL JURISDICTION OF THE COURT.—** [T]he Court has held that "territorial jurisdiction in criminal cases is the territory where the court has jurisdiction to take cognizance of or to try the offense allegedly committed therein by the accused. In all criminal prosecutions, the action shall be instituted and tried in the court of the municipality or territory wherein the offense was committed or where any one of the essential ingredients took place." Otherwise stated, the place where the crime was committed determines not only the venue of the action but is an essential element of jurisdiction. For jurisdiction to be acquired by courts in criminal cases, the offense should have been committed or any one of its essential ingredients should have taken place within the territorial jurisdiction of the court. Thus, a court cannot take jurisdiction over a person charged with an offense allegedly committed outside of its limited territory. In this relation, moreover, it has been held that the jurisdiction of a court over the criminal case is determined by the allegations in the complaint or information. Once it is so shown, the court may validly take cognizance of the case. However, if the evidence adduced during the trial shows that the offense was committed

somewhere else, the court should dismiss the action for want of jurisdiction.

4. **ID.; REVISED PENAL CODE; ESTAFA UNDER ARTICLE 315, PARAGRAPH 2(d); ELEMENTS.—** The elements of x x x [estafa under Article 315, paragraph 2(d) of the Revised Penal Code] consists of the following: (1) the offender has postdated or issued a check in payment of an obligation contracted at the time of the postdating or issuance; (2) at the time of postdating or issuance of said check, the offender has no funds in the bank or the funds deposited are not sufficient to cover the amount of the check; and (3) the payee has been defrauded.

5. **ID.; ID.; ID.; IT IS NOT THE NON-PAYMENT OF A DEBT WHICH IS MADE PUNISHABLE, BUT THE CRIMINAL FRAUD OR DECEIT IN THE ISSUANCE OF A CHECK; DECEIT, DEFINED.—** [I]n this form of estafa, it is not the non-payment of a debt which is made punishable, but the criminal fraud or deceit in the issuance of a check. Deceit has been defined as "the false representation of a matter of fact, whether by words or conduct by false or misleading allegations or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury."

6. **ID.; CRIMINAL CASES; VENUE OR WHERE AT LEAST ONE OF THE ELEMENTS OF THE CRIME OR OFFENSE WAS COMMITTED MUST BE PROVEN AND NOT JUST ALLEGED.—** [W]hile Cabral is not wrong in saying that the crime of estafa is a continuing or transitory offense and may be prosecuted at the place where any of the essential ingredients of the crime took place, the pieces of evidence on record point only to one place: Makati City. Time and again, the Court has ruled that "in criminal cases, venue or where at least one of the elements of the crime or offense was committed must be proven and not just alleged. Otherwise, a mere allegation is not proof and could not justify sentencing a man to jail or holding him criminally liable. To stress, an allegation is not evidence and could not be made equivalent to proof." Thus, since the evidence adduced during the trial showed that the offense allegedly committed by Bracamonte was committed somewhere else, the trial court should have dismissed the action for want of jurisdiction.

7. ID.; ID.; JURISDICTION; AN OBJECTION BASED ON THE GROUND THAT THE COURT LACKS JURISDICTION OVER THE OFFENSE CHARGED MAY BE RAISED OR CONSIDERED *MOTU PROPRIO* BY THE COURT AT ANY STAGE OF THE PROCEEDINGS OR ON APPEAL.— As to Cabral's contention that Bracamonte's motion should be considered barred by laches as it took him four (4) years before he raised the issue of jurisdiction, actively participating in the proceedings by cross-examining the prosecution witness, the rule is settled that an objection based on the ground that the court lacks jurisdiction over the offense charged may be raised or considered *motu proprio* by the court at any stage of the proceedings or on appeal. Moreover, jurisdiction over the subject matter in a criminal case cannot be conferred upon the court by the accused, by express waiver or otherwise, since such jurisdiction is conferred by the sovereign authority which organized the court, and is given only by law in the manner and form prescribed by law.

8. ID.; ID.; ID.; IN A CRIMINAL CASE, THE PROSECUTION MUST NOT ONLY PROVE THAT THE OFFENSE WAS COMMITTED, IT MUST ALSO PROVE THE IDENTITY OF THE ACCUSED AND THE FACT THAT THE OFFENSE WAS COMMITTED WITHIN THE JURISDICTION OF THE COURT.— [I]t is rather unfair to require a defendant or accused to undergo the ordeal and expense of a trial if the court has no jurisdiction over the subject matter or offense or it is not the court of proper venue. It has been consistently held that "in a criminal case, the prosecution must not only prove that the offense was committed, it must also prove the identity of the accused and the fact that the offense was committed within the jurisdiction of the court." There being no showing that the offense was committed within Parañaque City, the RTC of that city has no jurisdiction over the case.

APPEARANCES OF COUNSEL

Gera Law for petitioner.
Glynnis Theresa S. Matriz-Acosta 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 assailing the Decision[1] dated March 27, 2017 and Resolution[2] dated July 28, 2017 of the Court of Appeals (*CA*) in CA-G.R. SP No. 146746 which set aside the Order[3] dated February 26, 2016 of the Regional Trial Court (*RTC*) of Parañaque City, denying the Motion to Quash the Information charging respondent Chris S. Bracamonte with the crime of estafa.

The antecedent facts are as follows.

On September 15, 2009, respondent Chris S. Bracamonte and petitioner Ruel Francis Cabral executed a Memorandum of Agreement (*MOA*) in Makati City for the purchase of shares of stock in Wellcross Freight Corporation (*WFC*) and Aviver International Corporation (*AVIVER*). Simultaneous with the signing of the MOA, Bracamonte issued a postdated check to Cabral in the amount of ₱12,677,950.15. When the check was presented for payment, however, the drawee bank in Makati City dishonored the same for lack of sufficient funds. Consequently, for failure to settle the obligation, Cabral instituted a complaint for estafa against Bracamonte in Parañaque City. Finding probable cause, the prosecutor filed with the RTC of Parañaque City an Information, the accusatory portions of which read:

That on or about the 15th day of September 2009, in the City of Parañaque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused by means of deceit and false pretenses executed prior to or simultaneous with the commission of the fraud, did then and there willfully, unlawfully, and feloniously defraud Ruel

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[1] Penned by Associate Justice Mario V. Lopez, with Associate Justices Remedios A. Salazar-Fernando and Eduardo B. Peralta, Jr., concurring; *rollo*, pp. 75-80.

[2] *Id.* at 90.

[3] Penned by Judge Aida Estrella Macapagal; *id.* at 41-44.

L. Cabral, in the following manner, to wit: the said accused, in the payment of shares of stock, negotiated and delivered to the latter BANCO DE ORO Check No. 0249913, in the amount of ₱12,677,950.15 with the representation and assurance that the said check [is] good and covered with sufficient funds, the accused well knowing that at the time the check was negotiated and delivered the same was not covered with sufficient funds, said misrepresentation having been made to induce complainant to receive and accept, as complainant in fact received and accepted said check which was dishonored when presented for payment for the reason "NON-SUFF. FUND" and notwithstanding notice of dishonor and demand to make good the check within three (3) days, accused failed and refused and still fails and refuses to pay in cash, to the damage and prejudice of complainant Ruel L. Cabral, in the aforementioned amount of ₱12,677,950.15.

CONTRARY TO LAW.[4]

After arraignment and presentation of prosecution evidence, Bracamonte moved to quash the Information contending that the venue was improperly laid in Parañaque City, because the postdated check was delivered and dishonored in Makati City. Thus, the prosecution failed to show how the supposed elements of the crime charged were committed in Parañaque City. In contrast, Cabral maintained that the averments in the complaint and Information are controlling to determine jurisdiction. Since the complaint affidavit alleged that negotiations on the MOA were conducted in a warehouse in Parañaque City where Cabral was convinced to sell his shares in the two corporations, then the RTC of Parañaque City properly had jurisdiction.

In an Order dated February 26, 2016, the RTC denied the Motion to Quash explaining that it has jurisdiction over the case because Bracamonte employed fraudulent acts against Cabral in Parañaque City prior to the issuance of the postdated check. According to the trial court, a perusal of the Information would show that Cabral was defrauded by Bracamonte in the City of Parañaque. Also, in paragraph 7 of the complaint affidavit, Cabral narrated that it was during their meeting in the old

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[4] *Rollo*, p. 76.

warehouse of AVIVER and WFC located at Km. 17, West Service Road, South Super Highway, Parañaque City that Bracamonte was able to persuade and convince him to sell his entire shares of stock. There, they triumphed in misleading and fooling him until he finally accepted their offer. The RTC held that fundamental is the rule that for jurisdiction to be acquired by courts in criminal cases, the offense should have been committed or any one of its essential ingredients should have taken place within the territorial jurisdiction of the court. Moreover, jurisdiction of said courts is determined by the allegations in the complaint or information. Thus, since the complaint affidavit and the Information in the instant case duly alleged that Bracamonte deceived Cabral in Parañaque City, the Parañaque RTC appropriately had jurisdiction over the instant case.[5]

In a Decision dated March 27, 2017, however, the CA set aside the RTC Order and dismissed the Information against Bracamonte. According to the appellate court, in determining the proper venue, the following acts must be considered: (a) Cabral and Bracamonte executed the MOA in Makati City; (b) Bracamonte issued and delivered a postdated check to Cabral in Makati City simultaneous to the signing of the agreement; and (c) the check was presented for payment and was dishonored in Makati City. Applying the elements of estafa, it is clear that deceit took place in Makati City where the worthless check was issued and delivered, while damage was inflicted at the same place where the check was dishonored by the drawee bank. Thus, jurisdiction solely lies in Makati City where all the elements of the crime occurred. The place where the MOA was negotiated does not fix the venue of the offense in view of settled jurisprudence that provides that what is of decisive importance is the delivery of the instrument which is the final act essential to its consummation as an obligation. Finally, the CA added that the fact that Bracamonte had been arraigned and the prosecution completed its presentation of evidence does not

[5] *Id.* at 77.

affect the propriety of the Motion to Quash for the same may be filed any time since it is predicated on lack of jurisdiction.[6]

Aggrieved by the CA's denial of his Motion for Reconsideration, Cabral filed the instant petition on October 9, 2017 invoking the following argument:

I.

WHETHER THE COURT OF APPEALS GRAVELY ERRED WHEN IT HELD THAT THE TRIAL COURT IS DEVOID OF JURISDICTION TO TRY THE CRIMINAL CASE AGAINST BRACAMONTE AS VENUE WAS IMPROPERLY LAID THUS DISMISSING THE INFORMATION.

In his petition, Cabral asserts that averments in the complaint or Information characterize the crime to be prosecuted and the court before which it must be tried. He claims that jurisdiction of courts in criminal cases is determined by the allegations of the complaint or Information, and not by the findings the court may make after the trial. According to Cabral, the crime of estafa is a continuing or transitory offense which may be prosecuted at the place where any of the essential elements of the crime took place. As such, its basic elements of deceit and damage may arise independently in separate places. Here, the allegations in the complaint clearly indicate that the business transactions, with regard to the terms and conditions of the subject MOA, were conducted in a warehouse in Parañaque City as it was there that Bracamonte convinced him to finally sell the shares of stock, which allegations were never refuted by Bracamonte. Thus, the RTC of Parañaque City correctly denied Bracamonte's Motion to Quash as it unmistakably had jurisdiction over the case. Moreover, Cabral added that Bracamonte's motion should be considered barred by laches as it took him four (4) years before he raised the issue of jurisdiction, actively participating in the proceedings by cross-examining the prosecution witness.[7]

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

[7] *Id.* at 13-17.

We deny the petition.

At the outset, the Court deems it necessary to note that Cabral filed the present petition without the participation of the Office of the Solicitor General (*OSG*). Time and again, the Court has held that "the authority to represent the State in appeals of criminal cases before the Supreme Court and the CA is solely vested in the OSG." Section 35(1), Chapter 12, Title III, Book IV of the 1987 Administrative Code explicitly provides that the OSG shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. It shall have specific powers and functions to represent the Government and its officers in the Supreme Court and the CA, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party. The OSG is the law office of the Government. Thus, in criminal cases, the acquittal of the accused or the dismissal of the case against him can only be appealed by the Solicitor General, acting on behalf of the State. The private complainant or the offended party may question such acquittal or dismissal only insofar as the civil liability of the accused is concerned.[8]

The rationale behind this rule is that in a criminal case, the party affected by the dismissal of the criminal action is the State and not the private complainant. The interest of the private complainant or the private offended party is limited only to the civil liability. In the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution such that when a criminal case is dismissed by the trial court or if there is an acquittal, an appeal therefrom on the criminal aspect may be undertaken only by the State through the Solicitor General. The private offended party or complainant

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[8] *Chiok v. People*, 774 Phil. 230, 245, (2015), citing *Villareal v. Aliga*, 724 Phil. 47, 57 (2014).

may not take such appeal, but may only do so as to the civil aspect of the case.[9]

There have been instances, however, where the Court permitted an offended party to file an appeal without the intervention of the OSG, such as when the offended party questions the civil aspect of a decision of a lower court, when there is denial of due process of law to the prosecution and the State or its agents refuse to act on the case to the prejudice of the State and the private offended party, when there is grave error committed by the judge, or when the interest of substantial justice so requires.[10]

In the instant case, however, the petition before the Court essentially assails the criminal, and not only the civil, aspect of the CA Decision. Thus, the petition should have been filed only by the State through the OSG and not by Cabral who lacked the personality or legal standing to question the CA Decision. This is especially so because, as will be discussed below, the dismissal of Cabral's complaint was not gravely erroneous nor did it amount to a denial of due process of law that would allow the application of the exceptions mentioned above.

Nevertheless, even assuming the procedural propriety of the instant petition, the Court still resolves to deny the same. Time and again, the Court has held that "territorial jurisdiction in criminal cases is the territory where the court has jurisdiction to take cognizance of or to try the offense allegedly committed therein by the accused. In all criminal prosecutions, the action shall be instituted and tried in the court of the municipality or territory wherein the offense was committed or where any one of the essential ingredients took place."[11] Otherwise stated, the place where the crime was committed determines not only the venue of the action but is an essential element of jurisdiction. For jurisdiction to be acquired by courts in criminal cases, the

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[9] *Chiok v. People, supra*.

[10] *Morillo v. People, et al.*, 775 Phil. 192, 210-211 (2015).

[11] *Brodeth v. People*, G.R. No. 197849, November 29, 2017.

offense should have been committed or any one of its essential ingredients should have taken place within the territorial jurisdiction of the court. Thus, a court cannot take jurisdiction over a person charged with an offense allegedly committed outside of its limited territory. In this relation, moreover, it has been held that the jurisdiction of a court over the criminal case is determined by the allegations in the complaint or information. Once it is so shown, the court may validly take cognizance of the case. However, if the evidence adduced during the trial shows that the offense was committed somewhere else, the court should dismiss the action for want of jurisdiction.[12]

Here, the crime allegedly committed by Bracamonte is estafa under Article 315, paragraph 2(d) of the Revised Penal Code. The elements of such crime consists of the following: (1) the offender has postdated or issued a check in payment of an obligation contracted at the time of the postdating or issuance; (2) at the time of postdating or issuance of said check, the offender has no funds in the bank or the funds deposited are not sufficient to cover the amount of the check; and (3) the payee has been defrauded. Thus, in this form of estafa, it is not the non-payment of a debt which is made punishable, but the criminal fraud or deceit in the issuance of a check. Deceit has been defined as "the false representation of a matter of fact, whether by words or conduct by false or misleading allegations or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury."[13]

In the present petition, Cabral vehemently insists that since he alleged in his complaint affidavit that the business transactions with regard to the terms and conditions of the subject MOA were conducted in a warehouse in Parañaque City, the element of deceit definitely occurred therein, and as such, the RTC of Parañaque City has jurisdiction over the case. The Court, however, cannot subscribe to said contention.

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[12] *Treñas v. People*, 680 Phil. 368, 380 (2012).

[13] *Batac v. People*, G.R. No. 191622, June 6, 2018 (Minute Resolution).

Our pronouncement in *Fukuzume v. People*[14] is instructive. There, Fukuzume was charged with estafa before the RTC of Makati City for allegedly enticing private complainant to purchase aluminum scrap wires but thereafter refusing to deliver said wires despite receipt of payment. The Court therein, however, dismissed the case, without prejudice, on the ground that the prosecution failed to prove that the essential elements of the offense took place within the trial court's jurisdiction, to wit:

> **The crime was alleged in the Information as having been committed in Makati. However, aside from the sworn statement executed by Yu on April 19, 1994, the prosecution presented no other evidence, testimonial or documentary, to corroborate Yu's sworn statement or to prove that any of the above-enumerated elements of the offense charged was committed in Makati. Indeed, the prosecution failed to establish that any of the subsequent payments made by Yu** in the amounts of ₱50,000.00 on July 12, 1991, ₱20,000.00 on July 22, 1991, ₱50,000.00 on October 14, 1991 and ₱170,000.00 on October 18, 1991 **was given in Makati. Neither was there proof to show that the certifications purporting to prove that NAPOCOR has in its custody the subject aluminum scrap wires and that Fukuzume is authorized by Furukawa to sell the same were given by Fukuzume to Yu in Makati. On the contrary, the testimony of Yu established that all the elements of the offense charged had been committed in Parañaque**, to wit: that on July 12, 1991, Yu went to the house of Fukuzume in Parañaque; that with the intention of selling the subject aluminum scrap wires, the latter pretended that he is a representative of Furukawa who is authorized to sell the said scrap wires; that based on the false pretense of Fukuzume, Yu agreed to buy the subject aluminum scrap wires; that Yu paid Fukuzume the initial amount of ₱50,000.00; that as a result, Yu suffered damage. Stated differently, the crime of estafa, as defined and penalized under Article 315, paragraph 2(a) of the Revised Penal Code, was consummated when Yu and Fukuzume met at the latter's house in Parañaque and, by falsely pretending to sell aluminum scrap wires, Fukuzume was able to induce Yu to part with his money.

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[14] 511 Phil. 192 (2005).

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From the foregoing, it is evident that the prosecution failed to prove that Fukuzume committed the crime of estafa in Makati or that any of the essential ingredients of the offense took place in the said city. Hence, the judgment of the trial court convicting Fukuzume of the crime of estafa should be set aside for want of jurisdiction, without prejudice, however, to the filing of appropriate charges with the court of competent jurisdiction.[15]

Similarly, in the instant case, it was merely stated in the Information, and alleged by Cabral in his complaint affidavit, that the crime of estafa was committed in Parañaque City because it was there that he was convinced to sell the subject shares of stock. Apart from said allegation, however, he did not present any evidence, testimonial or documentary, that would support or corroborate the assertion. Equally guilty of the same failure to substantiate is the trial court which relied merely on Cabral's complaint affidavit in connecting the alleged offense within its territorial jurisdiction. In its Order, the RTC simply denied Bracamonte's Motion to Quash because "in paragraph 7 of the x x x complaint affidavit, Cabral narrated that it was during their meeting in the old warehouse of AVIVER and WFC located at Km. 17, West Service Road, South Super Highway, Parañaque City that Bracamonte was able to persuade and convince him to sell his entire shares of stock x x x. There, they triumphed in misleading and fooling him till finally the latter acceded to their ploy. It was there that he finally accepted their offer."[16] A perusal of said Order, however, would show the RTC's failure to cite any evidence upon which it based its conclusions.

On the contrary, and as the appellate court pointed out, what were actually proven by the evidence on record are the following: (1) Cabral and Bracamonte executed a MOA in Makati City; (2) Bracamonte issued and delivered a postdated check in Makati City simultaneous to the signing of the agreement; (3) the check was presented for payment and was subsequently dishonored

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[15] *Id.* at 206-207. (Emphases ours)

[16] *Rollo*, p. 43.

in Makati City. As such, the Court does not see why Cabral did not file the complaint before the Makati City trial court. Not only were the MOA and subject check executed, delivered, and dishonored in Makati City, it was even expressly stipulated in their agreement that the parties chose Makati City as venue for any action arising from the MOA because that was where it was executed. It is, therefore, clear from the foregoing that the element of deceit took place in Makati City where the worthless check was issued and delivered, while the damage was inflicted also in Makati City where the check was dishonored by the drawee bank.

To repeat, case law provides that in this form of estafa, it is not the non-payment of a debt which is made punishable, but the criminal fraud or deceit in the *issuance of a check*. Thus, while Cabral is not wrong in saying that the crime of estafa is a continuing or transitory offense and may be prosecuted at the place where any of the essential ingredients of the crime took place, the pieces of evidence on record point only to one place: Makati City. Time and again, the Court has ruled that "in criminal cases, venue or where at least one of the elements of the crime or offense was committed must be proven and not just alleged. Otherwise, a mere allegation is not proof and could not justify sentencing a man to jail or holding him criminally liable. To stress, an allegation is not evidence and could not be made equivalent to proof."[17] Thus, since the evidence adduced during the trial showed that the offense allegedly committed by Bracamonte was committed somewhere else, the trial court should have dismissed the action for want of jurisdiction.

As to Cabral's contention that Bracamonte's motion should be considered barred by laches as it took him four (4) years before he raised the issue of jurisdiction, actively participating in the proceedings by cross-examining the prosecution witness, the rule is settled that an objection based on the ground that the court lacks jurisdiction over the offense charged may be raised or considered *motu proprio* by the court at any stage of

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[17] *Brodeth v. People, supra* note 11.

the proceedings or on appeal. Moreover, jurisdiction over the subject matter in a criminal case cannot be conferred upon the court by the accused, by express waiver or otherwise, since such jurisdiction is conferred by the sovereign authority which organized the court, and is given only by law in the manner and form prescribed by law.[18]

Indeed, it is rather unfair to require a defendant or accused to undergo the ordeal and expense of a trial if the court has no jurisdiction over the subject matter or offense or it is not the court of proper venue. It has been consistently held that "in a criminal case, the prosecution must not only prove that the offense was committed, it must also prove the identity of the accused and the fact that the offense was committed within the jurisdiction of the court."[19] There being no showing that the offense was committed within Parañaque City, the RTC of that city has no jurisdiction over the case.

WHEREFORE, premises considered, the instant petition is **DENIED**. The assailed Decision dated March 27, 2017 and Resolution dated July 28, 2017 of the Court of Appeals in CA-G.R. SP No. 146746 are **AFFIRMED**. The Information in Criminal Case No. 11-0664 is **DISMISSED** without prejudice.

SO ORDERED.

Leonen, Reyes, A. Jr., Hernando, and *Carandang,*[*] *JJ.*, concur.

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[18] *Fukuzume v. People, supra* note 14, at 208.

[19] *Treñas v. People, supra* note 12, at 381.

[*] Designated Additional Member per Special Order No. 2624 dated November 28, 2018.

THIRD DIVISION

[G.R. No. 234528. January 23, 2019]

ISIDRO MIRANDA *y* PARELASIO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY; FACTUAL FINDINGS OF THE TRIAL COURT IN CRIMINAL CASES ARE GENERALLY ACCORDED GREAT WEIGHT AND RESPECT ON APPEAL; EXCEPTION.—** [I]n criminal cases, the factual findings of the trial court are generally accorded great weight and respect on appeal, especially when such findings are supported by substantial evidence on record. It is only in exceptional circumstances, such as when the trial court overlooked material and relevant matters, that the Court will evaluate the factual findings of the court below. Guided by this principle, the Court finds no cogent reason to disturb the RTC's factual findings, which were affirmed by the CA.

2. **CRIMINAL LAW; REVISED PENAL CODE; FRUSTRATED HOMICIDE; ELEMENTS.—** [I]n cases of frustrated homicide, the prosecution must prove beyond reasonable doubt that: "(i) the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault; (ii) the victim sustained [a] fatal or mortal wound but did not die because of timely medical assistance; and (iii) none of the qualifying circumstances for murder under Article 248 of the Revised Penal Code (RPC), as amended, are present."

3. **ID.; ID.; ID.; THE MAIN ELEMENT IS THE ACCUSED'S INTENT TO TAKE HIS VICTIM'S LIFE.—** [T]he main element in frustrated homicide is the accused's intent to take his victim's life. The prosecution has to prove this clearly and convincingly to exclude every possible doubt regarding homicidal intent. Intent to kill, being a state of mind, is discerned by the courts only through external manifestations, such as the acts and conduct of the accused at the time of the assault and immediately thereafter. Likewise, such homicidal intent may be inferred from, among other things, the means the offender

used, and the nature, location, and number of wounds he inflicted on his victim. x x x In the case at bar, Miranda's intent to kill was clearly established by the nature and number of wounds sustained by Pilo. x x x Undoubtedly, the manner of attack and the injuries sustained show forth a clear resolve to end Pilo's life. Indeed, these injuries cannot simply be brushed aside as grazing injuries, especially considering that one of which, was an injury to the head of Pilo, which may have caused the latter's untimely demise, if not for the timely medical assistance.

4. **ID.; ID.; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS.—** [W]hen the accused invokes self-defense, in effect, he admits to the commission of the acts for which he was charged, albeit under circumstances that, if proven, would exculpate him. As such, the burden of proving that his act was justified, shifts upon him. This means that the accused must prove by clear and convincing evidence that the attack was accompanied by the following circumstances: (i) unlawful aggression on the part of the victim; (ii) reasonable necessity of the means employed to prevent or repel such aggression; and (iii) lack of sufficient provocation on the part of the person resorting to self-defense. The accused must rely on the strength of his own evidence and not on the weakness of the prosecution, for even if the prosecution's evidence is weak, it cannot be disbelieved after the accused himself has admitted his acts.

5. **ID.; ID.; ID.; ID.; UNLAWFUL AGGRESSION; ELEMENTS.—** [T]he most important element of self-defense is unlawful aggression. This is a condition *sine qua non* for upholding self-defense. Significantly, the accused must establish the concurrence of three elements of unlawful aggression, namely: (i) there must have been a physical or material attack or assault; (ii) the attack or assault must be actual, or, at least, imminent; and (iii) the attack or assault must be unlawful. To be sure, the accused must show that the aggression caused by the victim in fact put his life or personal safety in real and grave peril. This danger must not be a mere imagined threat.

6. **ID.; ID.; ID.; ID.; ID.; IMMINENT UNLAWFUL AGGRESSION; MEANS THAT THE ATTACK AGAINST THE ACCUSED IS IMPENDING OR AT THE POINT OF HAPPENING.—** Equally important, imminent unlawful

aggression means that the attack against the accused is impending or at the point of happening. This scenario must be distinguished from a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong. x x x [E]ven assuming for the sake of argument that Pilo stooped down to the ground, which Miranda perceived as a threat that Pilo was going to pick up a stone, there is absolutely nothing life-threatening in such a situation. It must be emphasized that imminent unlawful aggression must not be a mere threatening attitude of the victim. Undoubtedly, Pilo's act of simply stooping down to the ground was in no way a threat to Miranda's life.

7. ID.; ID.; ID.; ID.; SELF-DEFENSE AND RETALIATION, DISTINGUISHED.— Miranda cannot seek exoneration on the simple pretext that the attack was initiated by Pilo. Suffice to say, in the case of *People v. Dulin,* the Court held that the fact that the victim was the initial aggressor does not *ipso facto* show that there was unlawful aggression. The Court elucidated that although the victim may have been the initial aggressor, he ceased to be the aggressor as soon as he was dispossessed of the weapon. Whatever the accused did thereafter is no longer self-defense, but retaliation, which is not the same as self-defense. In retaliation, the aggression that the victim started already ceased when the accused attacked him, but in self-defense, the aggression was still continuing when the accused injured the aggressor. In the instant case, Miranda continued to hack Pilo even after the latter stopped throwing stones. Plainly, Miranda's act constituted a retaliation against Pilo. Certainly at this point, Miranda was no longer motivated by the lawful desire of defending himself, but of the evil intent of retaliating and harming Pilo.

APPEARANCES OF COUNSEL

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

D E C I S I O N

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

This treats of the Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court filed by petitioner Isidro Miranda *y* Parelasio (Miranda), seeking the reversal of the Decision[2] dated May 15, 2017, and Resolution[3] dated September 13, 2017, rendered by the Court of Appeals (CA) in CA-G.R. CR No. 38523, which affirmed the trial court's ruling convicting him of the crime of Frustrated Homicide.

The Antecedents

On September 28, 2011, an Information was filed against Miranda for the crime of frustrated homicide, committed as follows:

> That on or about the 14th day of August 2011 in Barangay Binonoan of Infanta, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with [a] bolo, did then and there, willfully, feloniously and unlawfully, assaulted and repeatedly hacked a certain WINARDO PILO Y MORTIZ, on the different part[s] of his body thereby inflicting upon the latter mortal wounds on the parts of his body, thus, performing all acts of execution which would produce the crime of Homicide as a consequence but which nevertheless do not produce the same by reason of causes independent of the will of the accused. To wit: the timely and able medical assistance rendered to the complainant (minor) which prevented his instantaneous death.
>
> CONTRARY TO LAW.[4]

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

[2] Penned by Associate Justice Jhosep Y. Lopez, with Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan, concurring; *id*. at 41-49.

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

[4] *Id*. at 42.

When arraigned on December 6, 2011, Miranda pleaded not guilty to the crime charged. During the pre-trial, he interposed self-defense, which led to a reverse trial of case.[5]

The antecedent facts show that in the evening of August 14, 2011, victim Winardo Pilo (Pilo) attended the party of his niece at Barangay Binonoan, Infanta, Quezon. After the party, he and his friend Danilo Damaso (Damaso) left. While on their way home, they passed by the house of Miranda and threw stones at the latter's home.[6]

While Pilo was on his way home, Miranda suddenly went outside and started hacking Pilo. He hit Pilo's right forehead. Again, Miranda tried to hit Pilo, but the latter parried the attack with his left arm.[7]

In an attempt to stop Miranda, Damaso threw a stone at him. Thereafter, Damaso grabbed possession of the bolo.[8]

In his defense, Miranda admitted that he hacked Pilo with the bolo twice, but claimed that his acts were done in self-defense.[9] He narrated that on August 14, 2011, at around 7:00 p.m., while he was at home with his wife and daughter, he suddenly heard a thud at their door, followed by several other thuds and stones hurled at their house. Miranda peeped through the window and saw Pilo, throwing stones. He claimed that before he peeped through the door, he heard Pilo challenge him to come out so that they could kill each other.[10] Miranda asked Pilo if something was wrong, but the latter ignored him and continued hurling stones.[11] According to Miranda, Pilo approached him and hit

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[5] *Id*. at 73.

[6] *Id*. at 43.

[7] *Id*.

[8] *Id*. at 79.

[9] *Id*. at 74.

[10] *Id*. at 75.

[11] *Id*. at 15.

his upper left cheek with a stone. When Pilo stretched his two arms downwards to pick up something from the ground, Miranda suddenly hacked Pilo's arm with his bolo, in order to defend himself from Pilo's oncoming attack.[12]

At this instance, Damaso, arrived and grappled with Miranda to get a hold of the latter's bolo. Because of this, Damaso likewise sustained injuries.

Ruling of the Trial Court

On January 7, 2016, the Regional Trial Court (RTC) rendered a Decision[13] finding Miranda guilty beyond reasonable doubt of the crime of frustrated homicide. The RTC held that Miranda's claim of self-defense is biased, self-serving, inconsistent, illogical and contrary to the common experience of man.[14] The RTC further held that Miranda failed to prove that his act of hacking Pilo was legally justified.[15] The dispositive portion of the RTC ruling reads:

> IN THE LIGHT OF THE FOREGOING, judgment is hereby rendered against [Miranda], finding him GUILTY beyond reasonable doubt of the crime of frustrated homicide, and there being [sic] aggravating nor mitigating circumstance and applying the Indeterminate Sentence Law, this Court hereby imposes upon the said accused the penalty of imprisonment which is the maximum of *prision correccional* in its medium period which is Four (4) years and Two (2) months, as minimum, up to the maximum of *prision mayor* in its medium period which is Ten (10) years, as maximum, to suffer all the accessory penalties, to pay private complainant [Pilo] the amount of Thirty Thousand Pesos (Php30,000.00) as actual and/or temperate damages, Twenty Thousand Pesos (Php20,000.00) as moral damages, Ten Thousand Pesos (Php10,000.00) as exemplary damages, and to pay the costs of suit.

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[12] *Id*. at 74; 15.

[13] Rendered by Presiding Judge Arnelo C. Mesa; *id*. at 73-92.

[14] *Id*. at 82.

[15] *Id*. at 85.

SO ORDERED.[16]

Dissatisfied with the ruling, Miranda filed an appeal with the CA.

Ruling of the CA

On May 15, 2017, the CA rendered the assailed Decision[17] affirming the conviction meted by the trial court against Miranda. The CA ratiocinated that Miranda's claim of self-defense had no leg to stand on, considering that the act of Pilo of hurling stones at the house of Miranda cannot be regarded as an unlawful aggression that warranted the latter's act of hacking Pilo with a bolo.[18]

However, the CA held that although the act may not be regarded as an unlawful aggression, it may nonetheless be appreciated as sufficient provocation on the part of Pilo, which mitigates Miranda's liability. Pilo's act of throwing stones at the house of Miranda is sufficient provocation to enrage him, or stir his anger and obfuscate his thinking, more so, when the lives of his wife and children were placed in danger.[19]

However, the CA held that there was no voluntary surrender on Miranda's part considering that he did not actually voluntarily surrender to the police authorities. Thus, the CA modified the penalty meted by the RTC unto Miranda, as follows:

WHEREFORE, premises considered, the appeal is **DISMISSED**. The Decision dated January 7, 2016 of the [RTC] of Infanta, Quezon, in Criminal Case No. 2011-150-I is **AFFIRMED** with **MODIFICATION**. Accused-appellant **ISIDRO MIRANDA y PARELASIO** is found guilty of frustrated homicide and sentenced to suffer imprisonment from four (4) years of *prision correccional*, as minimum, to seven (7) years of *prision mayor*, as maximum. He is also ordered to pay **WINARDO PILO** the sum of Twenty-Five

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[16] *Id*. at 92.

[17] *Id*. at 41-49.

[18] *Id*. at 46.

[19] *Id*.

Thousand Pesos (Php25,000.00) as temperate damages and Ten Thousand Pesos (Php10,000.00) as moral damages. The award of exemplary damages is hereby ordered **DELETED**.

SO ORDERED.[20]

The Issue

The main issue raised for the Court's resolution rests on whether or not the prosecution proved the guilt of Miranda for frustrated homicide beyond reasonable doubt.

In Miranda's petition for review, he staunchly maintains that the CA erred in failing to exonerate him, as he merely acted in self-defense.

On the other hand, the People, through the Office of the Solicitor General (OSG), counters that the prosecution sufficiently proved the guilt of Miranda beyond reasonable doubt. The OSG maintains that Miranda may not claim self-defense in the absence of an unlawful aggression from Pilo. Moreover, the OSG avers that Miranda's intent to kill Pilo was evident from the kind of weapon he used and the number and nature of wounds the latter sustained.

Ruling of the Court

The instant petition is devoid of merit.

It must be noted at the outset that in criminal cases, the factual findings of the trial court are generally accorded great weight and respect on appeal, especially when such findings are supported by substantial evidence on record. It is only in exceptional circumstances, such as when the trial court overlooked material and relevant matters, that the Court will evaluate the factual findings of the court below.[21] Guided by this principle, the Court finds no cogent reason to disturb the RTC's factual findings, which were affirmed by the CA.

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[20] *Id.* at 48.

[21] *People v. Palma, et al.,* 754 Phil. 371, 377 (2015).

The Prosecution Proved Beyond Reasonable Doubt that Miranda is Guilty of Frustrated Homicide

Significantly, in cases of frustrated homicide, the prosecution must prove beyond reasonable doubt that: "(i) the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault; (ii) the victim sustained [a] fatal or mortal wound but did not die because of timely medical assistance; and (iii) none of the qualifying circumstances for murder under Article 248 of the Revised Penal Code (RPC), as amended, are present."[22]

It bears stressing that the main element in frustrated homicide is the accused's intent to take his victim's life. The prosecution has to prove this clearly and convincingly to exclude every possible doubt regarding homicidal intent. Intent to kill, being a state of mind, is discerned by the courts only through external manifestations, such as the acts and conduct of the accused at the time of the assault and immediately thereafter.[23] Likewise, such homicidal intent may be inferred from, among other things, the means the offender used, and the nature, location, and number of wounds he inflicted on his victim.[24]

In fact, in *De Guzman, Jr. v. People*,[25] the Court, quoting *Rivera v. People*,[26] enumerated the factors that determine the presence of intent to kill, to wit:

(1) the means used by the malefactors; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactors before, during, or immediately after the killing of the

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[22] *De Guzman, Jr. v. People,* 748 Phil. 452, 458 (2014).

[23] *Id*. at 458-459.

[24] *Abella v. People*, 719 Phil. 53, 66 (2013), citing *Colinares v. People*, 678 Phil. 482, 494 (2011).

[25] 748 Phil. 452 (2014).

[26] 511 Phil. 824 (2006).

victim; and (4) the circumstances under which the crime was committed and the motives of the accused.[27]

In the case at bar, Miranda's intent to kill was clearly established by the nature and number of wounds sustained by Pilo. The records show that Miranda used a bolo measuring 1 ½ feet. The hacking wound was about five inches long, and 1 inch deep fracturing Pilo's skull in the parietal area.[28] Relentless in his attack, Miranda continuously made several thrusts against Pilo, while the latter was already sprawled on the ground. This caused Pilo to sustain two additional wounds. These deep gashes measured four inches long by one-inch deep, and 1.5 inch long by one-inch deep in Pilo's forearm. In fact, these continuous attacks were stopped only when Damaso arrived and grappled with the weapon.[29] Undoubtedly, the manner of attack and the injuries sustained show forth a clear resolve to end Pilo's life. Indeed, these injuries cannot simply be brushed aside as grazing injuries, especially considering that one of which, was an injury to the head of Pilo, which may have caused the latter's untimely demise, if not for the timely medical assistance.

Miranda's Claim of Self-Defense is Unbelievable

In a bleak attempt to exonerate himself from the crime charged, Miranda claims that he merely acted in self-defense.

The Court is not persuaded.

To begin with, when the accused invokes self-defense, in effect, he admits to the commission of the acts for which he was charged, albeit under circumstances that, if proven, would exculpate him. As such, the burden of proving that his act was justified, shifts upon him.[30] This means that the accused must prove by clear and convincing evidence that the attack was

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[27] *De Guzman, Jr. v. People*, *supra* note 25, at 458.

[28] *Rollo*, p. 88.

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

[30] *Dela Cruz v. People, et al.*, 747 Phil. 376, 384-385 (2014).

accompanied by the following circumstances: (i) unlawful aggression on the part of the victim; (ii) reasonable necessity of the means employed to prevent or repel such aggression; and (iii) lack of sufficient provocation on the part of the person resorting to self-defense.[31] The accused must rely on the strength of his own evidence and not on the weakness of the prosecution, for even if the prosecution's evidence is weak, it cannot be disbelieved after the accused himself has admitted his acts.[32]

It, likewise, bears stressing that the most important element of self-defense is unlawful aggression. This is a condition *sine qua non* for upholding self-defense.[33] Significantly, the accused must establish the concurrence of three elements of unlawful aggression, namely: (i) there must have been a physical or material attack or assault; (ii) the attack or assault must be actual, or, at least, imminent; and (iii) the attack or assault must be unlawful.[34] To be sure, the accused must show that the aggression caused by the victim in fact put his life or personal safety in real and grave peril. This danger must not be a mere imagined threat.

Equally important, imminent unlawful aggression means that the attack against the accused is impending or at the point of happening. This scenario must be distinguished from a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong.[35]

Applying the foregoing doctrines to the case at bar, it becomes all too apparent that the evidence on record does not support Miranda's contention that Pilo employed unlawful aggression against him. It must be remembered that Pilo was merely throwing stones at the house of Miranda. Miranda himself admitted during

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[31] *Guevarra, et al. v. People*, 726 Phil. 183, 194 (2014).

[32] *Dela Cruz v. People*, *supra* note 30, at 384-385.

[33] *People v. Dulin*, 762 Phil. 24, 36 (2015).

[34] *Id*. at 37.

[35] *Id*.

the trial that Pilo did not throw stones at him, much less, utter any invectives, or threatening words against him. In fact, the stones Pilo threw merely hit Miranda's roof and door.[36]

Equally telling is the fact that when Miranda asked Pilo why he was throwing stones, the latter did not respond but simply remained mum, and threw a stone at Miranda's iron door. Miranda even further narrated that after throwing stones, Pilo even approached him, which made him believe that Pilo was trying to make peace with him.[37] This certainly belies an impending threat to Miranda's life. The following exchange proves the absence of an unlawful aggression, *viz.*:

> ATTY. CAYANAN:
>
> Q: What did you do after you heard the thug (sic thud) which you felt to be caused by stones that was [sic] thrown to your door?
> A: I looked at the window to find out where those thug (sic thud) coming from and I saw Winardo Pilo throwing stones, sir.
>
> x x x x x x x x x
>
> Q: When you saw the private complainant throwing stones at your door, what did you do next, if there was any?
> A: I asked him why he was throwing stones at my door while the door did not commit any mistake, sir.
>
> x x x x x x x x x
>
> Q: After the said private complainant still continued to throw stones at your door, what happened next, if there was any?
> A: I went out of the house and asked him again why he was throwing stones at my house, sir.
>
> Q: What did the private complainant answer to you, if there was any?
> A: **He remained silent and then he approached me and <u>I thought that he was going to make peace with me,</u> sir**.[38]

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[36] *Rollo*, pp. 85, 87.

[37] *Id.* at 86.

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

It is all too apparent that Miranda's life was not in grave peril. The stones were never directed against Miranda. More than this, Miranda even believed that Pilo was going to make peace with him. Obviously, Miranda was certainly not faced with any actual, sudden, unexpected or imminent danger for him to have the need to defend himself.

Moreover, the Court cannot lose sight of the fact that Miranda hacked Pilo four times, when the latter was completely defenseless. This continuous hacking by Miranda constitutes force beyond what is reasonably required to repel the private complainant's attack—and is certainly unjustified. Notably, in *Espinosa v. People*,[39] which also involves the continuous hacking by the accused even after the aggressor had been neutralized, the Court stressed that "the act of the accused in repeatedly hacking the victim was in no way a reasonable and necessary means of repelling the aggression allegedly initiated by the latter."[40]

Additionally, even assuming for the sake of argument that Pilo stooped down to the ground, which Miranda perceived as a threat that Pilo was going to pick up a stone, there is absolutely nothing life-threatening in such a situation. It must be emphasized that imminent unlawful aggression must not be a mere threatening attitude of the victim.[41] Undoubtedly, Pilo's act of simply stooping down to the ground was in no way a threat to Miranda's life.

It, likewise, bears stressing that Miranda cannot seek exoneration on the simple pretext that the attack was initiated by Pilo. Suffice to say, in the case of *People v. Dulin*,[42] the Court held that the fact that the victim was the initial aggressor does not *ipso facto* show that there was unlawful aggression.

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[39] 629 Phil. 432 (2010).

[40] *Id*. at 439.

[41] *People v. Dulin*, *supra* note 33, at 37.

[42] 762 Phil. 24 (2015).

The Court elucidated that although the victim may have been the initial aggressor, he ceased to be the aggressor as soon as he was dispossessed of the weapon. Whatever the accused did thereafter is no longer self-defense, but retaliation, which is not the same as self-defense. In retaliation, the aggression that the victim started already ceased when the accused attacked him, but in self-defense, the aggression was still continuing when the accused injured the aggressor.[43] In the instant case, Miranda continued to hack Pilo even after the latter stopped throwing stones. Plainly, Miranda's act constituted a retaliation against Pilo. Certainly at this point, Miranda was no longer motivated by the lawful desire of defending himself, but of the evil intent of retaliating and harming Pilo.

In addition to the fact that there was no unlawful aggression, the Court, likewise, notes that the means employed by Miranda was not reasonably commensurate to the nature and extent of the alleged attack, which he sought to avert. In *Dela Cruz v. People, et al.*,[44] the Court emphasized that, "the means employed by the person invoking self-defense contemplates a rational equivalence between the means of attack and the defense. The means employed by a person resorting to self-defense must be rationally necessary to prevent or repel an unlawful aggression."[45] Here, the victim Pilo was armed with a stone, in contrast to the 1 ½-inch bolo that Miranda was brandishing.

More so, as correctly observed by the CA, Miranda could have stayed hidden and protected at his house. He himself even admitted that he hid among the banana shrubs before hitting Pilo. In fact, he waited for Pilo to come out of his house, while he was hiding among the banana shrubs outside of the yard of their house.[46]

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[43] *Id.* at 38.

[44] 747 Phil. 376 (2014).

[45] *Id.* at 391.

[46] *Rollo*, p. 77.

Miranda is Entitled to the Mitigating Circumstance of Sufficient Provocation

Although Pilo's act of hurling stones may not be regarded as an unlawful aggression, admittedly, however, such deed was vexatious, improper and enough to incite Miranda into anger. The fact that Miranda was stirred to rage was understandable considering that his wife and daughter were at his home, and were peacefully having supper when Pilo threw the stones.

In *Gotis v. People*,[47] the Court held that while an act cannot be considered an unlawful aggression for the purpose of self-defense, the same act may be regarded as sufficient provocation for the purpose of mitigating the crime.[48] "As a mitigating circumstance, sufficient provocation is any unjust or improper conduct or act of the victim adequate enough to excite a person to commit a wrong, which is accordingly proportionate in gravity."[49] The victim must have committed a prior act that incited or irritated the accused.[50] Likewise, in order to be mitigating, the provocation must be sufficient and should immediately precede the act.[51]

In fact, in a long line of cases, the Court considered that although there may have been no unlawful aggression on the part of the victim, if the latter was nonetheless deemed to have given sufficient provocation, then the accused's liability shall be mitigated. Such acts which were deemed vexatious range from the victim's act of challenging the accused's family while armed with a bolo;[52] or thrusting a bolo at the accused while

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[47] 559 Phil. 843 (2007).

[48] *Id*. at 850.

[49] *Id*., citing L. Reyes, *The Revised Penal Code Book One* 265 (13th ed., 1993), 264-265.

[50] *Pepito v. CA*, 369 Phil. 378, 396 (1999).

[51] *Id*., citing *People v. Pagal*, 169 Phil. 550, 558 (1977).

[52] *Pepito, et al. v. CA*, *supra*.

threatening to kill him with the lives of the accused's wife and children placed in peril;[53] and the victim attempting to hack the accused.[54] Certainly, Pilo's act of hurling stones while Miranda's family was peacefully enjoying their supper falls within this range. Accordingly, the Court shall consider in favor of Miranda the mitigating circumstance of sufficient provocation.

The Proper Penalty

Article 249 of the RPC states that the penalty for homicide shall be *reclusion temporal*. Considering that the crime committed was frustrated homicide, then the penalty imposed shall be one degree lower than *reclusion temporal*, which is *prision mayor* in its minimum term, in view of the presence of the mitigating circumstance of sufficient provocation.

Furthermore, applying the Indeterminate Sentence Law, an indeterminate sentence shall be imposed, consisting of a maximum term, which is the penalty under the RPC properly imposed after considering any attending circumstance; while the minimum term is within the range of the penalty next lower than that prescribed by the RPC for the offense committed.[55] Accordingly, the CA correctly meted the penalty of four (4) years of *prision correccional*, as minimum, to seven (7) years of *prision mayor*, as maximum.

However, the Court shall modify the amount of damages awarded in order to conform with current jurisprudence. Guided by the Court's ruling in *People v. Jugueta*,[56] the amount of damages imposed against Miranda shall be as follows: (i) Php 50,000.00 as civil indemnity, (ii) Php 50,000.00 as moral damages, and (iii) Php 50,000.00 as exemplary damages. These amounts shall be

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[53] *Gotis v. People*, *supra* note 47, at 850-851, citing *Romero v. People*, 478 Phil. 606, 612-613 (2004).

[54] *Gotis v. People*, *id*. at 851.

[55] Act No. 4103, Section 1.

[56] 783 Phil. 806 (2016).

subject to the legal rate of interest of six percent (6%) *per annum* from the finality of the Court's ruling until full payment.

WHEREFORE, premises considered, the instant petition is **DENIED** for **lack of merit**. The Decision dated May 15, 2017, rendered by the Court of Appeals in CA-G.R. CR No. 38523, convicting petitioner Isidro Miranda *y* Parelasio of the crime of Frustrated Homicide, is hereby **AFFIRMED with modification**, in that Miranda is hereby ordered to pay victim Winardo Pilo the following amounts of damages in line with *People v. Jugueta*: (i) Php 50,000.00 as civil indemnity, (ii) Php 50,000.00 as moral damages, and (iii) Php 50,000.00 as exemplary damages. The total amount due shall earn a legal rate of interest of six percent (6%) *per annum* from the date of the finality of this Decision until the full satisfaction thereof.

SO ORDERED.

Peralta (*Chairperson*), *Leonen, Hernando*, and *Carandang,*[*] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 212107. January 28, 2019]

KEIHIN-EVERETT FORWARDING CO., INC., *petitioner, vs.* **TOKIO MARINE MALAYAN INSURANCE CO., INC.[*] and SUNFREIGHT FORWARDERS & CUSTOMS BROKERAGE, INC.,** *respondents.*

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[*] Designated as additional Member per Special Order No. 2624 dated November 28, 2018.

[*] Now known as "Malayan Insurance Company, Inc."

SYLLABUS

1. REMEDIAL LAW; PLEADINGS; RULE ON ACTIONABLE DOCUMENTS; FAILURE TO COMPLY THEREWITH DOES NOT PRECLUDE PLAINTIFF TO OFFER THE ACTIONABLE DOCUMENT IN EVIDENCE; CASE AT BAR.—It bears to stress that failure of Tokio Marine to attach in the Complaint the contract of insurance between the insurer (Tokio Marine) and the insured (Honda Trading) is not fatal to its cause of action. True, in the case of *Malayan Insurance Co., Inc. v. Regis Brokerage Corp.* relied upon by Keihin-Everett, the Court makes it imperative for the plaintiff (whose action is predicated upon his right as a subrogee) to attach the insurance contract in the complaint in accordance with Section 7, Rule 8 of the 1997 Rules of Court, just so in order to establish the legal basis of the right to subrogation. xxx However, in the aforesaid case, the Court did not suggest an outright dismissal of a complaint in case of failure to attach the insurance contract in the complaint. Promoting a reasonable construction of the rules so as not to work injustice, the Court makes it clear that failure to comply with the rules does not preclude the plaintiff to offer it as evidence. Thus: It may be that there is no specific provision in the Rules of Court which prohibits the admission in evidence of an actionable document in the event a party fails to comply with the requirement of the rule on actionable documents under Section 7, Rule 8. Unfortunately, in the *Malayan* case cited by Keihin-Everett, Malayan not only failed to attach or set forth in the complaint the insurance policy, it likewise did not present the same as evidence before the trial court or even in the CA. xxx Hence, there was sufficient reason for the Court to dismiss the case for it has no legal basis from which to consider the pre-existence of an insurance contract between Malayan and ABB Koppel and the former's right of subrogation. The instant case cannot be dismissed just like that. Unlike in the *Malayan* case, Tokio Marine presented as evidence, not only the Honda Trading Insurance Policy, but also the Subrogation Receipt evidencing that it paid Honda Trading the sum of US$38,855.83 in full settlement of the latter's claim under Policy No. 83-00143689. During the trial, Keihin-Everett even had the opportunity to examine the said documents and conducted a cross-examination of the said Contract of Insurance. By presenting the insurance policy constitutive of

the insurance relationship of the parties, Tokio Marine was able to confirm its legal right to recover as subrogee of Honda Trading.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; PAYMENT OR PERFORMANCE; THE INSURER WHO MAY HAVE NO RIGHTS OF SUBROGATION DUE TO VOLUNTARY PAYMENT MAY NEVERTHELESS RECOVER FROM THE THIRD PARTY RESPONSIBLE FOR THE DAMAGE TO THE INSURED PROPERTY; CASE AT BAR.—At any rate, even if we consider Tokio Marine as a third person who voluntarily paid the insurance claims of Honda Trading, it is still entitled to be reimbursed of what it had paid. As held by this Court in the case of *Pan Malayan Insurance Corp. v. Court of Appeals,* the insurer who may have no rights of subrogation due to "voluntary" payment may nevertheless recover from the third party responsible for the damage to the insured property under Article 1236 of the Civil Code. Under this circumstance, Tokio Marine's right to sue is based on the fact that it voluntarily made payment in favor of Honda Trading and it could go after the third party responsible for the loss (Keihin-Everett) in the exercise of its legal right of subrogation. Setting aside this assumption, Tokio Marine nonetheless was able to prove by the following documentary evidence, such as Insurance Policy, Agency Agreement and Subrogation Receipt, their right to institute this action as subrogee of the insured. Keihin-Everett, on the other hand, did not present any evidence to contradict Tokio Marine's case.

3. ID.; DAMAGES; RIGHT TO SUBROGATION; DESIGNED TO PROMOTE AND TO ACCOMPLISH JUSTICE AND IS THE MODE WHICH EQUITY ADOPTS TO COMPEL THE ULTIMATE PAYMENT OF A DEBT BY ONE WHO, IN JUSTICE AND GOOD CONSCIENCE, OUGHT TO PAY; CASE AT BAR.—Since the insurance claim for the loss sustained by the insured shipment was paid by Tokio Marine as proven by the Subrogation Receipt – showing the amount paid and the acceptance made by Honda Trading, it is inevitable that it is entitled, as a matter of course, to exercise its legal right to subrogation as provided under Article 2207 of the Civil Code. xxx It must be stressed that the Subrogation Receipt only proves the fact of payment. This fact of payment grants Tokio Marine subrogatory right which enables it to exercise legal

remedies that would otherwise be available to Honda Trading as owner of the hijacked cargoes as against the common carrier (Keihin-Everett). In other words, the right of subrogation accrues simply upon payment by the insurance company of the insurance claim. xxx Indeed, the right of subrogation has its roots in equity. It is designed to promote and to accomplish justice and is the mode which equity adopts to compel the ultimate payment of a debt by one who, in justice and good conscience, ought to pay. Consequently, the payment made by Tokio Marine to Honda Trading operates as an equitable assignment to the former of all the remedies which the latter may have against Keihin-Everett.

4. ID.; OBLIGATIONS AND CONTRACTS; COMMON CARRIERS; MANDATED TO OBSERVE EXTRAORDINARY DILIGENCE IN THE VIGILANCE OVER THE GOODS IT TRANSPORTS ACCORDING TO ALL THE CIRCUMSTANCES OF EACH CASE; EXTRAORDINARY RESPONSIBILITY OVER THE SHIPPER'S GOODS LASTS FROM THE TIME THESE GOODS ARE UNCONDITIONALLY PLACED IN THE POSSESSION OF, AND RECEIVED BY, THE CARRIER FOR TRANSPORTATION, UNTIL THEY ARE DELIVERED, ACTUALLY OR CONSTRUCTIVELY, BY THE CARRIER TO THE CONSIGNEE, OR TO THE PERSON WHO HAS RIGHT TO RECEIVE THEM; CASE AT BAR.—Keihin-Everett, as a common carrier, is mandated to observe, under Article 1733 of the Civil Code, extraordinary diligence in the vigilance over the goods it transports according to all the circumstances of each case. In the event that the goods are lost, destroyed or deteriorated, it is presumed to have been at fault or to have acted negligently, *unless it proves that it observed extraordinary diligence*. To be sure, under Article 1736 of the Civil Code, a common carrier's extraordinary responsibility over the shipper's goods lasts from the time these goods are unconditionally placed in the possession of, and received by, the carrier for transportation, until they are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them. Hence, at the time Keihin-Everett turned over the custody of the cargoes to Sunfreight Forwarders for inland transportation, it is still required to observe extraordinary diligence in the vigilance of the goods. Failure to successfully establish this carries with it the presumption of

fault or negligence, thus, rendering Keihin-Everett liable to Honda Trading for breach of contract. It bears to stress that the hijacking of the goods is not considered a fortuitous event or a *force majeure*. Nevertheless, a common carrier may absolve itself of liability for a resulting loss caused by robbery or hijacked if it is proven that the robbery or hijacking was attended by grave or irresistible threat, violence or force. In this case, Keihin-Everett failed to prove the existence of the aforementioned instances.

5. **ID.; ID.; SOLIDARY LIABILITY; PRESENT ONLY WHEN THE OBLIGATION EXPRESSLY SO STATES, WHEN THE LAW SO PROVIDES, OR WHEN THE NATURE OF THE OBLIGATION SO REQUIRES; CASE AT BAR.—** We likewise agree with the CA that the liability of Keihin-Everett and Sunfreight Forwarders are not solidary. There is solidary liability only when the obligation expressly so states, when the law so provides, or when the nature of the obligation so requires. Thus, under Article 2194 of the Civil Code, liability of two or more persons is solidary in *quasi-delicts*. But in this case, Keihin-Everett's liability to Honda Trading (to which Tokio Marine had been subrogated as an insurer) stemmed not from *quasi-delict,* but from its breach of contract of carriage. Sunfreight Forwarders was only impleaded in the case when Keihin-Everett filed a third-party complaint against it. As mentioned earlier, there was no direct contractual relationship between Sunfreight Forwarders and Honda Trading. Accordingly, there was no basis to directly hold Sunfreight Forwarders liable to Honda Trading for breach of contract. If at all, Honda Trading can hold Sunfreight Forwarders for *quasi-delict,*which is not the action filed in the instant case.

6. **ID.; DAMAGES; ATTORNEY'S FEES; AWARD THEREOF IS PROPER WHEN A PARTY IS COMPELLED TO LITIGATE TO PROTECT ITS INTEREST; CASE AT BAR.—**As to the award of attorney's fees, the same is likewise in order as Tokio Marine was clearly compelled to litigate to protect its interest.Attorney's fees are allowed in the discretion of the court after considering several factors which are discernible from the facts brought out during the trial. In this case, Tokio Marine was compelled to litigate brought about by Keihin-Everett's obstinate refusal to pay the former's valid claim.

APPEARANCES OF COUNSEL

Dela Cruz Nague and Associates Law Offices for petitioner.
Astorga and Repol Law Offices for respondent Tokio Marine Malayan Insurance Co., Inc.

D E C I S I O N

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

The Case

Keihin-Everett Forwarding Co., Inc. (Keihin-Everett) appealed from the April 8, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 98672 which held it liable to pay Tokio Marine Malayan Insurance Co., Inc.'s (Tokio Marine's) claim of ₱1,589,556.60 with right of reimbursement from Sunfreight Forwarders & Customs Brokerage, Inc. (Sunfreight Forwarders).

The Facts

The facts, as summarized by the CA,[2] are clear and undisputed.

In 2005, Honda Trading Phils. Ecozone Corporation (Honda Trading) ordered 80 bundles of Aluminum Alloy Ingots from PT Molten Aluminum Producer Indonesia (PT Molten).[3] PT Molten loaded the goods in two container vans with Serial Nos. TEXU 389360-5 and GATU 040516-3 which were, in turn, received in Jakarta, Indonesia by Nippon Express Co., Ltd. for shipment to Manila.[4]

Aside from insuring the entire shipment with Tokio Marine & Nichido Fire Insurance Co., Inc. (TMNFIC) under Policy No. 83-00143689, Honda Trading also engaged the services of

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[1] Penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justices Ramon R. Garcia and Danton Q. Bueser, concurring; *rollo,* pp. 34-45.

[2] *Id*. at 35-37.

[3] *Id*. at 35.

[4] *Id*.

petitioner Keihin-Everett to clear and withdraw the cargo from the pier and to transport and deliver the same to its warehouse at the Laguna Technopark in Biñan, Laguna.[5] Meanwhile, petitioner Keihin-Everett had an Accreditation Agreement with respondent Sunfreight Forwarders whereby the latter undertook to render common carrier services for the former and to transport inland goods within the Philippines.[6]

The shipment arrived in Manila on November 3, 2005 and was, accordingly, offloaded from the ocean liner and temporarily stored at the CY Area of the Manila International Port pending release by the Customs Authority.[7] On November 8, 2005, the shipment was caused to be released from the pier by petitioner Keihin-Everett and turned over to respondent Sunfreight Forwarders for delivery to Honda Trading.[8] En route to the latter's warehouse, the truck carrying the containers was hijacked and the container van with Serial No. TEXU 389360-5 was reportedly taken away.[9] Although said container van was subsequently found in the vicinity of the Manila North Cemetery and later towed to the compound of the Metro Manila Development Authority (MMDA), it appears that the contents thereof were no longer retrieved.[10] Only the container van with Serial No. GATU 040516-3 reached the warehouse. As a consequence, Honda Trading suffered losses in the total amount of ₱2,121,917.04, representing the value of the lost 40 bundles of Aluminum Alloy Ingots.[11]

Claiming to have paid Honda Trading's insurance claim for the loss it suffered, respondent Tokio Marine commenced the instant suit on October 10, 2006 with the filing of its complaint

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[5] *Id*.

[6] *Id*.

[7] *Id*

[8] *Id*.

[9] *Id*.

[10] *Id*.

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

for damages against petitioner Keihin-Everett. Respondent Tokio Marine maintained that it had been subrogated to all the rights and causes of action pertaining to Honda Trading.

Served with summons, petitioner Keihin-Everett denied liability for the lost shipment on the ground that the loss thereof occurred while the same was in the possession of respondent Sunfreight Forwarders.[12] Hence, petitioner Keihin-Everett filed a third-party complaint against the latter, who, in turn, denied liability on the ground that it was not privy to the contract between Keihin-Everett and Honda Trading. If at all, respondent Sunfreight Forwarders claimed that its liability cannot exceed the ₱500,000.00 fixed in its Accreditation Agreement with petitioner Keihin-Everett.[13]

Ruling of the RTC

On October 27, 2011, the RTC rendered a Decision finding petitioner Keihin-Everett and respondent Sunfreight Forwarders jointly and severally liable to pay respondent Tokio Marine's claim in the sum of ₱1,589,556.60, together with the legal interest due thereon and attorney's fees amounting to ₱100,000.00. The RTC found the driver of Sunfreight Forwarders as the cause of the evil caused. Under Article 2180 of the Civil Code, it provides: "Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry." Thus, Sunfreight Forwarders is hereby held liable for the loss of the subject cargoes with Keihin-Everett, being a common carrier. In case, Keihin-Everett pays for the amount, it has a right of reimbursement from Sunfreight Forwarders. It ruled:

> In the event of loss, destruction or deterioration of the insured goods, common carriers are responsible, unless they can prove that the loss, destruction or deterioration was brought about by the causes specified in Article 1734 of the Civil Code. In all other cases, they are presumed

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[12] *Id*. at 36.

[13] *Id*.

to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence *(Aboitiz Shipping Corporation v. [New] India Assurance Company, Ltd.,* G.R. No. 156978, August 24, 2007). And, hijacking of [a] carrier's truck is not one of those included as exempting circumstance under Art. 1374 *(De Guzman v. Court of Appeals,* 168 SCRA 612). Thus, [Keihin-Everett] and [Sunfreight Forwarders] are crystal clear liable for the loss of the subject cargo.[14]

Keihin-Everett moved for reconsideration of the foregoing RTC Decision. However, its motion was denied for lack of merit by the RTC in its Order dated March 8, 2012. Hence, Keihin-Everett filed an appeal with the CA.

Ruling of the CA

In the now appealed Decision dated April 8, 2014, the CA modified the ruling of the RTC insofar as the solidary liability of Keihin-Everett and Sunfreight Forwarders is concerned. The CA went to rule that solidarity is never presumed. There is solidary liability when the obligation so states, or when the law or the nature of the obligation requires the same. Thus, because of the lack of privity between Honda Trading and Sunfreight Forwarders, the latter cannot simply be held jointly and severally liable with Keihin-Everett for Tokio Marine's claim as subrogee. In view of the Accreditation Agreement between Keihin-Everett and Sunfreight Forwarders, the former possesses a right of reimbursement against the latter for so much of what Keihin-Everett has paid to Tokio Marine. The dispositive portion of the CA Decision reads as follows:

WHEREFORE, premises considered, the appealed October 27, 2011 Decision is MODIFIED to hold Keihin-Everett liable for Tokio Marine's claim in the sum of ₱1,589,556.60, with right of reimbursement from Sunfreight Forwarders. Keihin-Everett is likewise found solely liable for the attorney's fees the RTC awarded in favor of Tokio Marine. The rest is AFFIRMED *in toto.*

SO ORDERED.[15]

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[14] *Id.* at 37.

[15] *Id.* at 44.

Dissatisfied with the CA Decision, petitioner Keihin-Everett filed the instant petition with this Court.

The Issue

The main issue for consideration is whether or not the CA erred in affirming with modification the Decision of the RTC dated October 27, 2011 holding petitioner Keihin-Everett liable to respondent Tokio Marine.

Petitioner Keihin-Everett ascribed errors on the part of the CA (a) in considering the documents presented at the trial even if the same were not attached and made integral parts of the complaint in violation of Section 7, Rule 8 of the Rules of Court; (b) in upholding the RTC's failure to dismiss the complaint albeit the plaintiff is not the real party in interest and has no capacity to sue; (c) in ruling that there was legal subrogation; and (d) in affirming the petitioner's liability despite overwhelming evidence showing that the damaged cargoes were in the custody of Sunfreight Forwarders at the time they were lost.[16]

Ruling

Keihin-Everett's arguments will be resolved *in seriatim.*

First. Keihin-Everett argued that the case should have been dismissed for failure of Tokio Marine to attach or state in the Complaint the actionable document or the insurance policy between the insurer and the insured, in clear violation of Section 7, Rule 8 of the 1997 Rules of Court, which states:

> SEC. 7. *Action or defense based on document.* — Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.

It bears to stress that failure of Tokio Marine to attach in the Complaint the contract of insurance between the insurer (Tokio

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[16] *Id.* at 14.

Marine) and the insured (Honda Trading) is not fatal to its cause of action.

True, in the case of *Malayan Insurance Co., Inc. v. Regis Brokerage Corp.*[17] relied upon by Keihin-Everett, the Court makes it imperative for the plaintiff (whose action is predicated upon his right as a subrogee) to attach the insurance contract in the complaint in accordance with Section 7, Rule 8 of the 1997 Rules of Court, just so in order to establish the legal basis of the right to subrogation. The Court ratiocinated:

> Malayan's right of recovery as a subrogee of ABB Koppel cannot be predicated alone on the liability of the respondent to ABB Koppel, even though such liability will necessarily have to be established at the trial for Malayan to recover. Because Malayan's right to recovery derives from contractual subrogation as an incident to an insurance relationship, and not from any proximate injury to it inflicted by the respondents, it is critical that Malayan establish the legal basis of such right to subrogation by presenting the contract constitutive of the insurance relationship between it and ABB Koppel. Without such legal basis, its cause of action cannot survive.
>
> Our procedural rules make plain how easily Malayan could have adduced the Marine Insurance Policy. Ideally, this should have been accomplished from the moment it filed the complaint. Since the Marine Insurance Policy was constitutive of the insurer-insured relationship from which Malayan draws its right to subrogation, such document should have been attached to the complaint itself, as provided for in Section 7, Rule 8 of the 1997 Rules of Civil Procedure.[18]

However, in the aforesaid case, the Court did not suggest an outright dismissal of a complaint in case of failure to attach the insurance contract in the complaint. Promoting a reasonable construction of the rules so as not to work injustice, the Court makes it clear that failure to comply with the rules does not preclude the plaintiff to offer it as evidence. Thus:

> It may be that there is no specific provision in the Rules of Court which prohibits the admission in evidence of an actionable document

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[17] 563 Phil. 1003 (2007).

[18] *Id*. at 1016.

in the event a party fails to comply with the requirement of the rule on actionable documents under Section 7, Rule 8.[19]

Unfortunately, in the *Malayan* case cited by Keihin-Everett, Malayan not only failed to attach or set forth in the complaint the insurance policy, it likewise did not present the same as evidence before the trial court or even in the CA. As the Court metaphorically described, the very insurance contract emerges as the white elephant in the room — an obdurate presence which everybody reacts to, yet legally invisible as a matter of evidence since no attempt had been made to prove its corporeal existence in the court of law.[20] Hence, there was sufficient reason for the Court to dismiss the case for it has no legal basis from which to consider the pre-existence of an insurance contract between Malayan and ABB Koppel and the former's right of subrogation.

The instant case cannot be dismissed just like that. Unlike in the *Malayan* case, Tokio Marine presented as evidence, not only the Honda Trading Insurance Policy, but also the Subrogation Receipt evidencing that it paid Honda Trading the sum of US$38,855.83 in full settlement of the latter's claim under Policy No. 83-00143689. During the trial, Keihin-Everett even had the opportunity to examine the said documents and conducted a cross-examination of the said Contract of Insurance.[21] By presenting the insurance policy constitutive of the insurance relationship of the parties, Tokio Marine was able to confirm its legal right to recover as subrogee of Honda Trading.

Second. Keihin-Everett insisted that Tokio Marine is not the insurer but TMNFIC, hence, it argued that Tokio Marine has no right to institute the present action. As it pointed out, the Insurance Policy shows in its face that Honda Trading procured the insurance from TMNFIC and not from Tokio Marine.

While this assertion is true, Insurance Policy No. 83-00143689 itself expressly made Tokio Marine as the party liable to pay

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[19] *Id*. at 1017.

[20] *Id*. at 1018.

[21] *Rollo*, p. 36.

the insurance claim of Honda Trading pursuant to the Agency Agreement entered into by and between Tokio Marine and TMNFIC. As properly appreciated by both the RTC and the CA, the Agency Agreement shows that TMNFIC had subsequently changed its name to that of Tokio Marine.[22] By agreeing to this stipulation in the Insurance Policy, Honda Trading binds itself to file its claim from Tokio Marine and thereafter to accept payment from it.

At any rate, even if we consider Tokio Marine as a third person who voluntarily paid the insurance claims of Honda Trading, it is still entitled to be reimbursed of what it had paid. As held by this Court in the case of *Pan Malayan Insurance Corp. v. Court of Appeals,*[23] the insurer who may have no rights of subrogation due to "voluntary" payment may nevertheless recover from the third party responsible for the damage to the insured property under Article 1236[24] of the Civil Code. Under this circumstance, Tokio Marine's right to sue is based on the fact that it voluntarily made payment in favor of Honda Trading and it could go after the third party responsible for the loss (Keihin-Everett) in the exercise of its legal right of subrogation.

Setting aside this assumption, Tokio Marine nonetheless was able to prove by the following documentary evidence, such as Insurance Policy, Agency Agreement and Subrogation Receipt, their right to institute this action as subrogee of the insured. Keihin-Everett, on the other hand, did not present any evidence to contradict Tokio Marine's case.

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[22] CA Decision; *rollo,* p. 40.

[23] 262 Phil. 919 (1990).

[24] Art. 1236. The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary.

Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.

Third. Since the insurance claim for the loss sustained by the insured shipment was paid by Tokio Marine as proven by the Subrogation Receipt – showing the amount paid and the acceptance made by Honda Trading, it is inevitable that it is entitled, as a matter of course, to exercise its legal right to subrogation as provided under Article 2207 of the Civil Code as follows:

> Art. 2207. If the plaintiffs property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury.

It must be stressed that the Subrogation Receipt only proves the fact of payment. This fact of payment grants Tokio Marine subrogatory right which enables it to exercise legal remedies that would otherwise be available to Honda Trading as owner of the hijacked cargoes as against the common carrier (Keihin-Everett). In other words, the right of subrogation accrues simply upon payment by the insurance company of the insurance claim.[25] As the Court held:

> The payment by the insurer to the insured operates as an equitable assignment to the insurer of all the remedies which the insured may have against the third party whose negligence or wrongful act caused the loss. The right of subrogation is not dependent upon, nor does it grow out of any privity of contract or upon payment by the insurance company of the insurance claim. It accrues simply upon payment by the insurance company of the insurance claim.[26]

Indeed, the right of subrogation has its roots in equity.[27] It is designed to promote and to accomplish justice and is the

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[25] *Delsan Transport Lines, Inc. v. Court of Appeals,* 420 Phil. 824, 832 (2001).

[26] *Equitable Insurance Corp. v. Transmodal International, Inc.,* G.R. No. 223592, August 7, 2017, 834 SCRA 581, 592-593.

[27] *Delsan Transport Lines, Inc. v. Court of Appeals*, *supra* note 25.

mode which equity adopts to compel the ultimate payment of a debt by one who, in justice and good conscience, ought to pay.[28] Consequently, the payment made by Tokio Marine to Honda Trading operates as an equitable assignment to the former of all the remedies which the latter may have against Keihin-Everett.

Finally. Keihin-Everett maintained that at the time when the cargoes were lost, it was already in the custody of Sunfreight Forwarders. Notwithstanding that the cargoes were in the possession of Sunfreight Forwarders when they were hijacked, Keihin-Everett is not absolved from its liability as a common carrier. Keihin-Everett seems to have overlooked that it was the one whose services were engaged by Honda Trading to clear and withdraw the cargoes from the pier and to transport and deliver the same to its warehouse. In turn, Keihin-Everett accredited Sunfreight Forwarders to render common carrier service for it by transporting inland goods. As correctly held by the CA, there was no privity of contract between Honda Trading (to whose rights Tokio Marine was subrogated) and Sunfreight Forwarders. Hence, Keihin-Everett, as the common carrier, remained responsible to Honda Trading for the lost cargoes.

In this light, Keihin-Everett, as a common carrier, is mandated to observe, under Article 1733 of the Civil Code, extraordinary diligence in the vigilance over the goods it transports according to all the circumstances of each case. In the event that the goods are lost, destroyed or deteriorated, it is presumed to have been at fault or to have acted negligently, *unless it proves that it observed extraordinary diligence.*[29] To be sure, under Article 1736 of the Civil Code, a common carrier's extraordinary responsibility over the shipper's goods lasts from the time these goods are unconditionally placed in the possession of, and received by, the carrier for transportation, until they are delivered, actually or constructively, by the carrier to the consignee, or

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[28] *Id*.

[29] *A.F. Sanchez Brokerage, Inc. v. Court of Appeals,* 488 Phil. 430, 441 (2004).

to the person who has a right to receive them. Hence, at the time Keihin-Everett turned over the custody of the cargoes to Sunfreight Forwarders for inland transportation, it is still required to observe extraordinary diligence in the vigilance of the goods. Failure to successfully establish this carries with it the presumption of fault or negligence, thus, rendering Keihin-Everett liable to Honda Trading for breach of contract.

It bears to stress that the hijacking of the goods is not considered a fortuitous event or a *force majeure.*[30] Nevertheless, a common carrier may absolve itself of liability for a resulting loss caused by robbery or hijacked if it is proven that the robbery or hijacking was attended by grave or irresistible threat, violence or force.[31] In this case, Keihin-Everett failed to prove the existence of the aforementioned instances.

We likewise agree with the CA that the liability of Keihin-Everett and Sunfreight Forwarders are not solidary. There is solidary liability only when the obligation expressly so states, when the law so provides, or when the nature of the obligation so requires.[32] Thus, under Article 2194 of the Civil Code, liability of two or more persons is solidary in *quasi-delicts.* But in this case, Keihin-Everett's liability to Honda Trading (to which Tokio Marine had been subrogated as an insurer) stemmed not from *quasi-delict,* but from its breach of contract of carriage. Sunfreight Forwarders was only impleaded in the case when Keihin-Everett filed a third-party complaint against it. As mentioned earlier, there was no direct contractual relationship between Sunfreight Forwarders and Honda Trading. Accordingly, there was no basis to directly hold Sunfreight Forwarders liable to Honda Trading for breach of contract. If

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[30] *Torres-Madrid Brokerage, Inc. v. FEB Mitsui Marine Insurance Co., Inc.,* 789 Phil. 413, 424 (2016).

[31] *De Guzman v. Court of Appeals,* 250 Phil. 613, 622 (1988).

[32] *Malayan Insurance Co., Inc. v. Philippines First Insurance Co., Inc.,* 690 Phil. 621, 638 (2012).

at all, Honda Trading can hold Sunfreight Forwarders for *quasi-delict,*[33] which is not the action filed in the instant case.

It is not expected however that Keihin-Everett must shoulder the entire loss. The case of *Torres-Madrid Brokerage, Inc. v. FEB Mitsui Marine Insurance Co., Inc.*[34] is instructive. The said case involves a similar set of facts as that of the instant case such that the shipper (Sony) engaged the services of common carrier (TMBI), to facilitate the release of its shipment and deliver the goods to its warehouse, who, in turn, subcontracted a portion of its obligation to another common carrier (BMT). The Court ruled:

> We do not hereby say that TMBI must absorb the loss. By subcontracting the cargo delivery to BMT, TMBI entered into its own contract of carriage with a fellow common carrier.
>
> The cargo was lost after its transfer to BMT's custody based on its contract of carriage with TMBI. Following Article 1735, BMT is presumed to be at fault. Since BMT failed to prove that it observed *extraordinary diligence* in the performance of its obligation to TMBI, it is liable to TMBI for breach of their contract of carriage.
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> In these lights, TMBI is liable to Sony (subrogated by Mitsui) for breaching the contract of carriage. In turn, TMBI is entitled to reimbursement from BMT due to the latter's own breach of its contract of carriage with TMBI. x x x[35]

In the same manner, Keihin-Everett has a right to be reimbursed based on its Accreditation Agreement with Sunfreight Forwarders. By accrediting Sunfreight Forwarders to render common carrier services to it, Keihin-Everett in effect entered into a contract of carriage with a fellow common carrier, Sunfreight Forwarders.

It is undisputed that the cargoes were lost when they were in the custody of Sunfreight Forwarders. Hence, under Article 1735[36]

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[33] *Torres-Madrid Brokerage, Inc. v. FEB Mitsui Marine Insurance Co., Inc., supra* note 30, at 427.

[34] *Id*.

[35] *Id*. at 428.

[36] Art. 1735. In all cases other than those mentioned in Nos. 1, 2, 3, 4, and 5 of the preceding article, if the goods are lost, destroyed or deteriorated,

of the Civil Code, the presumption of fault on the part of Sunfreight Forwarders (as common carrier) arose. Since Sunfreight Forwarders failed to prove that it observed extraordinary diligence in the performance of its obligation to Keihin-Everett, it is liable to the latter for breach of contract. Consequently, Keihin-Everett is entitled to be reimbursed by Sunfreight Forwarders due to the latter's own breach occasioned by the loss and damage to the cargoes under its care and custody. As with the cited *Torres-Madrid Brokerage* case, Sunfreight Forwarders, too, has the option to absorb the loss or to proceed after its missing driver, the suspect in the hijacking incident.[37]

As to the award of attorney's fees, the same is likewise in order as Tokio Marine was clearly compelled to litigate to protect its interest.[38] Attorney's fees are allowed in the discretion of the court after considering several factors which are discernible from the facts brought out during the trial.[39] In this case, Tokio Marine was compelled to litigate brought about by Keihin-Everett's obstinate refusal to pay the former's valid claim.

WHEREFORE, the Decision dated April 8, 2014 of the Court of Appeals in CA-G.R. No. CV No. 98672 is **AFFIRMED**.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe, Caguioa,* and *Hernando,*[**] *JJ.,* concur.

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common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as required in Article 1733.

[37] *Torres-Madrid Brokerage, Inc. v. FEB Mitsui Marine Insurance Co., Inc., supra* note 30, at 428.

[38] CIVIL CODE, Article 2208 (2).

[39] *Philippine Rabbit Bus Lines, Inc. v. Esguerra,* 203 Phil. 107, 112 (1982).

[**] Additional Member per S.O. No. 2630 dated December 18, 2018.

SECOND DIVISION

[G.R. No. 226578. January 28, 2019]

AUGUSTIN INTERNATIONAL CENTER, INC., *petitioner, vs.* **ELFRENITO B. BARTOLOME and RUMBY L. YAMAT,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 8042; MONEY CLAIMS; LABOR ARBITERS HAVE ORIGINAL AND EXCLUSIVE JURISDICTION OVER CLAIMS ARISING OUT OF EMPLOYER-EMPLOYEE RELATIONS OR BY VIRTUE OF ANY LAW OF CONTRACT INVOLVING FILIPINO WORKERS FOR OVERSEAS DEPLOYMENT.—** Section 10 of Republic Act No. (RA) 8042, as amended by RA 10022, explicitly provides that **LAs have original and exclusive jurisdiction over claims arising out of employer-employee relations or by virtue of any law or contract involving Filipino workers for overseas deployment**, as in this case. x x x Settled is the rule that jurisdiction over the subject matter is conferred by law and cannot be acquired or waived by agreement of the parties. As herein applied, the dispute settlement provision in respondents' employment contracts cannot divest the LA of its jurisdiction over the illegal dismissal case. Hence, it correctly took cognizance of the complaint filed by respondents before it.

2. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ARGUMENTS OR DEFENSES NOT RAISED IN THE PREVIOUS PROCEEDINGS ARE DEEMED WAIVED AND CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.—** [I]ssues not raised in the previous proceedings cannot be raised for the first time at a late stage. In this case, the Court observes that AICI failed to raise the issue of respondents' supposed non-compliance with the dispute settlement provision before the LA, as well as before the NLRC. In fact, AICI only mentioned this issue for the first time before the CA in its motion for reconsideration. Therefore, such argument or defense is deemed waived and can no longer be

considered on appeal. Hence, the Court rules that the LA properly took cognizance of this case.

3. LABOR AND SOCIAL LEGISLATION; LABOR CODE; VOLUNTARY ARBITRATION; INAPPLICABLE IN CASE AT BAR FOR WHAT IS CONTEMPLATED IS AN AMICABLE SETTLEMENT WHEREBY THE PARTIES CAN NEGOTIATE WITH EACH OTHER AND NOT A VOLUNTARY ARBITRATION WHEREIN A THIRD PARTY RENDERS A DECISION TO RESOLVE THE DISPUTE.— To clarify, the Voluntary Arbitrator under the Labor Code is one agreed upon by the parties to resolve certain disputes and is tasked to render an award or decision within twenty (20) calendar days pursuant to Article 276 of the Labor Code. This decision shall be final and executory after ten (10) calendar days from receipt thereof. In this case, x x x the mechanism contemplated herein is an amicable settlement whereby the parties can negotiate with each other; it is not a voluntary arbitration under the Labor Code wherein a third party renders a decision to resolve the dispute. The text of the contractual provision shows that the designated person is tasked merely to *participate* in the amicable settlement and not to *decide* the dispute. This participation is in line with the mandate of Filipinos Resource Centers, in which labor attachés are members, to engage in the "conciliation of disputes arising from employer-employee relationship." Hence, the "[Labor] Attaché or any [authorized] representative of the Philippine Embassy nearest the site of employment" was not called upon to act as a Voluntary Arbitrator as contemplated under the Labor Code. It was therefore erroneous for the CA to assume that the contractual provision triggered the voluntary arbitration mechanism under the Labor Code and, on that premise, venture into an inquiry as to whether or not there was an "express stipulation" submitting the termination dispute to such process, which thereby puts the case beyond the ambit of the LA's jurisdiction.

4. ID.; REPUBLIC ACT NO. 8042; MONEY CLAIMS; A RECRUITMENT AGENCY IS SOLIDARILY LIABLE WITH THE FOREIGN EMPLOYER FOR MONEY CLAIMS ARISING OUT OF THE EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE LATTER AND THE OVERSEAS FILIPINO WORKER.— Section 10 of RA 8042, as amended, expressly provides that a recruitment

agency, such as AICI, is solidarily liable with the foreign employer for money claims arising out of the employee-employer relationship between the latter and the overseas Filipino worker. Jurisprudence explains that this solidary liability is meant to assure the aggrieved worker of immediate and sufficient payment of what is due him, as well as to afford overseas workers an additional layer of protection against foreign employers that tend to violate labor laws. In view of the express provision of law, AICI's lack of an employee-employer relationship with respondents cannot exculpate it from its liability to pay the latter's money claims. Nevertheless, AICI is not left without a remedy. The law does not preclude AICI from going after the foreign employer for reimbursement of any payment it has made to respondents to answer for the money claims against the foreign employer.

APPEARANCES OF COUNSEL

Benedicto Buenaventura for petitioner.
Public Attorney's Office for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated November 11, 2015 and the Resolution[3] dated August 19, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 131582 denying the petition for review filed by petitioner Augustin International Center, Inc. (AICI) questioning the Resolution[4]

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[1] *Rollo*, p. 818.

[2] *Id*. at 20-29. Penned by Associate Justice Zenaida T. Galapate-Laguilles with Associate Justices Mariflor P. Punzalan Castillo and Florito S. Macalino, concurring.

[3] *Id*. at 30-34.

[4] Records, Vol. I, pp. 210-213. Penned by Commissioner Dolores M. Peralta-Beley with Presiding Commissioner Leonardo L. Leonida and Commissioner Mercedes R. Posada-Lacap, concurring.

dated March 15, 2013 and the Decision[5] dated June 27, 2013 of the National Labor Relations Commission (NLRC), which affirmed the Labor Arbiter's (LA) finding that respondents Elfrenito B. Bartolome (Bartolome) and Rumby L. Yamat (Yamat; collectively, respondents) were illegally dismissed from employment.

The Facts

In 2010, Bartolome and Yamat applied as carpenter and tile setter, respectively, with AICI, an employment agency providing manpower to foreign corporations. They were eventually engaged by Golden Arrow Company, Ltd. (Golden Arrow), which had its office in Khartoum, Republic of Sudan. Thereafter, they signed their respective employment contracts stating that they would render services for a period not less than twenty-four (24) months.[6] In their contracts, there was a provision on dispute settlement that reads:

> 14. Settlement of disputes: All claims and complaints relative to the employment contract of the employee shall be settled in accordance with Company policies, rules[,] and regulations. In case the Employee contests the decision of the employer, the matter shall be settled amicably **with [the] participation of the Labour Attaché or any authorised representative of the Philippines Embassy nearest the site of employment**. x x x[7] (Emphasis and underscoring supplied)

Upon their arrival in Sudan sometime in March and April 2011, Golden Arrow transferred their employment to its sister company, Al Mamoun Trading and Investment Company (Al Mamoun). A year later, or on May 2, 2012, Al Mamoun served

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[5] *Id*. at 230-236. Penned by Commissioner Dolores M. Peralta-Beley with Commissioner Mercedes R. Posada-Lacap, concurring.

[6] See Employment Contracts of Bartolome dated November 12, 2010 (*rollo*, pp. 35-38) and Yamat dated October 23, 2010 (*id*. at 41-44). Based on their contracts, they would render services to Golden Arrow for a period of not less than twenty-four (24) months and for a basic monthly salary of five hundred fifty US dollars ($550.00) (See *id*. at 21. See also *id*. at 35 and 41).

[7] *Id*. at 37 and 43.

Notices of Termination of Service[8] to respondents, causing them to return to the Philippines. On May 22, 2012, they filed their complaint[9] before the NLRC seeking that AICI and A1 Mamoun be held liable for illegal dismissal, breach of contract, and payment of the unexpired portion of the contract.[10]

For their part, AICI and Al Mamoun claimed that respondents abandoned their duties by mid-2012, based on the e-mail message[11] from Golden Arrow to that effect, *viz.*:

> 2. Illegal Termination – I understand Mr[.] [Yamat] and Mr[.] Bartolome refused to work resulting in the work they were designated to complete remaining pending. It is our policy that should a member of staff refuse to carry out their normal duties without a satisfactory and timely explanation then we believe they have terminated their employment themselves.[12]

The LA's Ruling

In a Decision[13] dated August 31, 2012, the LA held that respondents were illegally dismissed, and accordingly, ordered AICI and Al Mamoun to pay the former ₱69,300.00 each, representing their salaries for the unexpired portion of their contract.[14] The LA explained that AICI and Al Mamoun failed to overcome their burden to prove that the dismissal was for a

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[8] *Id*. at 39 and 45. The notices read:

> This is to inform you that it has been decided to terminate your services with AL MAMOUN CO. LTD Effective 07/05/2012. Please contact the HR department to finalizing (sic) your out process.
>
> Wish Well In Future. (sic)

[9] See Complaint; records, Vol. I, p. 1. See also Single-Entry Approach form dated May 22, 2012; *id*. at 13.

[10] See *rollo*, p. 22.

[11] See e-mail correspondence dated July 4, 2012; records, Vol. I, p. 35.

[12] *Id*.

[13] *Id*. at 91-96. Penned by Labor Arbiter Leandro M. Jose.

[14] See *id*. at 95-96.

just or authorized cause. They likewise failed to show that respondents abandoned their duties.[15]

Aggrieved, AICI and Al Mamoun filed an appeal.[16]

The NLRC's Ruling

In a Decision[17] dated June 27, 2013, the NLRC affirmed the LA's ruling, noting that AICI and Al Mamoun failed to discharge their burden to prove by substantial evidence that the termination of respondents' employment was valid.[18]

Undaunted, AICI and A1 Mamoun filed a petition for *certiorari*[19] before the CA.

The CA's Ruling

In a Decision[20] dated November 11, 2015, the CA denied the petition.[21] It held that AICI and A1 Mamoun failed to comply with procedural and substantive due process in dismissing respondents from their employment.[22]

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[15] See *id*. at 94-95.

[16] Dated October 25, 2012. *Id*. at 102-105. The appeal was initially denied in a Resolution dated March 15, 2013 (*id*. at 210-213) due to non-perfection but was later reinstated in the Decision dated June 27, 2013 (*id*. at 230-236), after AICI and Al Mamoun filed their motion for reconsideration dated April 19, 2013 (*id*. at 215-216).

[17] *Id*. at 230-236.

[18] See *id*. at 234-235.

[19] See Petition dated September 3, 2013 (records, Vol. II, pp. 1-8) and Amended Petition (*id*. at 246-253).

[20] *Rollo*, pp. 20-29.

[21] *Id*. at 29.

[22] Anent procedural due process, the CA found that respondents were neither served with notices recounting acts and/or omissions to justify their dismissal nor given the opportunity to explain their side. Instead, they were merely sent the Notices of Termination of Service briefly informing them of the management's decision to prematurely conclude their services. As regards substantive due process, the CA held that AICI and Al Mamoun's defense of abandonment of duties to justify respondents' dismissal were

AICI and Al Mamoun moved for reconsideration,[23] arguing for the first time that they were denied due process because respondents did not first contest their termination before the "[Labor] Attache or any [authorized] representative of the Philippine Embassy nearest the site of employment," as stipulated in the employment contracts, before filing the complaint before the LA.[24]

In a Resolution[25] dated August 19, 2016, the CA denied the said motion.[26] It explained that, as a rule, termination disputes should be brought before the LA, except when the parties agree to submit the dispute to voluntary arbitration pursuant to then Article 262[27] (now Article 275) of the Labor Code, provided that such agreement is stated "in unequivocal language." Citing jurisprudence,[28] the CA added that the phrase "all disputes" is not sufficient to divest the LA of its jurisdiction over termination disputes. In the same manner, the phrase "all claims and complaints" in respondents' employment contracts does not remove the LA's jurisdiction to decide whether respondents were legally terminated.[29]

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unsubstantiated. It stressed that the burden of proof to show that the dismissal was for a just or authorized cause rests with the employer and its failure to do so would mean that the dismissal was illegal, as in this case. (See *id*. at 24-28.)

[23] Motion for reconsideration is not attached to the records.

[24] *Rollo*, pp. 30-31.

[25] *Id*. at 30-33.

[26] *Id*. at 33.

[27] See Article 275 (formerly 262) of the Labor Code, 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."

[28] See *Vivero v. Court of Appeals*, 398 Phil. 158 (2000); and *Negros Metal Corporation v. Lamayo*, 643 Phil. 675 (2010).

[29] See *rollo*, pp. 31-32.

Hence, AICI filed this petition.

The Issues Before the Court

The issues before the Court are whether or not: (*a*) the LA correctly took cognizance of this case; and (*b*) AICI is liable for respondents' illegal dismissal.

The Court's Ruling

Preliminarily, it bears stressing that AICI does not assail the CA's ruling of illegal dismissal but instead, argues that the LA incorrectly took cognizance of the case at the onset. It insists that based on the dispute settlement provision in respondents' employment contracts, the "primary jurisdiction" to decide this case is with the "[Labor] Attache or any [authorized] representative of the Philippine Embassy nearest the site of employment" (designated person).[30]

After a judicious review of the case, the Court denies the petition.

Section 10 of Republic Act No. (RA) 8042,[31] as amended by RA 10022,[32] explicitly provides that **LAs have original and exclusive**[33] **jurisdiction over claims arising out of employer-**

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[30] See *rollo*, p. 10.

[31] Entitled "AN ACT TO INSTITUTE THE POLICIES OF OVERSEAS EMPLOYMENT AND ESTABLISH A HIGHER STANDARD OF PROTECTION AND PROMOTION OF THE WELFARE OF MIGRANT WORKERS, THEIR FAMILIES AND OVERSEAS FILIPINOS IN DISTRESS, AND FOR OTHER PURPOSES," approved on June 7, 1995.

[32] See Section 7 of RA 10022, entitled "AN ACT AMENDING REPUBLIC ACT No. 8042, OTHERWISE KNOWN AS THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995, AS AMENDED, FURTHER IMPROVING THE STANDARD OF PROTECTION AND PROMOTION OF THE WELFARE OF MIGRANT WORKERS, THEIR FAMILIES AND OVERSEAS FILIPINOS IN DISTRESS, AND FOR OTHER PURPOSES," approved on March 8, 2010.

[33] See *Cubero v. Laguna West Multi-Purpose Cooperative, Inc.*, 538 Phil. 899, 905 (2006) wherein the Court stated that original jurisdiction refers to the power "to take cognizance of a cause at its inception, try it and

employee relations or by virtue of any law or contract involving Filipino workers for overseas deployment, as in this case. The relevant portion of the provision reads:

> Section 10. *Money Claims.* – **Notwithstanding any provision of law to the contrary, the Labor Arbiters** of the National Labor Relations Commission (NLRC) **shall have the original and exclusive jurisdiction to hear and decide**, within ninety (90) calendar days after filing of the complaint, **the claims arising out of** an employer-employee relationship or by virtue of any law or **contract involving Filipino workers for overseas deployment** including claims for actual, moral, exemplary and other forms of damages. x x x (Emphases supplied)

Settled is the rule that jurisdiction over the subject matter is conferred by law[34] and cannot be acquired or waived by agreement of the parties.[35] As herein applied, the dispute settlement provision in respondents' employment contracts cannot divest the LA of its jurisdiction over the illegal dismissal case. Hence, it correctly took cognizance of the complaint filed by respondents before it.

Moreover, issues not raised in the previous proceedings cannot be raised for the first time at a late stage. In this case, the Court observes that AICI failed to raise the issue of respondents' supposed non-compliance with the dispute settlement provision

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pass judgment upon the law and facts" while exclusive jurisdiction means that such power is "possessed to the exclusion of others."

[34] See *Spouses Santiago v. Northbay Knitting, Inc.,* G.R. No. 217296, October 11, 2017. See also *Metromedia Times Corporation v. Pastorin*, 503 Phil. 288, 304 (2005) citing *Lozon v. NLRC*, 310 Phil. 1, 13 (1995), wherein the Court stated thus: "[Jurisdiction over the subject matter] is conferred by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside. x x x"

[35] See *Office of the Court Administrator v. CA*, 428 Phil. 696 (2002). The Court held thus: "[t]he well-entrenched rule is that jurisdiction over the subject matter is determined exclusively by the Constitution and the law. It cannot be conferred by the voluntary act or agreement of the parties, it cannot be acquired through, or waived or enlarged or diminished by, their act or omission; neither is it conferred by acquiescence of the court. x x x" (*Id*. at 701-702.)

before the LA, as well as before the NLRC. In fact, AICI only mentioned this issue for the first time before the CA in its motion for reconsideration. Therefore, such argument or defense is deemed waived and can no longer be considered on appeal.[36] Hence, the Court rules that the LA properly took cognizance of this case.

However, the Court deems it essential to point out that in resolving whether the LA had jurisdiction over this case, the CA erroneously assumed that the designated person in the dispute settlement provision is a Voluntary Arbitrator under the auspices of the Labor Code, to wit:

> It is true that the Voluntary Arbitrator or a panel of Voluntary Arbitrators can hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks upon agreement of the parties. But if the parties wish to submit termination disputes to voluntary arbitration, such an agreement must be stated "in unequivocal language." In the present case, the agreement of the parties was written in this manner:
>
> x x x x x x x x x
>
> It is, however, not sufficient to merely say that the parties agree on the principle that "all disputes" should first be submitted to a Voluntary Arbitrator. There is a need for an express stipulation that illegal termination disputes should be resolved by a Voluntary Arbitrator or Panel of Voluntary Arbitrators, since the same fall within a special class of disputes that are generally within the exclusive

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[36] Section 1, Rule 9 of the Rules of Court provides that "[d]efenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. x x x." See also *Maxicare PCIB Cigna Healthcare v. Contreras*, 702 Phil. 688, 696 (2013) wherein the Court held that "[a]s a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court, will not be permitted to change theory on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court. x x x"

[and] original jurisdiction of the Labor Arbiters by express provision of law.[37]

To clarify, the Voluntary Arbitrator[38] under the Labor Code is one agreed upon by the parties to resolve certain disputes[39] and is tasked to render an award or decision within twenty (20) calendar days pursuant to Article 276 of the Labor Code.[40] This decision shall be final and executory after ten (10) calendar days from receipt thereof.[41]

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[37] *Rollo*, pp. 31-32.

[38] Article 219 (formerly 212) (n) of the Labor Code reads:

Article 219. [212] *Definitions*. — x x x

(n) "*Voluntary Arbitrator*" means any person accredited by the Board as such, or any person named or designated in the Collective Bargaining Agreement by the parties to act as their Voluntary Arbitrator, or one chosen with or without the assistance of the National Conciliation and Mediation Board, pursuant to a selection procedure agreed upon in the Collective Bargaining Agreement, or any official that may be authorized by the Secretary of Labor and Employment to act as Voluntary Arbitrator upon the written request and agreement of the parties to a labor dispute."

[39] The jurisdiction of the Voluntary Arbitrator is contained in Articles 274 and 275 (formerly 261 and 262) of the Labor Code, to wit:

Article 274. [261] *Jurisdiction of Voluntary Arbitrators and Panel of Voluntary Arbitrators.* – The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies referred to in the immediately preceding article. x x x

Article 275. [262] *Jurisdiction over Other Labor Disputes*. – The Voluntary Arbitrator or panel of Voluntary Arbitrators, upon agreement of the parties, shall also hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks.

[40] See the third paragraph of Article 276 (formerly 262-A), which reads:

Article 276. [262-A] *Procedures*. – x x x

Unless the parties agree otherwise, it shall be mandatory for the Voluntary Arbitrator or panel of Voluntary Arbitrators to **render an award or decision** within twenty (20) calendar days from the date of submission of the dispute to voluntary arbitration. x x x (Emphasis supplied)

[41] See the fourth paragraph of Article 276 (formerly 262-A), which reads:

In this case, the dispute settlement provision reads:

14. Settlement of disputes: All claims and complaints relative to the employment contract of the employee shall be settled in accordance with Company policies, rules[,] and regulations. In case the Employee contests the decision of the employer, the matter shall be settled amicably **with [the] participation of the Labour Attaché or any authorised representative of the Philippines Embassy nearest the site of employment**. x x x[42] (Emphasis and underscoring supplied)

Clearly, the mechanism contemplated herein is an amicable settlement whereby the parties can negotiate with each other; it is not a voluntary arbitration under the Labor Code wherein a third party renders a decision to resolve the dispute. The text of the contractual provision shows that the designated person is tasked merely to *participate* in the amicable settlement and not to *decide* the dispute. This participation is in line with the mandate of Filipinos Resource Centers, in which labor attachés are members, to engage in the "conciliation of disputes arising from employer-employee relationship."[43] Hence, the "[Labor] Attaché or any [authorized] representative of the Philippine Embassy nearest the site of employment" was not called upon to act as a Voluntary Arbitrator as contemplated under the Labor

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Article 276. [262-A] *Procedures*. – x x x

The award or decision of the Voluntary Abitrator or panel of Voluntary Arbitrators shall contain the facts and the law on which it is based. It shall be **final and executory** after ten (10) calendar days from receipt of the copy of the award or decision by the parties. x x x (Emphasis supplied)

[42] *Rollo*, pp. 37 and 43.

[43] Previously, labor attaches were tasked "to provide all Filipino workers within their jurisdiction assistance on all matters arising out of employment" pursuant to Article 21 of the Labor Code. However, said provision had been superseded by RA 8042 which defined the roles and responsibilities of different government agencies involved in the protection of migrant workers. Nevertheless, under RA 8042, labor attaches remain active in protecting migrant workers as a member of the Filipinos Resources Center. (See Section 19 of RA 8042 in relation to Sections 46 and 47 of the Implementing Rules and Regulations-RA 8042, entitled "OMNIBUS RULES AND REGULATIONS IMPLEMENTING THE MIGRANT WORKERS AND OVERSEAS FILIPINO ACT OF 1995" [February 29, 1996]).

Code. It was therefore erroneous for the CA to assume that the contractual provision triggered the voluntary arbitration mechanism under the Labor Code and, on that premise, venture into an inquiry as to whether or not there was an "express stipulation" submitting the termination dispute to such process, which thereby puts the case beyond the ambit of the LA's jurisdiction.

Considering that the parties did not submit the present illegal termination case to the voluntary arbitration mechanism, the dispute remained under the exclusive and original jurisdiction of the LA, which therefore correctly took cognizance of the case. Hence, the Court modifies the CA's ruling on this matter accordingly.

On the second issue, AICI argues in its petition that it cannot be held liable for illegal dismissal because it only recruits employees for foreign employers, and as such, it does not have an employee-employer relationship with the overseas workers.[44]

This argument does not hold water. Section 10 of RA 8042, as amended; expressly provides that a recruitment agency, such as AICI, is solidarily liable with the foreign employer for money claims arising out of the employee-employer relationship between the latter and the overseas Filipino worker.[45] Jurisprudence

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[44] See *rollo*, pp. 13-14.

[45] The second and third paragraphs of Section 10 of RA 8042, as amended by RA 10022, read:

Section 10. *Money Claims.* — x x x

The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.

Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment

explains that this solidary liability is meant to assure the aggrieved worker of immediate and sufficient payment of what is due him,[46] as well as to afford overseas workers an additional layer of protection against foreign employers that tend to violate labor laws.[47] In view of the express provision of law, AICI's lack of an employee-employer relationship with respondents cannot exculpate it from its liability to pay the latter's money claims.

Nevertheless, AICI is not left without a remedy. The law does not preclude AICI from going after the foreign employer for reimbursement of any payment it has made to respondents to answer for the money claims against the foreign employer.[48]

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or modification made locally or in a foreign country of the said contract. x x x (Emphasis supplied)

[46] See *Sameer Overseas Placement Agency, Inc. v. Cabiles*, 740 Phil. 403, 445 (2014), wherein the Court elucidated on this point further, to wit: "[i]n overseas employment, the filing of money claims against the foreign employer is attended by practical and legal complications. The distance of the foreign employer alone makes it difficult for an overseas worker to reach it and make it liable for violations of the Labor Code. There are also possible conflict of laws, jurisdictional issues, and procedural rules that may be raised to frustrate an overseas worker's attempt to advance his or her claims. x x x The fundamental effect of joint and several liability is that 'each of the debtors is liable for the entire obligation.' A final determination may, therefore, be achieved even if only one of the joint and several debtors are impleaded in an action. Hence, in the case of overseas employment, either the local agency or the foreign employer may be sued for all claims arising from the foreign employer's labor law violations. This way, the overseas workers are assured that someone – the foreign employer's local agent – may be made to answer for violations that the foreign employer may have committed." See also *ATCI Overseas Corporation v. Echin*, 647 Phil. 43 (2010); and *Sevillana v. I.T. (International) Corp.*, 408 Phil. 570 (2001).

[47] See *Sameer Overseas Placement Agency, Inc. v. Cabiles*, *id.* at 446, wherein the Court held thus: "[a] further implication of making local agencies jointly and severally liable with the foreign employer is that an additional layer of protection is afforded to overseas workers. Local agencies, which are businesses by nature, are inoculated with interest in being always on the lookout against foreign employers that tend to violate labor law. Lest they risk their reputation or finances, local agencies must already have mechanisms for guarding against unscrupulous foreign employers even at the level prior to overseas employment applications."

[48] See *id*.

WHEREFORE, the petition is **DENIED** for lack of merit. Accordingly, the Decision dated November 11, 2015 and the Resolution dated August 19, 2016 of the Court of Appeals in CA-G.R. SP No. 131582 are hereby **AFFIRMED** for the reasons above-discussed.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 228953. January 28, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSH JOE T. SAHIBIL,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS, PRESENT IN THE INSTANT CASE.— Under Section 5, Article II of RA 9165, any person, who, without lawful authority, shall sell any dangerous drug, regardless of quantity and purity, shall be guilty of illegal sale of dangerous drugs. More particularly, to be convicted of this charge, the prosecution must prove with moral certainty: (1) the identity of the seller and the buyer; (2) the object and consideration of the sale; and, (3) the delivery of the thing sold and the payment therefor. All these elements

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[*] Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018.

were present here. As uniformly found by the RTC and the CA, on January 31, 2012, the operatives of the CIDG-Tagum conducted a buy-bust operation on the appellant; during the transaction, appellant sold to SPO1 Ellevera two sachets of *shabu* in exchange for money placed in an envelope, which appellant believed to be worth ₱12,000.00 but which in fact comprised of ₱1,000.00 marked money, the rest being just boodle money. This being so, the identity of the seller (appellant) and the buyer (SPO1 Ellevera); the object (two sachets of *shabu*) and their consideration (marked money), as well as the delivery of the illegal drugs and payment for the same, were established.

2. **ID.; ID.; ID.; CHAIN OF CUSTODY RULE; FOUR LINKS THAT MUST BE PROVED TO COMPLY WITH THE CHAIN OF CUSTODY RULE, ESTABLISHED IN CASE AT BAR.—** There are generally four links that must be proved to comply with the Chain of Custody Rule. "*[F]irst,* 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." Contrary to the contentions of appellant, the prosecution had established that the buy-bust team fully complied with the required chain of custody of the seized drug such that there is no basis to depart from the lower courts' ruling that he was guilty of the illegal sale of dangerous drugs.

3. **ID.; ID.; ID.; ID.; MARKING OF THE SEIZED ITEMS NOT AT THE PLACE OF THE INCIDENT DID NOT IMPAIR THE CHAIN OF CUSTODY OF THE DRUG EVIDENCE; MORE THAN SUFFICIENT REASONS JUSTIFIED WHY MARKING, INVENTORY AND PHOTOGRAPHY WERE DONE AT THE POLICE STATION.—** The marking of the seized items at the police station, not at the place of incident, did not impair the chain of custody of the drug evidence. For one, the marking at the nearest police station is allowed whenever the same is availed of due to practical reason[s]. For another, the prosecution had explained the failure of the buy-bust team to immediately mark these items at the place where the buy-bust operation was conducted. These justifications include: (i)

because of security reasons – there were many people in the place of incident, which was a public transport terminal, and the buy-bust team was uncertain if appellant had any companion; (ii) after the buy-bust was concluded, appellant was resisting arrest and consequently, people were asking what had happened and a commotion transpired; and (iii) as mentioned, the buy-bust happened in a bus terminal, which was a busy place where buses were going out at the very exit where the actual buy-bust took place. To put it simply, as a rule, marking of the illegal drugs must be done immediately upon confiscation. "Immediate confiscation," however, has no exact definition; and in case there is such a practical reason, the marking at the nearest police station falls within the concept of immediate marking of the seized drugs. For indeed, "[m]arking upon 'immediate' confiscation can reasonably cover marking done at the nearest police station or office of the apprehending team, especially when the place of seizure is volatile and could draw unpredictable reactions from its surroundings," as in this case. Clearly, there are more than sufficient justifications on why the marking (as well as the succeeding procedures incidental to establishing the chain of custody) was conducted at the police station which was a mere kilometer away from the place of incident.

4. **ID.; ID.; ID.; ILLEGAL SALE OF DANGEROUS DRUGS, ESTABLISHED; PENALTY.—** Taken together, all the x x x circumstances showed that the buy-bust team had fully observed the required chain of custody of the confiscated illegal drugs. Without doubt, the existence of the *corpus delicti* was established in this case. Lastly, aside from properly finding that appellant was guilty of illegal sale of dangerous drugs, the penalty imposed against him by the RTC, as affirmed by the CA, is in order. Pursuant to Section 5, Article II of RA 9165, appellant must suffer the penalty of life imprisonment and a fine in the amount of ₱500,000.00.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

This is an appeal from the September 16, 2016 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR HC No. 01409-MIN, which affirmed *in toto* the April 1, 2015 Decision[2] of the Regional Trial Court (RTC) of Panabo City in Criminal Case No. Crc 52-2012 finding accused-appellant Josh Joe T. Sahibil (appellant) guilty of illegal sale of dangerous drugs (*shabu*), as defined and penalized under Section 5, Article II of Republic Act (RA) No. 9165.[3]

Factual Antecedents

In an Information dated February 1, 2012, appellant was charged with illegal sale of dangerous drugs, reading as follows:

> That on or about January 31, 2012 in the City of Panabo, Philippines and within the jurisdiction of this Honorable Court, the above named accused, without being authorized by law, willfully, unlawfully and knowingly traded, sold and delivered two (2) sachets of methamphetamine hydrochloride commonly known as 'shabu', a dangerous drug, approximately weighing 0.2977 [gram] and 0.2379 [gram], to SPO1 ROSIL ELLEVERA who was then acting as poseur-buyer in a legitimate buy-bust operation after receiving from the said poseur-buyer an envelope containing marked money consisting of ten pieces of ONE HUNDRED PESO bills.
>
> CONTRARY TO LAW.[4]

Upon arraignment, appellant pleaded "Not Guilty"[5] to this charge. Trial thereafter ensued.

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[1] CA *rollo*, pp. 78-100; penned by Associate Justice Rafael Antonio M. Santos and concurred in by Associate Justices Edgardo T. Lloren and Ruben Reynaldo G. Roxas.

[2] Records, pp. 152-165; penned by Presiding Judge Dax Gonzaga Xenos.

[3] The Comprehensive Dangerous Drugs Act of 2002.

[4] Records, p. 1.

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

Version of the Prosecution

In the third week of January 2012, the CIDG[6] Provincial Office in Tagum City (CIDG-Tagum) received information from a confidential informant (CI) that a group of gay men was selling illegal drugs in the Panabo Overland Transport Terminal (Terminal). Thus, for a week, Police Chief Inspector (PCI) Darwin S. Rafer, the Provincial Officer of the CIDG-Tagum, instructed his team to conduct surveillance on those persons mentioned by the CI. After confirming that drug sales were being held at the Terminal, the CIDG-Tagum formed a buy-bust team designating SPO3 Joseph[7] Gaco, SPO1 Rosil A. Ellevera (SPO1 Ellevera), and PO3 Johnny Collado (PO3 Collado) as team leader, poseur-buyer, and back-up/arresting officer respectively. The CI was directed to accompany the buy-bust team in the operation. During the briefing, SPO1 Ellevera placed his initials and the date of the buy-bust on 10 pieces of ₱100.00 bills to be used as marked money for the operation.[8]

At about 7:15 p.m. on January 31, 2012, and with prior coordination with the PDEA[9] and the Panabo City Police Station,[10] the buy-bust team arrived at the Terminal. SPO1 Ellevera was with the CI while the other members of the buy-bust team stayed in the vicinity. Later, the CI found alias "Wally" (later identified as appellant) at the exit of the Terminal, and introduced SPO1 Ellevera to him. Specifically, the CI told appellant that SPO1 Ellevera was a drug user who was interested in buying drugs from him (appellant). Appellant then asked SPO1 Ellevera if the latter could afford worth ₱12,000.00 of his stocks. In reply, SPO1 Ellevera told appellant that he only had ₱2,000.00 but if appellant could wait, he would withdraw money and be back with ₱12,000.00.[11]

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[6] Criminal Investigation and Detection Group.

[7] TSN, November 20, 2013, p. 4.

[8] TSN, September 11, 2013, pp. 2-7, 29.

[9] Philippine Drug Enforcement Agency.

[10] Records, pp. 9, 17.

[11] TSN, September 11, 2013, pp. 8-11.

Resultantly, SPO1 Ellevera went out of the Terminal and pretended to withdraw money. After 15 to 20 minutes, and still at the Exit area of the Terminal, SPO1 Ellevera met with appellant. He told the latter that the money was complete giving appellant a brown envelope containing the marked money while the rest was just boodle money. Immediately, appellant gave SPO1 Ellevera two sachets containing white crystallized substances. After examining them, SPO1 Ellevera scratched his head, the buy-bust team's pre-arranged signal that the sale transaction had been completed. Upon seeing the signal, the rest of the buy-bust team approached appellant and announced his arrest.[12]

Later, the team leader (SPO3 Gaco) directed the police operatives to proceed to the Panabo Police Station, which was just a kilometer way from the Terminal because: (1) of security reasons as there were many people in the Terminal and the police operatives were unaware if appellant had companions; (2) a commotion transpired since appellant was resisting arrest and people in the vicinity were asking what happened; and (3) the Terminal was busy and there was no place to do the markings of the seized items considering that buses were exiting the Terminal where the buy-bust transpired.[13]

While in transit to the police station, SPO1 Ellevera kept custody of the two sachets he bought from appellant. At around 8:00 p.m. of the same day at the police station, SPO1 Ellevera marked the sachets with his initials ("ERA") and signatures as well as the date and time of the operation. On the other hand, PO3 Collado conducted an inventory of the seized items in the presence of appellant, including an elective official (*Barangay Kagawad* Joselito Ohaylan), and representatives from the media (Gilbert P. Bacarro), and the DOJ[14] (Ian R. Dionola). Pictures were also taken during the conduct of the inventory.[15]

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[12] TSN, September 11, 2013, pp. 12-14.

[13] TSN, September 11, 2013, pp. 15-19; November 20, 2013, pp. 12-13.

[14] Department of Justice.

[15] TSN, September 11, 2013, pp. 16-17, 20-21; November 20, 2013, pp. 14-16.

At about 10:00 p.m. of even date, the police operatives brought appellant and the seized items to their office in Tagum City. Afterwards, they brought the evidence to the PNP[16] Provincial Crime Laboratory but the same was closed. As such, they returned to their office, and SPO1 Ellevera placed the subject items in his evidence locker to which he had sole access. The following day, SPO1 Ellevera delivered to the Crime Laboratory the recovered sachets and the request for their laboratory examination. In turn, PO1 Jeffrey Cambalon (PO1 Cambalon) received, weighed, and labelled them with their weights and his signatures. PO1 Cambalon also asked SPO1 Ellevera to affix his signature on each specimen.[17] Per the examination of PCI Virginia Sison Gucor (PCI Gucor), the Forensic Chemist at the Crime Laboratory, these specimens gave positive results for methamphetamine hydrochloride, a dangerous drug.[18]

Later, the counsels of both parties stipulated on the Chain of Custody document which detailed the transfer of custody of the subject *shabu* from PO1 Cambalon to PCI Gucor on February 1, 2012 at 7:30 a.m., and from PCI Gucor to Officer Maricar Villano on the same day at 2:00 p.m. Consequently, their testimonies for the purpose of establishing their participation in the Chain of Custody document were already dispensed with.[19] And since the parties had already stipulated on the due execution and contents of the chain of custody and turnover of the drug evidence, the testimony PO1 Ruffy[20] D. Federe (PO1 Federe), also from the Crime Laboratory and the one who submitted the drug evidence to the court, was likewise dispensed with.[21]

Version of the Defense

Appellant denied the accusations against him and instead narrated on these events:

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[16] Philippine National Police.

[17] TSN, September 11, 2013, pp. 23-26, 43.

[18] Records, p. 16.

[19] *Id*. at 90.

[20] Also spelled as Rhuffy in some parts of the records.

[21] *Id*. at 49, 95.

x x x [O]n January 31, 2012, at around 5:30 x x x in the evening, and while at their house, [appellant] received a text message from his gay friend, Socrates Rosario, inviting him to a fiesta celebration in Panabo City.

[Appellant] acceded to the invitation and travelled to Panabo City. When he arrived at Panabo City at around 7:00 o'clock in the evening, a motorcycle went near him and offered to transport him to his destination which was Gredu, Everlasting, Panabo City.

While on board the motorcycle and five (5) minutes had passed, the motorcycle was still not running. Subsequently, a man came near him and choked him by the neck. Surprised by the turn of events, the appellant was able to act on impulse and hit the man by the body using his elbow.

However, the man was able to subdue [appellant] and arrested him. He was made to board a car and was brought to the CIDG Office, near the Shell Station in Panabo City – they arrived at around 10:00 o'clock in the evening.

While at the CIDG Office, the arresting officers were able to seize from the appellant Php40.00 and a Nokia Cellphone. According to [appellant], he was subjected to a police interrogation and/or torture when the police officers recorded a video of him without pants and underwear.

The appellant narrated that the police officers wanted him to admit possession and ownership of the purported shabu but he vehemently denied it for he had no shabu with him.

While being subjected to severe interrogation and/or torture, out of desperation, the appellant demanded for the shabu so that he could admit ownership thereof. This angered the police officers.

During his testimony, appellant denied selling dangerous drugs to SPO1 Ellevera. According to him, he was just a back rider of a motorcycle when he was arrested near the exit of the Panabo Transport Terminal.[22]

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[22] As culled from the Brief of Accused-Appellant (with the CA); CA *rollo*, pp. 26-27.

Ruling of the Regional Trial Court

In its April 1, 2015 Decision, the RTC found appellant guilty as charged imposing upon him the penalty of life imprisonment, and ordering him to pay ₱500,000.00 as fine. It decreed that the prosecution had sufficiently shown that appellant was found to have been engaged in the illegal sale of prohibited drugs.

Moreover, in concluding that the existence of the *corpus delicti* or the subject drugs was established, the RTC highlighted that the two sachets of *shabu* bought from appellant remained in the custody of SPO1 Ellevera from the time he bought them from appellant until they were marked in the police station; and later, SPO1 Ellevera was also the one who delivered them to the Crime Laboratory. It held that the same items were thereafter turned over to the court by PO1 Federe. The police (SPO1 Ellevera and PO3 Collado) confirmed that the items presented in court were the same ones subject of the buy-bust transaction.

Ruling of the Court of Appeals

The CA affirmed *in toto* the RTC Decision.

Undaunted, appellant appealed before the Court reiterating his contentions before the CA. He insisted that he must be acquitted as the chain of custody rule was not observed faulting the police for its failure to immediately mark the subject items after confiscation. He also ascribed irregularity in the fact that the necessary witnesses – an elective official, and representatives from the media and the DOJ – were not present during the sale (made by appellant) and seizure of the subject illegal drugs.

Issue

Whether appellant is guilty beyond reasonable doubt of illegal sale of *shabu*.

Our Ruling

This appeal is patently without merit.

The Court has repeatedly elucidated that, in order for the accused to be convicted of illegal sale of dangerous drugs, the

prosecution must establish the elements of the crime as well as the *corpus delicti* or the drug/s subject of the case.[23] These primordial requirements were duly proved here leaving no doubt that appellant was guilty beyond reasonable doubt of the illegal sale of dangerous drugs.

Under Section 5, Article II of RA 9165, any person, who, without lawful authority, shall sell any dangerous drug, regardless of quantity and purity, shall be guilty of illegal sale of dangerous drugs. More particularly, to be convicted of this charge, the prosecution must prove with moral certainty: (1) the identity of the seller and the buyer; (2) the object and consideration of the sale; and, (3) the delivery of the thing sold and the payment therefor.[24]

All these elements were present here.

As uniformly found by the RTC and the CA, on January 31, 2012, the operatives of the CIDG-Tagum conducted a buy-bust operation on the appellant; during the transaction, appellant sold to SPO1 Ellevera two sachets of *shabu* in exchange for money placed in an envelope, which appellant believed to be worth ₱12,000.00 but which in fact comprised of ₱1,000.00 marked money, the rest being just boodle money. This being so, the identity of the seller (appellant) and the buyer (SPO1 Ellevera); the object (two sachets of *shabu*) and their consideration (marked money), as well as the delivery of the illegal drugs and payment for the same, were established.

Appellant nonetheless insists that he must be acquitted on the ground that the police operatives failed to comply with the Chain of Custody Rule which governs the handling of the drug evidence from its confiscation until its presentation in court as evidence.

We disagree.

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[23] *People v. De Asis*, G.R. No. 225219, June 11, 2018.

[24] *People v. Taboy*, G.R. No. 223515, June 25, 2018.

Section 21, Article II of RA 9165 provides for the Chain of Custody Rule or the procedure on how seized drug/s and/or related items must be handled until they are presented in court as evidence, to wit:

> Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs* x x x. — The PDEA shall take charge and have custody of all dangerous drugs x x x 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 x x x 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 x x x.

There are generally four links that must be proved to comply with the Chain of Custody Rule. "*[F]irst*, 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."[25]

Contrary to the contentions of appellant, the prosecution had established that the buy-bust team fully complied with the

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[25] *People v. Calvelo*, G.R. No. 223526, December 6, 2017.

required chain of custody of the seized drug such that there is no basis to depart from the lower courts' ruling that he was guilty of the illegal sale of dangerous drugs.

To stress, after the conclusion of the buy-bust operation, the police operatives, along with the appellant, proceeded to the nearby Panabo Police Station, where SPO1 Ellevera **marked** the sachets of *shabu* he bought from appellant with his initials (ERA), signature, and the date and time of the buy-bust.

The marking of the seized items at the police station, not at the place of incident, did not impair the chain of custody of the drug evidence. For one, the marking at the nearest police station is allowed whenever the same is availed of due to practical reason[s].[26] For another, the prosecution had explained the failure of the buy-bust team to immediately mark these items at the place where the buy-bust operation was conducted.

These justifications include: (i) because of security reasons — there were many people in the place of incident, which was a public transport terminal, and the buy-bust team was uncertain if appellant had any companion; (ii) after the buy-bust was concluded, appellant was resisting arrest and consequently, people were asking what had happened and a commotion transpired; and (iii) as mentioned, the buy-bust happened in a bus terminal, which was a busy place where buses were going out at the very exit where the actual buy-bust took place.[27]

To put it simply, as a rule, marking of the illegal drugs must be done immediately upon confiscation. "Immediate confiscation," however, has no exact definition; and in case there is such a practical reason, the marking at the nearest police station falls within the concept of immediate marking of the seized drugs. For indeed, "[m]arking upon 'immediate' confiscation can reasonably cover marking done at the nearest police station or office of the apprehending team, especially

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[26] *People v. Pundugar*, G.R. No. 214779 (Resolution), February 7, 2018.

[27] TSN, September 11, 2013, pp. 15-18; November 20, 2013, pp. 12-13.

when the place of seizure is volatile and could draw unpredictable reactions from its surroundings,"[28] as in this case.

Clearly, there are more than sufficient justifications on why the marking (as well as the succeeding procedures incidental to establishing the chain of custody) was conducted at the police station which was a mere kilometer away from the place of incident.

Moreover, at the Panabo Police Station, PO3 Collado conducted an **inventory** of the recovered sachets of *shabu*. The inventory of these items was done in the presence of appellant and the necessary witnesses — an elective official, Brgy. *Kagawad* Joselito Ohaylan; a media representative, Gilbert P. Bacarro; as well as a representative from the DOJ, Ian R. Dionola. At the same time, **pictures** were taken during the inventory of these items.

In addition, there was nothing irregular in the turnover of the seized illegal drugs to the Crime Laboratory. Note that it was established that, within 24 hours from the seizure of the *shabu*, SPO1 Ellevera delivered them to the Crime Laboratory. PO1 Cambalon received, weighed, and labelled them and, thereafter, turned them over to their Forensic Chemist, PCI Gucor. In turn, upon examination by the Forensic Chemist, these specimens tested positive of methamphetamine hydrochloride. In fact, the counsels of the parties stipulated on the Chain of Custody document and even dispensed with the testimonies of PO1 Cambalon and PCI Gucor as well as that of PO1 Federe, who delivered the drug evidence to the court. These matters only proved that even the defense had, early on, agreed to the full compliance with the Chain of Custody Rule by the buy-bust team.

Furthermore, SPO1 Ellevera and PO3 Collado **identified in court** that the items presented thereat were the same ones they recovered during the buy-bust operation against appellant.

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[28] *Macad v. People*, G.R. No. 227366, August 1, 2018.

Taken together, all the foregoing circumstances showed that the buy-bust team had fully observed the required chain of custody of the confiscated illegal drugs. Without doubt, the existence of the *corpus delicti* was established in this case.

Lastly, aside from properly finding that appellant was guilty of illegal sale of dangerous drugs, the penalty imposed against him by the RTC, as affirmed by the CA, is in order. Pursuant to Section 5,[29] Article II of RA 9165, appellant must suffer the penalty of life imprisonment and a fine in the amount of ₱500,000.00.

WHEREFORE, the appeal is **DISMISSED**. The assailed September 16, 2016 Decision of the Court of Appeals in CA-G.R. CR HC No. 01409-MIN is hereby **AFFIRMED**.

SO ORDERED.

Bersamin, C.J., Jardeleza, Gesmundo, and *Carandang, JJ.*, concur.

THIRD DIVISION

[G.R. No. 234951. January 28, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BENJAMIN A. ELIMANCIL,** *accused-appellant.*

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[29] SECTION 5. *Sale x x x of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell x x x any dangerous drug x x x regardless of the quantity and purity involved x x x.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL; GUIDING PRINCIPLES IN REVIEWING RAPE CASES.—** In reviewing rape cases, this Court has constantly been guided by three principles, to wit: (1) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence for the defense. And as a result of these guiding principles, credibility of the complainant becomes the single most important issue. If the testimony of the victim is credible, convincing and consistent with human nature, and the normal course of things, the accused may be convicted solely on the basis thereof.

2. **ID.; EVIDENCE; CREDIBILITY OF WITNESSES; APPELLATE COURTS WILL GENERALLY NOT DISTURB THE FINDINGS OF THE TRIAL COURT, CONSIDERING THAT THE LATTER IS IN A BETTER POSITION TO DECIDE THE QUESTION AS IT HEARD THE WITNESSES THEMSELVES AND OBSERVED THEIR DEPORTMENT AND MANNER OF TESTIFYING DURING TRIAL.—** The determination of the credibility of the offended party's testimony is a most basic consideration in every prosecution for rape, for the lone testimony of the victim, if credible, is sufficient to sustain the verdict of conviction. As in most rape cases, the ultimate issue in this case is credibility. In this regard, when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question as it heard the witnesses themselves and observed their deportment and manner of testifying during trial. The exceptions to the rule are when such evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied some facts or circumstance of weight and substance which could affect the result of the case. In the present case, the said circumstances are not present, thus, it does not warrant an exception to the coverage of the rule.

3. CRIMINAL LAW; REVISED PENAL CODE; RAPE; IT IS NOT NECESSARY FOR RAPE TO BE COMMITTED IN AN ISOLATED PLACE, FOR RAPISTS BEAR NO RESPECT FOR LOCALE AND TIME IN CARRYING OUT THEIR EVIL DEED.— To discredit AAA, appellant raises the argument that the crime of rape could not have happened since another person was inside an adjacent room and any commotion would have easily been noticed by the latter. Such reasoning is unacceptable. In a long line of cases, this Court has ruled that a small living quarter has not been considered to be a safe refuge from a sexual assault. Rape can be committed in the same room with the rapist's spouse or where other members of the family are also sleeping, in a house where there are other occupants or even in places which to many might appear unlikely and high-risk venues for its commission. Lust, it has been said before, is apparently no respecter of time and place. Neither is it necessary for the rape to be committed in an isolated place, for rapists bear no respect for locale and time in carrying out their evil deed.

4. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; CONSIDERED AS INHERENTLY WEAK DEFENSES AND CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION OF THE ACCUSED AS THE ONE WHO COMMITTED THE CRIME.— [D]enial and alibi are viewed by this Court with disfavor, considering these are inherently weak defenses, especially in this case where AAA positively identified appellant as the one who committed the crime against her, as well as her straightforward and convincing testimony detailing the circumstances and events leading to the rape.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

This is to resolve the appeal of appellant Benjamin A. Elimancil that seeks to reverse and set aside the Decision[1] dated July 14, 2017 of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 07588, affirming the Decision[2] dated May 20, 2015 of the Regional Trial Court (*RTC*), [redacted], Bataan, finding appellant guilty beyond reasonable doubt of Simple Rape under Article 266-A, par. 1 of the Revised Penal Code (*RPC*).

The facts follow.

AAA,[3] the victim, was alone inside her boarding house in [redacted], Bataan on the night of August 14, 2000 because her board-mate, [redacted], was out visiting friends. AAA then fell asleep with the lights on after she cleaned the house and waited for Agnes.

Later, around 11:30 p.m., AAA felt someone lie beside her and she was immediately awakened. She saw appellant, Benjamin

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[1] Penned by Associate Justice Eduardo B. Peralta, Jr., with the concurrence of Associate Justices Remedios A. Salazar-Fernando and Mario V. Lopez; *rollo*, pp. 2-9.

[2] Penned by Presiding Judge Emmanuel A. Silva; CA *rollo*, pp. 23-31.

[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*, 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).

Elimancil, poking a knife on her left side. She knew Benjamin because both of them grew up in [redacted], Bataan, and was a friend of her brother.

Thereafter, Benjamin pulled down AAA's pajama and panty while still poking the knife at her. AAA tried to resist, but all she could do was cry because appellant was still holding the knife. Appellant proceeded to remove his pants and underwear and placed himself on top of her. Afterwards, he forced his penis in AAA's vagina and made a push-and-pull movement for more than one minute. AAA felt pain and cried until she felt a hot liquid come out from appellant's penis. When AAA looked down, she saw blood in her vagina. Before appellant left, he told AAA not to mention to anybody what transpired between them or something bad would happen to her.

AAA remained at her boarding house and cried until her board-mate Agnes arrived past midnight. AAA told Agnes what transpired and on the following day, AAA went to her hometown in [redacted], Bataan and also told her parents what happened.

The father of AAA immediately went to the [redacted] Police Station and asked assistance from the authorities to look for appellant. The policemen found appellant in [redacted], Bataan and the latter promised to go to AAA's parents' house in [redacted], Bataan, but did not do so.

On August 17, 2000, AAA went to the Bataan Provincial Hospital and was examined by Dr. Neriza A. Paguio. AAA's examination yielded the following medico-legal findings:

> Pertinent Physical Findings:
>
> - Patient is conscious, coherent, ambulatory
>
> Breast – globularly enlarged with brownish aerola and overted nipples
>
> Axilla – (-) axilliary hair flat
>
> Genitalia – well distributed pubic hair
>
> Labia majora and minora closely apposed
>
> (+) superficial healed lacerations at 1, 4, 6, 7, 9, 10 o'clock position.

Hence, an Information was filed against appellant for the crime of Rape which reads as follows:

> That on or about 14 August 2000, in [redacted], Bataan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, by means of force, threat, and intimidation, armed with a bladed weapon, did then and there willfully, unlawfully, and feloniously lie and succeed in having sexual intercourse with AAA, against her will and consent, to her damage and prejudice.
>
> CONTRARY TO LAW.

Appellant pleaded not guilty during his arraignment, thus, trial on the merits ensued.

Appellant denied raping AAA. According to him, AAA invited him at her boarding house for a birthday party. When appellant arrived, he saw five women, including AAA and her boardmate, [redacted]. Appellant slept over, while the other three left the boarding house. The following day, appellant claimed that AAA and [redacted]s went to their respective jobs. He added that it was impossible for him to sexually assault AAA, considering that the occupant of the adjacent room, Joel Malate, could have easily heard any commotion.

The RTC, on May 20, 2015, rendered its Judgment and found appellant guilty beyond reasonable doubt of the crime of Rape. The dispositive portion of the decision reads as follows:

> WHEREFORE, this Court finds accused BENJAMIN A. ELIMANCIL guilty beyond reasonable doubt of the crime of Rape under Article 266-A, paragraph 1 of the Revised Penal Code and there being an aggravating circumstance of the use [sic] a deadly weapon, a bladed weapon in the commission of the offense without the presence of any mitigating circumstance to offset the same, the Court hereby sentences said accused BENJAMIN A. ELIMANCIL to suffer the penalty of *reclusion perpetua* without eligibility for parole.
>
> In addition, accused BENJAMIN A. ELIMANCIL is hereby ordered to pay the victim "AAA" the amount of Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (₱75,000.00) as moral damages and the amount of Thirty Thousand Pesos (₱30,000.00) as exemplary damages.

SO ORDERED.[4]

The RTC, aside from ruling that the elements of the crime of rape was proven beyond reasonable doubt, also held that appellant was not able to present any proof as to the ill motives of AAA.

Thus, appellant elevated the case to the CA, and the latter, on July 14, 2017, promulgated its Decision affirming the decision of the RTC, the dispositive portion of which reads:

> WHEREFORE, in the light of the foregoing premises, the instant APPEAL is hereby DENIED and the Decision dated May 20, 2015 in Criminal Case No. ML-1731 of the Regional Trial Court of [redacted], Bataan is hereby AFFIRMED.
>
> SO ORDERED.[5]

The CA, in affirming the Decision of the RTC, also ruled that the medico-legal findings are consistent with the claim of the victim AAA that she was raped and that her straightforward, positive, and spontaneous testimony prevails over appellant's surmises.

Hence, the present appeal.

The appeal is unmeritorious.

In reviewing rape cases, this Court has constantly been guided by three principles, to wit: (1) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence for the defense. And as a result of these guiding principles, credibility of the complainant becomes the single most important issue. If the

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[4] CA *rollo*, p. 63.

[5] *Rollo*, p. 8.

testimony of the victim is credible, convincing and consistent with human nature, and the normal course of things, the accused may be convicted solely on the basis thereof.[6]

The determination of the credibility of the offended party's testimony is a most basic consideration in every prosecution for rape, for the lone testimony of the victim, if credible, is sufficient to sustain the verdict of conviction.[7] As in most rape cases, the ultimate issue in this case is credibility. In this regard, when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question as it heard the witnesses themselves and observed their deportment and manner of testifying during trial.[8] The exceptions to the rule are when such evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied some facts or circumstance of weight and substance which could affect the result of the case.[9] In the present case, the said circumstances are not present, thus, it does not warrant an exception to the coverage of the rule.

A review of the testimony of AAA would clearly show its consistency and straightforwardness, a matter which the trial court correctly appreciated, thus:

FISCAL VELASCO:

Q What was that unusual incident that happened that you remember?
A On August 14, 2000, sir, I was sleeping in my boarding house. I was awaken (sic) when I felt somebody lied beside me.

Q And when you felt somebody lied beside you, what did you do?
A I woke up sir, and when I was surprised when he poked a knife on my side.

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[6] *People v. SPO1 Aure, et al.*, 590 Phil. 848, 866 (2008).

[7] *People v. Malana*, 644 Phil. 290, 302 (2010), citing *People v. Peralta*, 619 Phil. 268, 273 (2009).

[8] *Remiendo v. People*, 618 Phil. 273, 287 (2009).

[9] *People v. Panganiban*, 412 Phil. 98, 107 (2001).

Q And who was this person who lied beside you and who poked a knife on your left side?
A Benjamin Elimancil, sir.

Q And why did you say that it was Benjamin Elimancil who lied beside you and poked a knife on you?
A Because we have a light on then (sic), sir, and I know him.

Q How long have you known Benjamin Elimancil?
A I knew him, sir, because he is a [friend] of my brother and we both live in the same place.

Q And when you felt a knife on your side and the accused Benjamin Elimancil besides (sic) you, what happened next?
A He told me not to shout, sir or else something bad will happen to me.

Q And after saying those things, what happened next?
A He forcibly removed my pajama and my panty, sir.

Q Was he able to pull your pajama and your panty down?
A Yes, sir.

Q Up to where was your panty and your pajama pulled down?
A Middle of my legs, sir.

Q And when he was able to pull down your panty and your pajama, what did Benjamin Elimancil do?
A He removed his pants and his brief, sir.

Q And after removing his pants and brief, what else did he do, if any?
A He lied on top of me, sir. I cannot fight him because he was poking a knife on my side. I was so afraid that I just cried.

x x x x x x x x x

Q And while forcing his organ unto your private part, what did you do, if any?
A I cried, sir. I tried to resist but I cannot do anything.

Q Despite the fact that you were crying, what did you do next when he was forcing his organ onto your sex organ, what else happened, if any?
A After he was able to insert his organ into my private part, sir, he made a push-and-pull motion and I got shocked.

Q And how long did he stay on top of you when he was making a motion of up and down?
A For more than one (1) minute, sir.

Q And what did you feel when his organ is inside your sex organ?
A I got hurt and I continued crying, sir.

Q And after a minute as you have stated, what did you feel when he was making that up and down motion, what did you feel?
A I just felt that there was this hot liquid that came from him, sir.

Q And after that, what happened next?
A I looked and I saw that the front portion of my body is bloodied, sir.

Q And what did Benjamin Elimancil do after that?
A He told me not to mention to anybody about it or else something bad will happen to me, sir.

Q After uttering those remarks to you, what did he do next, if any?
A He left, sir.[10]

Based on the testimony of AAA, she was able to narrate convincingly to the trial court the crime that was committed, hence, the trial court's assessment of AAA's credibility must not be disturbed. As ruled by this Court in *People of the Philippines v. Castel*:[11]

> Findings of facts and assessment of credibility of witnesses are matters best left to the trial court. What militates against the claim of appellant is the time-honored rule that the findings of facts and assessment of credibility of witnesses are matters best left to the trial court. The trial court has the unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath – all of which are useful aids for an accurate determination of a witness' honesty and sincerity.

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[10] TSN, July 3, 2001, pp. 4-7.

[11] 593 Phil. 288, 315-316 (2008).

Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, the trial court's assessment must be respected, for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and to detect if they were lying.

To discredit AAA, appellant raises the argument that the crime of rape could not have happened since another person was inside an adjacent room and any commotion would have easily been noticed by the latter. Such reasoning is unacceptable. In a long line of cases, this Court has ruled that a small living quarter has not been considered to be a safe refuge from a sexual assault.[12] Rape can be committed in the same room with the rapist's spouse or where other members of the family are also sleeping,[13] in a house where there are other occupants or even in places which to many might appear unlikely and high-risk venues for its commission.[14] Lust, it has been said before, is apparently no respecter of time and place.[15] Neither is it necessary for the rape to be committed in an isolated place, for rapists bear no respect for locale and time in carrying out their evil deed.[16]

It must be remembered that denial and alibi are viewed by this Court with disfavor,[17] considering these are inherently weak defenses,[18] especially in this case where AAA positively identified appellant[19] as the one who committed the crime against

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[12] *People v. Guntang*, 406 Phil. 487, 524 (2001).

[13] *People v. Domingo*, 579 Phil. 254, 267-268 (2008); *People v. Orande*, 461 Phil. 403, 415 (2003).

[14] *People v. Montesa*, 592 Phil. 681, 704 (2008).

[15] *People v. Evina*, 453 Phil. 25, 41 (2003).

[16] *People v. Cañada*, 617 Phil. 587, 603 (2009), citing *People v. Watimar*, 392 Phil. 711, 724 (2000); *People v. Alkodha*, 583 Phil. 692, 704 (2008).

[17] *People v. Dacoba*, 352 Phil. 70,78 (1998).

[18] *People v. Estrada*, 624 Phil. 211, 222 (2010).

[19] See *People v. Achas*, 612 Phil. 652, 663 (2009).

her, as well as her straightforward and convincing testimony detailing the circumstances and events leading to the rape.[20]

The penalty imposed by the RTC and affirmed by the CA is proper, except for the award of exemplary damages. Per recent jurisprudence, the amount of exemplary damages awarded should be ₱75,000.00, instead of ₱30,000.00.[21]

WHEREFORE, the appeal is **DISMISSED**. The Decision dated July 14, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07588, affirming the Decision dated May 20, 2015 of the Regional Trial Court, [redacted], Bataan, finding Benjamin A. Elimancil guilty beyond reasonable doubt of Simple Rape under Article 266-A, par. 1 of the Revised Penal Code, is **AFFIRMED** with the **MODIFICATION** that appellant is **ORDERED** to **PAY** the victim AAA, aside from the earlier awarded civil and moral damages, the amount of ₱75,000.00 as exemplary damages, with interest at the rate of six percent (6%) *per annum* from the finality of this Decision until said amounts are fully paid.

SO ORDERED.

Leonen, Reyes, A. Jr., Hernando, and *Carandang,*[*] *JJ.*, concur.

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[20] *Id*. at 662.

[21] See *People v. Jugueta*, 783 Phil. 806 (2016).

[*] Designated Additional Member per Special Order No. 2624 dated November 28, 2018.

SECOND DIVISION

[G.R. No. 238865. January 28, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BILLY ACOSTA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; IN CRIMINAL CASES, THE APPEAL CONFERS THE APPELLATE COURT FULL JURISDICTION OVER THE CASE AND RENDERS SUCH COURT COMPETENT TO EXAMINE RECORDS, REVISE THE JUDGMENT APPEALED FROM, INCREASE THE PENALTY, AND CITE THE PROPER PROVISION OF THE PENAL LAW.— [I]n criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

2. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCH AND SEIZURE; A SEARCH AND SEIZURE MUST BE CARRIED OUT THROUGH OR ON THE STRENGTH OF A JUDICIAL WARRANT PREDICATED UPON THE EXISTENCE OF PROBABLE CAUSE.— Section 2, Article III of the 1987 Constitution mandates that a search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause, absent which, such search and seizure become "unreasonable" within the meaning of said constitutional provision. To protect the people from unreasonable searches and seizures, Section 3 (2), Article III of the 1987 Constitution provides that evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding. In other words, evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted

and should be excluded for being the proverbial fruit of a poisonous tree.

3. **ID.; ID.; ID.; ID.; PLAIN VIEW DOCTRINE; REQUISITES.—** One of the recognized exceptions to the need of a warrant before a search may be effected is when the "plain view" doctrine is applicable. In *People v. Lagman*, this Court laid down the following parameters for its application": x x x The 'plain view' doctrine applies when the following requisites concur: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of evidence in plain view is **inadvertent**; (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure.

4. **ID.; ID.; ID.; ID.; ID.; CANNOT APPLY IF THE DISCOVERY OF THE EVIDENCE IS NOT INADVERTENT.—** The testimonies of P/Insp. Gundaya, SPO4 Legaspi, and Salucana collectively paint the picture that the police officers proceeded with the arrest of Acosta for the mauling incident armed with prior knowledge that he was also illegally planting marijuana x x x. It is clear from Salucana's testimony that he knew of Acosta's illegal activities even prior to the mauling incident. In fact, it may be reasonably inferred that the mauling incident had something to do with Acosta's planting of marijuana. It is also clear that Salucana apprised the police officers of the illegal planting and cultivation of the marijuana plants when he reported the mauling incident. Thus, when the police officers proceeded to Acosta's abode, **they were already alerted to the fact that there could possibly be marijuana plants in the area**. This belies the argument that the discovery of the plants was inadvertent. In *People v. Valdez*, the Court held that the "plain view" doctrine cannot apply if the officers are actually "searching" for evidence against the accused x x x. Verily, it could not be gainsaid that the discovery was inadvertent when the police officers already knew that there could be marijuana plants in the area. Armed with such knowledge, they would naturally be more circumspect in their observations. In effect, they proceeded to Acosta's abode, not only to arrest him for the mauling incident, but also to verify Salucana's report that Acosta was illegally planting marijuana. Thus, the second requisite for the "plain view" doctrine is absent. Considering

that the "plain view" doctrine is inapplicable to the present case, the seized marijuana plants are inadmissible in evidence against Acosta for being fruits of the poisonous tree.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated February 22, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01612-MIN, which affirmed the Judgment[3] dated February 7, 2017 of the Regional Trial Court of Gingoog City, Branch 43 (RTC) in Crim. Case No. 2015-6192, finding accused-appellant Billy Acosta (Acosta) guilty beyond reasonable doubt of violating Section 16, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information[5] filed before the RTC accusing Acosta of the crime of Illegal Planting and Cultivation of Marijuana Plant, defined and penalized under

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[1] See Notice of Appeal dated March 23, 2018; *rollo*, pp. 23-24.

[2] *Id*. at 3-22. Penned by Associate Justice Ruben Reynaldo G. Roxas with Associate Justices Edgardo T. Lloren and Walter S. Ong, concurring.

[3] CA *rollo*, pp. 27-35. Penned by Presiding Judge Mirabeaus A. Undalok.

[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 September 11, 2015. Records, pp. 6-7.

Section 16, Article II of RA 9165. The prosecution alleged that at around seven (7) o'clock in the morning of September 10, 2015 in Purok 2, Barangay San Juan, Gingoog City, Alfredo Salucana (Salucana) went to the Gingoog City Police Station to report a mauling incident where Acosta purportedly hit him with a piece of wood. He also reported that Acosta was illegally planting marijuana. Salucana's foregoing reports prompted Police Inspector Ismael Virgil O. Gundaya (P/Insp. Gundaya), Senior Police Officer 4 Henry B. Legaspi (SPO4 Legaspi), Senior Police Officer 2 Jan Jomen (SPO2 Jomen), and Police Officer 3 Leo Pontillas (PO3 Pontillas) to proceed to Acosta's home in Purok 2, Barangay San Juan, Gingoog City. Thereat, Salucana positively identified Acosta who was then walking on the trail leading towards his house. The police officers then rushed towards Acosta and arrested him before he entered his home. After the arrest, SPO4 Legaspi found thirteen (13) hills of suspected marijuana plants planted beneath the "gabi" plants just outside Acosta's home, and around a meter away from where he was arrested. Upon seeing the marijuana, SPO4 immediately called Barangay Captain Rodulfo Maturan (Brgy. Captain Maturan), Barangay Kagawad Danilo Macaraig (Brgy. Kagawad Macaraig), and Mrs, Joyce Donguines (Mrs. Donguines) of the Farmer's Association, to witness the uprooting of the suspected marijuana plants. Thereafter, they brought Acosta and the uprooted marijuana plants to the police station for the marking and inventory of the seized items. At the police station, the suspected marijuana plants were marked and inventoried in the presence of Acosta, Brgy. Captain Maturan, and Mrs. Donguines. SPO4 Legaspi then delivered the seized items to Police Chief Inspector Joseph T. Esber (PCI Esber) of the Philippine National Police (PNP) Regional Crime Laboratory where, after examination,[6] the plants tested positive for marijuana, a dangerous drug. PCI Esber then turned over the specimens to the Evidence Custodian.[7]

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[6] See Chemistry Report No. D-91-2015 MIS OR dated September 10, 2015; records, p. 13.

[7] See *rollo*, pp. 5-6. See also CA *rollo*, pp. 27-29.

In defense, Acosta denied the charges against him and maintained that the accusations hurled against him were all fabricated.[8] He likewise argued that the seized marijuana plants are inadmissible in evidence as the "plain view" doctrine is not applicable.[9] Acosta argued that the discovery was not inadvertent because it was Salucana who pointed out the marijuana plants to the police.[10] Furthermore, there was a violation of Section 21, Article II of RA 9165 since there was no proof of the photography of the marking and inventory of the seized marijuana plants.[11]

In a Judgment[12] dated February 7, 2017, the RTC found Acosta 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.[13] The RTC held that the marijuana plants were inadvertently found in plain view by the police officers during a lawful arrest. It also found that the prosecution, through testimonial and documentary evidence, had established beyond reasonable doubt that Acosta indeed illegally planted and cultivated thirteen (13) hills of marijuana plants at his residence. Likewise, the RTC held that the identity, integrity, and evidentiary value of the illegal marijuana plants were duly preserved as the chain of custody was proved by the prosecution. The RTC found Acosta's defense of denial unavailing, as it cannot prevail over the positive testimony of prosecution's witnesses.[14] Aggrieved, Acosta appealed[15] to the CA.

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[8] See *rollo*, pp. 6-7.

[9] See records, p. 83.

[10] See CA *rollo*, p. 22.

[11] See records, pp. 83-84.

[12] CA *rollo*, pp. 27-35.

[13] *Id*. at 35.

[14] See *id*. at 29-34.

[15] See Notice of Appeal dated February 8, 2017; records, p. 110.

In a Decision[16] dated February 22, 2018, the CA affirmed the RTC ruling.[17] It held that the requirements of the "plain view" doctrine were complied with in that the police officers: (*a*) had prior justification to be in the area in order to apprehend Acosta for the mauling incident; (*b*) did not purposefully search for the marijuana plants but came across them inadvertently in the course of the arrest as they were in their line of sight; and (*c*) were able to recognize the marijuana plants owing to their different foliar characteristics from the "*gabi*" plants. The CA likewise found that the prosecution sufficiently established beyond reasonable doubt all the elements of the crime charged against Acosta, and all the links constituting the chain of custody.[18]

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

The Court's Ruling

The appeal is meritorious.

At the outset, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[19]

Section 2,[20] Article III of the 1987 Constitution mandates that a search and seizure must be carried out through or on the

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[16] *Rollo*, pp. 3-22.

[17] *Id*. at 21.

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

[19] *Sindac v. People*, 794 Phil. 421, 427 (2016).

[20] Section 2, Article III of the 1987 Constitution states:

strength of a judicial warrant predicated upon the existence of probable cause, absent which, such search and seizure become "unreasonable" within the meaning of said constitutional provision. To protect the people from unreasonable searches and seizures, Section 3 (2),[21] Article III of the 1987 Constitution provides that evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding. In other words, evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree.[22]

One of the recognized exceptions to the need of a warrant before a search may be effected is when the "plain view" doctrine is applicable. In *People v. Lagman*,[23] this Court laid down the following parameters for its application":

> Objects falling in plain view of an officer who has a right to be in a position to have that view are subject to seizure even without a search warrant and may be introduced in evidence. The 'plain view' doctrine applies when the following requisites concur: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of evidence in plain view is **inadvertent**; (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure.

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.

[21] Section 3 (2), Article III of the 1987 Constitution states:

Section 3. x x x.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

[22] *Sindac v. People*, *supra* note 19, at 428.

[23] 593 Phil. 617 (2008).

The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area. In the course of such lawful intrusion, he came inadvertently across a piece of evidence incriminating the accused. The object must be open to eye and hand **and its discovery inadvertent**.[24] (Emphases supplied)

In this case, the first and third requisites were not seriously contested by Acosta. Instead, he argues that the second requisite is absent since the discovery of the police officers of the marijuana plants was not inadvertent as it was prompted by Salucana. After a careful review of the records, this Court is inclined to agree.

The testimonies of P/Insp. Gundaya, SPO4 Legaspi, and Salucana collectively paint the picture that the police officers proceeded with the arrest of Acosta for the mauling incident armed with prior knowledge that he was also illegally planting marijuana:

Direct Examination

[Assistant City Prosecutor Alfredo Z. Gomez (ACP Gomez)]: Why did you know that marijuana plants are owned and planted by the accused Billy Acosta?
[P/Insp. Gundaya]: It was **disclosed to us by his foster father Alfredo Salucana that Billy Acosta is cultivating marijuana plants**.[25] (Emphasis supplied)

Direct Examination

[ACP Gomez]: If you know who was the one who planted those marijuana plants?
[SPO4 Legaspi]: I do not have personal knowledge considering that we did not see the accused in this case cultivate the plants. However, **we just have been in [sic] fed of the information by Alfredo Salucana that it was Billy Acosta who cultivated that plants**.[26] (Emphasis supplied)

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[24] *Id*. at 628-629, citing *People v. Doria*, 361 Phil. 595, 633-634 (1999).

[25] TSN, February 16, 2016, p. 5.

[26] TSN, May 3, 2016, p. 4.

Direct Examination

[Court]: And that was the only time that you resort to report the incident to the police because he hurt you?
[Salucana]: Yes, Sir.

Q: **At that time you reported the matter to the police you also told the police that Billy Acosta was planting marijuana**?
A: Yes, Sir.

Q: That is why they went with you because of that report **because he planted marijuana** and he struck you with a piece of wood?
A: Yes, Sir.

x x x x x x x x x

ACP Gomez: (continuing) Would you know of any reason why Billy Acosta would strike you with a wood?
[Salucana]: Because of the marijuana that I was able to pass.

x x x x x x x x x

Q: Did you ever call the attention of Billy Acosta about the marijuana plants you testified to?
A: I told him that planting the marijuana plants is against the law.

Q: What was his response?
A: He told me that he will change when he will be imprisoned.[27]
(Emphases supplied)

It is clear from Salucana's testimony that he knew of Acosta's illegal activities even prior to the mauling incident. In fact, it may be reasonably inferred that the mauling incident had something to do with Acosta's planting of marijuana. It is also clear that Salucana apprised the police officers of the illegal planting and cultivation of the marijuana plants when he reported the mauling incident. Thus, when the police officers proceeded to Acosta's abode, **they were already alerted to the fact that there could possibly be marijuana plants in the area**. This belies the argument that the discovery of the plants was inadvertent. In *People v. Valdez*,[28] the Court held that the "plain

[27] TSN, March 8, 2016, pp. 6 and 8.

[28] 395 Phil. 206 (2000).

view" doctrine cannot apply if the officers are actually "searching" for evidence against the accused, to wit:

> Note further that the police team was dispatched to appellant's *kaingin* precisely to search for and uproot the prohibited flora. The seizure of evidence in "plain view" applies **only where the police officer is not searching for evidence against the accused, but inadvertently comes across an incriminating object. Clearly, their discovery of the cannabis plants was not inadvertent.** We also note the testimony of SPO2 Tipay that upon arriving at the area, they first had to "look around the area" before they could spot the illegal plants. Patently, **the seized marijuana plants were not "immediately apparent"**and a **"further search" was needed**. In sum, the marijuana plants in question were not in "plain view" or "open to eye and hand." The "plain view" doctrine, thus, cannot be made to apply.[29] (Emphases supplied)

Verily, it could not be gainsaid that the discovery was inadvertent when the police officers already knew that there could be marijuana plants in the area. Armed with such knowledge, they would naturally be more circumspect in their observations. In effect, they proceeded to Acosta's abode, not only to arrest him for the mauling incident, but also to verify Salucana's report that Acosta was illegally planting marijuana. Thus, the second requisite for the "plain view" doctrine is absent. Considering that the "plain view" doctrine is inapplicable to the present case, the seized marijuana plants are inadmissible in evidence against Acosta for being fruits of the poisonous tree.[30]

All told, since the marijuana plants seized from Acosta constitute inadmissible evidence in violation of Section 3 (2), Article III of the 1987 Constitution, and given that the confiscated plants are the very *corpus delicti* of the crime charged, the Court finds Acosta's conviction to be improper and therefore, acquits him.

WHEREFORE, the appeal is **GRANTED**. The Decision dated February 22, 2018 of the Court of Appeals in CA-G.R. CR-H.C. No. 01612-MIN is hereby **REVERSED** and **SET**

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[29] *Id*. at 220; citations omitted.

[30] See *id*. at 220-221.

ASIDE. Accordingly, accused-appellant Billy Acosta is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 239521. January 28, 2019]

PRIMO A. MINA, FELIX DE VERA, POMPEYO MAGALI, BERNADETTE AMOR and PURIFICACION DELA CRUZ, *petitioners, vs.* **THE COURT OF APPEALS and RODOLFO C. TANDOC,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; APPEALS PROCESS IN THE NATIONAL PROSECUTION SERVICE; AUTHORITY TO RULE WITH FINALITY APPEALED CASES SUBJECT OF PRELIMINARY INVESTIGATION/REINVESTIGATION ARE DELEGATED TO THE OFFICE OF THE REGIONAL STATE PROSECUTORS; CASE AT BAR.— DOJ Department Circular No. 70-A delegated to the ORSPs the authority to **rule with finality** cases subject of preliminary investigation/reinvestigation appealed before it, provided that:

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[*] Designated Additional Member per Special Order No. 2629 dated December 18, 2018.

(*a*) the case is not filed in the National Capital Region (NCR); and (*b*) the case, should it proceed to the courts, is cognizable by the Metropolitan Trial Courts (MeTCs), Municipal Trial Courts (MTCs) and Municipal Circuit Trial Courts (MCTCs) – which includes not only violations of city or municipal ordinances, but also all offenses punishable with imprisonment **not exceeding six (6) years** irrespective of the amount of fine, and regardless of other imposable accessory or other penalties attached thereto. This is, however, without prejudice on the part of the SOJ to review the ORSP ruling, should the former deem it appropriate to do so in the interest of justice. The foregoing amendment is further strengthened by a later issuance, namely DOJ Department Circular No. 018-14 dated June 18, 2014, entitled "Revised Delegation of Authority on Appealed Cases." x x x In this case, records show that petitioners filed a criminal complaint before the OPP accusing Tandoc of Perjury. The complaint was, however, dismissed by the OPP and such dismissal was upheld by the ORSP. Since (*a*) the criminal complaint was filed outside of the NCR; (*b*) perjury cases are cognizable by the first-level courts since the maximum penalty therefor is imprisonment for less than six (6) years; and (*c*) it appears that the SOJ did not exercise its power of control and supervision over the entire NPS by reviewing the ORSP ruling, the ORSP's affirmance of the OPP ruling was with finality. As such, petitioners have already exhausted its administrative remedies and may now go to the CA via a petition for *certiorari*.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; ESTABLISHED IN CASE AT BAR.— [T]he Court concludes that the CA gravely abused its discretion in dismissing outright the petition for *certiorari* filed before it by petitioners. On this note, since the Court recognizes that the dismissal of petitioners' petition for *certiorari* filed before the CA was due to a mere technicality, it is only appropriate that this case be remanded to the said appellate court for its resolution on the merits.

APPEARANCES OF COUNSEL

Decano Law Office for petitioners.
Nolan R. Evangelista for Rodolfo C. Tandoc.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for *certiorari*[1] are the Resolutions dated May 22, 2017[2] and March 12, 2018[3] of the Court of Appeals (CA) in CA-G.R. SP No. 150130 which dismissed petitioners Primo A. Mina, Felix De Vera, Pompeyo Magali, Bernadette Amor, and Purificacion Dela Cruz's (petitioners) petition for *certiorari* before it for purportedly availing of a wrong remedy.

The Facts

This case stemmed from an Affidavit-Complaint[4] for Perjury, as defined and penalized under Article 183 of the Revised Penal Code (RPC), filed by petitioners against respondent Rodolfo C. Tandoc (Tandoc) before the Office of the Provincial Prosecutor of Pangasinan (OPP). After the requisite preliminary investigation proceedings, the OPP dismissed petitioners' criminal complaint against Tandoc for lack of probable cause.[5] Aggrieved, petitioners appealed before the Office of the Regional State Prosecutor (ORSP) located in San Fernando City, La Union. However, the ORSP affirmed the OPP's findings that no probable cause exists to indict Tandoc for the crime of Perjury. Undaunted, petitioners filed a petition for *certiorari* before the CA.[6]

The CA Ruling

In a Resolution[7] dated May 22, 2017, the CA dismissed the petition outright on the ground that petitioners availed of a

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[1] *Rollo*, pp. 4-15.

[2] *Id*. at 17-18. Penned by Associate Justice Ramon A. Cruz with Associate Justices Mario V. Lopez and Carmelita Salandanan-Manahan, concurring.

[3] *Id*. at 20-22.

[4] Dated August 2, 2016; CA *rollo*, pp. 102-108.

[5] See Resolution dated September 30, 2016; *id*. at 179-181.

[6] See *rollo*, p. 6.

[7] *Id*. at 17-18.

wrong remedy. It held that under Department of Justice (DOJ) Department Circular No. 70-A, petitioners should have first appealed the adverse ORSP ruling to the Secretary of Justice (SOJ) before elevating the matter to the regular courts.[8]

Petitioners moved for reconsideration but the same was denied in a Resolution[9] dated March 12, 2018; hence, this petition.[10]

The Issue Before the Court

Whether or not the CA erred in dismissing the petition for *certiorari* on the ground of petitioners' supposed availment of a wrong remedy.

The Court's Ruling

To recapitulate, the CA ruled that petitioners should have first elevated the adverse ORSP ruling to the SOJ before availing of judicial remedies. On the other hand, petitioners maintain that the ORSP ruling is already final, and as such, it correctly elevated the matter to the courts by filing a petition for *certiorari*. before the CA.

The Court finds for petitioners.

DOJ Department Circular No. 70[11] dated July 3, 2000, entitled the "2000 NPS Rule on Appeal," which governs the appeals process in the National Prosecution Service (NPS), provides that resolutions of, *inter alia*, the Regional State Prosecutor, in cases subject of preliminary investigation/reinvestigation shall be appealed by filing a verified petition for review before the SOJ.[12] However, this procedure was immediately amended by DOJ Department Circular No. 70-A[13] dated July 10, 2000, entitled

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[8] *Id*.

[9] *Id*. at 20-22.

[10] *Id*. at 4-15.

[11] (September 1, 2000).

[12] See Sections 1 and 4 of DOJ Circular No. 70.

[13] (September 1, 2000).

"Delegation of Authority to Regional State Prosecutors to Resolve Appeals in Certain Cases," which reads:

DEPARTMENT CIRCULAR NO. 70-A

SUBJECT: Delegation of Authority to Regional State Prosecutors to Resolve Appeals in Certain Cases

In order to expedite the disposition of appealed cases governed by Department Circular No. 70 dated July 3, 2000 ("2000 NPS RULE ON APPEAL"), **all petitions for review of resolutions of Provincial/ City Prosecutors in cases cognizable by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts**, except in the National Capital Region, **shall be filed with the Regional State Prosecutor concerned who shall resolve such petitions with finality** in accordance with the pertinent rules prescribed in the said Department Circular.

The foregoing delegation of authority notwithstanding, the Secretary, of Justice may, pursuant to his power of supervision and control over the entire National Prosecution Service and in the interest of justice, review the resolutions of the Regional State Prosecutors in appealed cases.

x x x x x x x x x (Emphases and underscoring supplied)

As may be gleaned above, DOJ Department Circular No. 70-A delegated to the ORSPs the authority to **rule with finality** cases subject of preliminary investigation/reinvestigation appealed before it, provided that: (*a*) the case is not filed in the National Capital Region (NCR); and (*b*) the case, should it proceed to the courts, is cognizable by the Metropolitan Trial Courts (MeTCs), Municipal Trial Courts (MTCs) and Municipal Circuit Trial Courts (MCTCs) – which includes not only violations of city or municipal ordinances, but also all offenses punishable with imprisonment **not exceeding six (6) years** irrespective of the amount of fine, and regardless of other imposable accessory or other penalties attached thereto.[14] This is, however, without

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[14] See Section 32 of *Batas Pambansa Blg.* 129, entitled "AN ACT REORGANIZING THE JUDICIARY, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES," otherwise known as "THE

prejudice on the part of the SOJ to review the ORSP ruling, should the former deem it appropriate to do so in the interest of justice. The foregoing amendment is further strengthened by a later issuance, namely DOJ Department Circular No. 018-14[15] dated June 18, 2014, entitled "Revised Delegation of Authority on Appealed Cases," pertinent portions of which read:

DEPARTMENT CIRCULAR NO. 018-14

SUBJECT: Revised Delegation of
Authority on Appealed Cases

In the interest of service and pursuant to the provisions of existing laws with the objective of institutionalizing the Department's Zero Backlog Program on appealed cases, the following guidelines shall be observed and implemented in the resolution of appealed cases on Petition for Review and Motions for Reconsideration:

1. Consistent with Department Circular No. 70-A, all appeals from resolutions of Provincial or City Prosecutors, except those from the National Capital Region, in cases cognizable by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts, shall be by way of a petition for review to the concerned province or city. The Regional Prosecutor shall resolve the petition for review with finality, in accordance with the rules prescribed in pertinent rules and circulars of this Department. *Provided, however*, that the Secretary of Justice may, pursuant to the power of control and supervision over the entire National Prosecution Service, review, modify or reverse, the resolutions of the Regional Prosecutor in these appealed cases.

2. Appeals from resolutions of Provincial or City Prosecutors, except those from the National Capital Region, in all other cases shall be by way of a petition for review to the Office of Secretary of Justice.

3. Appeals from resolutions of the City Prosecutors in the National Capital Region in cases cognizable by Metropolitan Trial Courts shall be by way of a petition for review to the Prosecutor General who

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JUDICIARY REORGANIZATION ACT OF 1980," as amended (August 14, 1981).

[15] (July 1, 2014)

shall decide the same with finality. *Provided, however*, that the Secretary of Justice may, pursuant to the power of control and supervision over the entire National Prosecution Service, review, modify or reverse, the resolutions of the Prosecutor General in these appealed cases.

4. Appeals from resolutions of the City Prosecutors in the National Capital Region in all other cases shall be by way of a petition for review to the Office of the Secretary.

x x x x x x x x x

This Circular supersedes all inconsistent issuances, takes effect on 01 July 2014 and shall remain in force until further orders.

For guidance and compliance.

In *Cariaga v. Sapigao*,[16] the Court harmonized the foregoing DOJ Circulars, and accordingly, interpreted the prevailing appeals process of the NPS as follows:

A reading of the foregoing provisions shows that the prevailing appeals process in the NPS with regard to complaints subject of preliminary investigation would depend on two factors, namely: where the complaint was filed, *i.e*., whether in the NCR or in the provinces; and which court has original jurisdiction over the case, *i.e*., whether or not it is cognizable by the MTCs/MeTCs/MCTCs. Thus, the rule shall be as follows:

(a) **If the complaint is filed outside the NCR and is cognizable by the MTCs/MeTCs/MCTCs, the ruling of the OPP may be appealable by way of petition for review before the ORSP, which ruling shall be with finality**;

(b) If the complaint is filed outside the NCR and is not cognizable by the MTCs/MeTCs/MCTCs, the ruling of the OPP may be appealable by way of petition for review before SOJ, which ruling shall be with finality;

(c) If the complaint is filed within the NCR and is cognizable by the MTCs/MeTCs/MCTCs, the ruling of the OCP may be appealable

[16] G.R. No. 223844, June 28, 2017, 828 SCRA 436.

by way of petition for review before the Prosecutor General, whose ruling shall be with finality;

(d) If the complaint is filed within the NCR and is not cognizable by the MTCs/MeTCs/MCTCs, the ruling of the OCP may be appealable by way of petition for review before the SOJ, whose ruling shall be with finality;

(e) ***Provided*, that in instances covered by (a) and (c), the SOJ may, pursuant to his power of control and supervision over the entire National Prosecution Service, review, modify, or reverse the ruling of the ORSP or the Prosecutor General, as the case may be**.[17] (Emphases and underscoring supplied)

In this case, records show that petitioners filed a criminal complaint before the OPP accusing Tandoc of Perjury. The complaint was, however, dismissed by the OPP and such dismissal was upheld by the ORSP. Since (*a*) the criminal complaint was filed outside of the NCR; (*b*) perjury cases are cognizable by the first-level courts since the maximum penalty therefor is imprisonment for less than six (6) years;[18] and (*c*) it appears that the SOJ did not exercise its power of control and supervision over the entire NPS by reviewing the ORSP ruling, the ORSP's affirmance of the OPP ruling was with finality. As such, petitioners have already exhausted its administrative remedies and may now go to the CA via a petition for *certiorari*.

In this light, the Court concludes that the CA gravely abused its discretion in dismissing outright the petition for *certiorari* filed before it by petitioners. On this note, since the Court recognizes that the dismissal of petitioners' petition for *certiorari* filed before the CA was due to a mere technicality, it is only appropriate that this case be remanded to the said appellate court for its resolution on the merits.

WHEREFORE, the petition is **GRANTED**. The Resolutions dated May 22, 2017 and March 12, 2018 of the Court of Appeals in CA-G.R. SP No. 150130 are hereby **REVERSED** and **SET**

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[17] *Id.* at 446-447.

[18] See Article 183 of the Revised Penal Code.

ASIDE. Accordingly, this case is **REMANDED** to the Court of Appeals for its resolution on the merits.

SO ORDERED.

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

EN BANC

[A.M. No. 18-03-03-SB. January 29, 2019]

RE: E-MAIL COMPLAINT OF MA. ROSARIO GONZALES AGAINST HON. MARIA THERESA MENDOZA-ARCEGA, Associate Justice, Sandiganbayan and HON. FLERIDA Z. BANZUELA, Presiding Judge, Regional Trial Court, Branch 51, Sorsogon City, Sorsogon.

SYLLABUS

1. LEGAL ETHICS; JUDGES; UNDUE DELAY IN RENDERING A DECISION, COMMITTED; A JUDGE SHOULD NOT DEFER THE RENDERING OF A DECISION JUST BECAUSE OF A PENDING MOTION TO WITHDRAW AS COUNSEL.— Nevertheless, the Court agrees that Judge Zaballa-Banzuela was guilty of undue delay in rendering a decision in Gonzales' annulment case. At the onset, it bears emphasizing that she failed to comply with Section 18 of A.M. No. 02-11-10-SC. As noted by the OCA, Judge Zaballa-Banzuela gave the parties 30 days to submit their respective memoranda from the time the trial was terminated—beyond the 15 days allowed by the rules. Observance of the

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[*] Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2019.

15-day period is vital as the rules provide that the case is considered submitted for decision after the lapse of the said period, even if no memoranda was submitted. As applied in the present circumstances, the case should have been deemed submitted for decision on October 5, 2016 because the trial was terminated on September 20, 2016. However, Judge Zaballa-Banzuela even granted Gonzales' Motion for Extension to file a Memorandum and gave her until November 20, 2016 to file one. In addition, even assuming that Judge Zaballa-Banzuela's orders regarding the submission of the memoranda and the extension given to Gonzales were in order, she still failed to render a decision within the prescribed 90-day period. The 90-day period to render a decision is constitutionally mandated and failure to decide cases within the same constitutes a ground for administrative sanction except when there are valid reasons for the delay. The prompt disposal of cases is necessary as undue delay erodes the public's faith and confidence to the justice system and brings it into disrepute. Here, even after the extension Judge Zaballa-Banzuela had granted no memoranda were submitted. Thus, she should have considered the case submitted for decision and prepared drafting the same in order to comply with the 90-day period. Judge Zaballa-Banzuela erred in deferring the rendering of the decision just because of a Motion to Withdraw as Counsel was filed by Gonzales' counsel. The said motion pertained to issues tangentially related to those in the main case. Judge Zaballa-Banzuela could have resolved Gonzales' annulment case notwithstanding the pendency of the motion to withdraw as counsel.

2. **ID.; ID.; ID.; THE COURT DEFERRED THE IMPOSITION OF THE ACTUAL PENALTIES IN VIEW OF THE PRESENCE OF MITIGATING FACTORS AND IN LIEU THEREOF JUST REPRIMAND RESPONDENT JUDGE.—** Undue delay in rendering a decision is a less serious charge which may subject the erring judge to suspension from office without salary and other benefits from one to three months, or a fine of ₱10,000.00 to ₱20,000.00. However, the Court may defer from imposing the actual penalties in the presence of mitigating factors. As pointed out by the OCA, this is Judge Zaballa-Banzuela's first offense in her more than seven years of service. In addition, she was motivated by honest intensions in deferring the resolution of the case by wanting to resolve

the issues raised in the motion to withdraw as counsel. Based on the circumstances, it is best to just reprimand Judge Zaballa-Banzuela to be circumspect in complying with the prescribed period for deciding cases.

R E S O L U T I O N

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

Subject of this Resolution is the Complaint[1] of Ma. Rosario Gonzales (Gonzales) against Sandiganbayan Associate Justice Ma. Theresa V. Mendoza-Arcega (Justice Mendoza-Arcega), then Presiding Judge of Regional Trial Court, Branch 17, Malolos City, Bulacan (RTC) from November 21, 2012 to January 19, 2016, Judge Sita Jose-Clemente, then pairing judge of the RTC from January 20, 2016 to June 2016, and Judge Flerida P. Zaballa-Banzuela (Judge Zaballa-Banzuela), then Acting Presiding Judge of the RTC from June 2016 to November 2017.

Gonzales was a party-litigant before the RTC in Civil Case No. 664-M-2012, where she was the petitioner for the annulment of her marriage. She assailed that the judges and personnel of the RTC, particularly Justice Mendoza-Arcega and Judge Zaballa-Banzuela, were incompetent and unprofessional in handling the above-mentioned case. Gonzales highlighted that while her annulment case was uncomplicated and was "extremely simple," it still took the RTC five years to decide the case. She pointed out that most of the delays in her case, *i.e.*, failure of the judge or the prosecutor to appear on scheduled dates, occurred when Justice Mendoza-Arcega was still the Presiding Judge of the RTC.

In addition, Gonzales specified the following as examples of tardiness of the judges and personnel of the RTC:

1. Summons for her husband was ready for service on January 25, 2013, but was served only on March 21, 2013;

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[1] *Rollo*, pp. 3-4.

2. The pre-trial hearing was scheduled on August 6, 2013 after more than three months from the order to conduct non-collusion investigation was made on April 26, 2013;

3. It took 12 months from the first pre-trial hearing date until actual hearing was conducted because several pre-trial hearings were cancelled due to the absence of the judge;

4. It took six months after her testimony before the next witness testified;

5. Four months delay in the testimony of the expert witness on account of the absence of the prosecutor during the initial hearing date; and

6. Three months delay in the testimony of the respondent because the prosecutor failed to appear during the original hearing date.[2]

Further, Gonzales bewailed that Judge Zaballa-Banzuela failed to render the Decision within the 90-day period from the date the case was submitted for decision. She also decried that it took three months after the promulgation of the Decision before an Entry of Final Judgment was made. Gonzales lamented that her case could have been completed within 18 months, but due to the incompetence and carelessness of the RTC, under the supervision of Justice Mendoza-Arcega and Judge Zaballa-Banzuela, she wasted another three years of her life. In addition, she pointed out the fact that the RTC had no telephone or internet connection as another sign of ineptitude.

In its March 13, 2018 Resolution,[3] the Court directed the Office of the Court Administrator (OCA) for investigation, report and recommendation. Pursuant to the Court's Resolution, the OCA requested the RTC to transmit the entire records of Civil Case No. 664-M-2012 to study the allegations concerning the said case. After going over the records of Civil Case No. 664-M-2012, the OCA directed Judge Zaballa-Banzuela to comment on Gonzales' complaint.

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

[3] *Id.* at 5.

In her Comment[4] dated November 14, 2018, Judge Zaballa-Banzuela explained that she rendered the July 10, 2017 Decision within the 90-day period for decision making. She noted that she initially granted Gonzales' *ex parte* motion to extend the period for filing of her memoranda until November 20, 2016; however, on December 2, 2016, Gonzales' counsel filed a Motion to Withdraw as counsel. Judge Zaballa-Banzuela expounded that she first resolved the Motion to Withdraw as Counsel and eventually ordered the parties to file their respective memoranda within 30 days from receipt of the Order denying the said motion and submitting the case for decision. As such, Judge Zaballa-Banzuela surmised that even assuming that the parties received the Order dated March 13, 2017 on the same day, the 90-day period commenced only on April 13, 2017 and ending on July 13, 2017. She highlighted that the decision was rendered within the 90-day period as it was promulgated on July 10, 2017.

On the other hand, Judge Zaballa-Banzuela dispelled the allegations of undue delay in the proceedings during her time as the Acting Presiding Judge of the RTC. She pointed out that the June 14, 2016 hearing was cancelled because the prosecutor assigned to the case was indisposed due to a pending case in another court.

Report and Recommendation

In its Report and Recommendation[5] dated December 7, 2018, the OCA manifested that it did not require Justice Mendoza-Arcega to comment on the complaint since upon a circumspect consideration, it found that the allegations against her are without merit. The OCA averred that while Gonzales may feel that her "very simple" case took a long time to be decided, her annulment went through the mandated procedure such as the pre-trial and the collusion investigation. Further, it noted that there was no delay in the service of the summons to Gonzales' husband as it was to be served outside the territorial jurisdiction of the

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[4] *Id.* at 16-22.

[5] *Id.* at 33-40.

RTC. The OCA highlighted that the summons was coursed through and received by the Office of the Clerk of Court of Iligan City on March 18, 2013 and was eventually served to Gonzales' husband on March 21, 2013.

In addition, the OCA found that Justice Mendoza-Arcega acted reasonably when she ordered the collusion investigation to be commenced on April 26, 2013 and the pre-trial conference to be set in August. It averred that the period between the collusion investigation and the pre-trial conference was set so as to afford the prosecutor sufficient time to conduct its investigation and prepare its report for the court. The OCA pointed out that the fact that the prosecutor already made a report as early as May 30, 2013 is of no moment especially since Gonzales never requested an earlier setting of the pre-trial conference after receiving the report on June 25, 2013.

As to the delays and resetting during the pre-trial and trial stage, the OCA observed that it was either due to the absence of the judge or the prosecutor due to official business, or inability of Gonzales to attend the proceedings due to illness or foreign travel. It also elucidated that the hearing dates are not set in stone, and, as such, Gonzales could have requested for an earlier setting if she was not amenable to the dates provided by the court.

Meanwhile, the OCA found that there was no delay in the making of the entry of judgment. It clarified that Gonzales' husband received the July 10, 2017 Decision on October 23, 2017 while the Office of the Solicitor General received the same only on November 7, 2013 — the entry of judgment was made on November 24, 2017.

Nevertheless, the OCA opined that Judge Zaballa-Banzuela incurred delay in rendering the decision in Civil Case No. 664-M-2012. It noted that she violated Section 18 of A.M. No. 02-11-10-SC[6] which provides that the court may require the parties

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[6] *Rule of Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages*.

to file their memoranda within 15 days from the date the trial is terminated. The OCA pointed out that Judge Zaballa-Banzuela submitted the case for decision in her Order dated September 20, 2016 giving the parties 30 days to file their respective memoranda. Even assuming that Judge Zaballa-Banzuela's Order granting Gonzales' Motion for Extension to file her memorandum was valid, it is still of the position that she was guilty of delay because she should have commenced preparing the decision on November 20, 2016, or the last day of Gonzales' extension. The OCA expounded that her counsel's December 2, 2016, Motion to Withdraw as Counsel was immaterial since the case was already submitted for decision and no more proceedings were to be conducted.

The Court's Ruling

The Court adopts the recommendation of the OCA.

In *In Re: Verified Complaint of Fernando Castillo against Associate Justice Mariflor Punzalan-Castillo, Court of Appeals, Manila*,[7] the Court reminded that accusations against members of the judiciary must be supported by sufficient evidence especially since the Court will not think twice in disciplining errant members of the judiciary, to wit:

> Thus, the Court does not take lightly any accusation or imputation of wrongdoing against members of the judiciary, especially against magistrates of the appellate court. After all, a single member in disrepute will effectively tarnish the image of the judiciary as the bastion of justice and protector of the voiceless and oppressed. The Court will not hesitate to mete out the appropriate penalty to those who fail to uphold the high standards and expectations of the judiciary, even if it means handing out the harshest punishment possible. Neither will the Court blindly castigate erring judiciary officials and personnel without sufficient evidence or proof.

A thorough review of the records reveal that Gonzales' accusations against Justice Mendoza-Arcega and Judge Zaballa-

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[7] OCA IPI No. 17-267-CA-J, April 24, 2018.

Banzuela of delay in the conduct of proceedings in Civil Case No. 664-M-2012 are baseless and unwarranted.

Gonzales laments that her annulment case was uncomplicated and simple, yet, it took the RTC five years before a decision was rendered. Nevertheless, the OCA observed that the Gonzales' annulment case flowed through the usual proceedings from the collusion investigation until the rendition of judgment. It is true that justice must be administered with dispatch, but it must be orderly and expeditious — not only concerned at the speed in which justice was delivered.[8] In other words, the length or the duration of the proceedings is not the only barometer in determining whether there was delay in the dispensation of justice. Interruptions warranted under the circumstances or allowed by the rules of procedure do not equate to the delay resulting to a failure in the administration of justice — the delay must have been unjustified.

In the present case, other than Gonzales' conclusion that the RTC dilly dallied in deciding her case, there are no evidence to suggest that the proceedings in Civil Case No. 664-M-2012 were tainted with undue delay. On the contrary, circumstances show that the disturbances were justified or were within the bounds of procedural law.

Gonzales' perceived delay in the service of the summons to her husband and in the conduct of the collusion investigation and pre-trial conference are flawed. *First*, it is noteworthy that the summons was served not within the territorial jurisdiction of the RTC, but in Isabela. The summons was served to Gonzales' husband within three days from the time the trial court of Isabela received the same. *Second*, Justice Mendoza-Arcega acted within reason in giving at least three months to the prosecutor to conduct the collusion investigation and to prepare a report before the pre-trial conference. The fact that the prosecutor did not exhaust the entire period is immaterial. In addition, Gonzales never requested for an earlier setting of the pre-trial conference in

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[8] *Escobar v. People*, G.R. Nos. 228349 and 228353, September 19, 2018.

spite of the knowledge that a report had been made earlier than scheduled.

As to the resetting of hearing dates and the gap between hearing dates, the alleged undue delay is more of a perception than reality. As pointed out by the OCA, the rescheduling of the hearing dates were due to the unavailability of the judge or prosecutor on official business. There were times that it was also due to Gonzales' unavailability on account of her illness or foreign travel. Thus, the causes of the delay were neither unjustified nor arbitrary. On the other hand, it is of judicial notice that hearing dates are calendared based on the schedule of other cases pending before a particular court. As such, the hearing dates may vary depending on the workload of a particular court. Also, it bears emphasizing that Gonzales was represented by her counsel during the proceedings, and if she had any concerns regarding the scheduling of hearing dates, she could have asked for an earlier setting through her counsel.

Likewise, the Court finds that there was no delay in making the entry of judgment. The following are important dates to consider in determining whether there was delay in the entry of judgment: (1) the Decision was rendered on **July 10, 2017**; (2) Gonzales' husband received the Decision on **October 23, 2017**; (3) the OSG received the same on **November 7, 2017**; and (4) the entry of judgment was made on **November 24, 2017**. Entry of judgment is to be issued upon finality of judgment. In turn, a decision or judgment becomes final upon the denial of an appeal or after the lapse of the period to appeal with no appeal being filed.

Decisions in a petition for declaration of absolute nullity or petition for annulment shall become final upon the expiration of the 15 days from notice to the parties.[9] Prior to the receipt of the decision of the RTC by Gonzales' husband and the OSG, the period before the decision would become final has not yet commenced. The 15-day period before the decision becomes final is not reckoned from the date of promulgation.

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[9] A.M. No. 02-11-10-SC, Section 19(3).

A closer look on the accusations of undue delay levelled by Gonzales would show that it was brought about by a lack of knowledge and understanding of the law, its nuances and of legal procedure. This is understandable considering that she is a layperson, who is not expected to fully comprehend the intricacies of the law. As such, no fault could be attributed to Justice Mendoza-Arcega and Judge Zaballa-Banzuela with regard to the allegations of undue delay or inefficiency in the conduct of the proceedings in Civil Case No. 664-M-2012.

Nevertheless, the Court agrees that Judge Zaballa-Banzuela was guilty of undue delay in rendering a decision in Gonzales' annulment case. At the onset, it bears emphasizing that she failed to comply with Section 18[10] of A.M. No. 02-11-10-SC. As noted by the OCA, Judge Zaballa-Banzuela gave the parties 30 days to submit their respective memoranda from the time the trial was terminated—beyond the 15 days allowed by the rules. Observance of the 15-day period is vital as the rules provide that the case is considered submitted for decision after the lapse of the said period, even if no memoranda were submitted. As applied in the present circumstances, the case should have been deemed submitted for decision on October 5, 2016 because the trial was terminated on September 20, 2016. However, Judge Zaballa-Banzuela even granted Gonzales' Motion for Extension to file a Memorandum and gave her until November 20, 2016 to file one.

In addition, even assuming that Judge Zaballa-Banzuela's orders regarding the submission of the memoranda and the extension given to Gonzales were in order, she still failed to render a decision within the prescribed 90-day period. The 90-

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[10] SEC. 18. *Memoranda*. — The court may require the parties and the public prosecutor, in consultation with the Office of the Solicitor General, to file their respective memoranda in support of their claims **within fifteen days** from date the trial is terminated. It may require the Office of the Solicitor General to file its own memorandum if the case is of significant interest to the State. No other pleadings or papers may be submitted without leave of court. After the lapse of the period herein provided, the case will be considered submitted for decision, with or without the memoranda.

day period to render a decision is constitutionally mandated and failure to decide cases within the same constitutes a ground for administrative sanction except when there are valid reasons for the delay.[11] The prompt disposal of cases is necessary as undue delay erodes the public's faith and confidence to the justice system and brings it into disrepute.[12]

Here, even after the extension Judge Zaballa-Banzuela had granted, no memoranda were submitted. Thus, she should have considered the case submitted for decision and prepared drafting the same in order to comply with the 90-day period. Judge Zaballa-Banzuela erred in deferring the rendering of the decision just because of a Motion to Withdraw as Counsel was filed by Gonzales' counsel. The said motion pertained to issues tangentially related to those in the main case. Judge Zaballa-Banzuela could have resolved Gonzales' annulment case notwithstanding the pendency of the motion to withdraw as counsel.

Undue delay in rendering a decision is a less serious charge[13] which may subject the erring judge to suspension from office without salary and other benefits from one to three months, or a fine of ₱10,000.00 to ₱20,0000.00.[14] However, the Court may defer from imposing the actual penalties in the presence of mitigating factors.[15] As pointed out by the OCA, this is Judge Zaballa-Banzuela's first offense in her more than seven years of service. In addition, she was motivated by honest intentions in deferring the resolution of the case by wanting to resolve the issues raised in the motion to withdraw as counsel. Based on the circumstances, it is best to just reprimand Judge Zaballa-Banzuela to be circumspect in complying with the prescribed period for deciding cases.

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[11] *Edaño v. Judge Asdala*, 651 Phil. 183, 187 (2010).

[12] *Office of the Court Administrator v. Judge Reyes*, 566 Phil. 325, 333 (2008).

[13] RULES OF COURT, Rule 140, Section 9(1) of A.M. No. 01-8-10-SC.

[14] *Id*. at Section 11(B)(1).

[15] *Judge Arganosa-Maniego v. Salinas*, 608 Phil. 334, 346 (2009).

WHEREFORE, the complaint against Associate Justice Ma. Theresa V. Mendoza-Arcega is **DISMISSED**.

Judge Flerida P. Zaballa-Banzuela is **GUILTY** for undue delay in rendering a Decision. She is **REPRIMANDED** with a **STERN WARNING** that a repetition of the same or a similar offense will be dealt with more severely.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Gesmundo, Hernando, and *Carandang, JJ.*, concur.

Reyes, A. Jr., J., on leave.

EN BANC

[A.M. No. P-18-3791. January 29, 2019]
(Formerly OCA IPI No. 15-4447-P)

MILAGROS P. MALUBAY, Legal Researcher II, Regional Trial Court, Branch 270, Valenzuela City, *complainant, vs.* **HONORIO RAUL C. GUEVARA, Clerk III, Same Court,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; GROSS NEGLECT OF DUTY; REFERS TO SUCH NEGLECT WHICH, FROM THE GRAVITY OF THE CASE OR THE FREQUENCY OF INSTANCES, BECOMES SO SERIOUS IN ITS CHARACTER AS TO ENDANGER OR THREATEN THE PUBLIC WELFARE.— Neglect of duty

is the failure [of] a public official or employee to give attention to a task expected of him. The public official or employee of the Judiciary responsible for such act or omission cannot escape the disciplinary power of this Court. **Simple neglect of duty** is contrasted from **gross neglect. Gross neglect of duty** refers to negligence characterized by the glaring want of care; by acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally; or by acting with a conscious indifference to consequences with respect to other persons who may be affected. It is such neglect which, from the gravity of the case or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare. It does not necessarily include wilful neglect or intentional official wrongdoing.

2. **ID.; ID.; ID.; ID.; LOSS OF COURT RECORDS WHILE IN THE CUSTODY OF THE EMPLOYEE TASKED TO TAKE CUSTODY THEREOF REFLECTS LACK OF DILIGENCE IN THE PERFORMANCE OF DUTIES AND IT CONSTITUTES GROSS NEGLECT OF DUTY.—** As Clerk III, the respondent was tasked, among others, to take custody of the records of criminal cases raffled to and being heard by Branch 270; to update said records; and to prepare the accompanying documents for transmittal of the records of appealed criminal cases to the CA as the appellate court. Regrettably, he was frequently grossly remiss in discharging his duties. He repeatedly failed to update the criminal dockets under his custody; was careless in attaching documents to their corresponding case records; and did not prepare the case records for prompt transmission to the CA despite the specific instructions and constant reminders from his superiors. In addition, parts of the records of some criminal cases went missing while under his custody. Such loss of court records while in his custody reflected his lack of diligence in performing his duties, and indubitably revealed his uncharacteristic indifference to and wanton abandonment of his regular assigned duties and responsibilities. He thereby became guilty of **gross neglect of duty.**

3. **ID.; ID.; ID.; ID.; GROSS INSUBORDINATION; INDICATES AN INEXPLICABLE AND UNJUSTIFIED REFUSAL TO OBEY SOME ORDER THAT A SUPERIOR IS ENTITLED**

TO GIVE AND HAVE OBEYED, AND IMPORTS A WILLFUL OR INTENTIONAL DISREGARD OF THE LAWFUL AND REASONABLE INSTRUCTIONS OF THE SUPERIOR.— But **gross neglect of duty** was not the respondent's only sin. He further frequently disobeyed or ignored without any valid justification his superiors' directives and instructions for the conscientious performance of his duties. He persisted on his errant conduct and bad attitude despite the several opportunities that his superiors accorded to him to mend his ways. He thereby manifested his brazen disrespect for and defiance towards his superiors. He was thus also guilty of **gross insubordination,** which is the inexplicable and unjustified refusal to obey some order that a superior is entitled to give and have obeyed, and imports a willful or intentional disregard of the lawful and reasonable instructions of the superior.

4. **ID.; ID.; ID.; ID.; INEFFICIENCY AND GROSS INCOMPETENCE IN THE PERFORMANCE OF OFFICIAL DUTIES; UNSATISFACTORY RATINGS FOR TWO CONSECUTIVE SEMESTERS, A CASE OF.—** [T]he respondent received unsatisfactory ratings for two consecutive semesters, a true demonstration of how poorly and ineptly he had discharged his assigned tasks. As such, he was likewise guilty of **inefficiency and gross incompetence in the performance of his official duties.**

5. **ID.; ID.; ID.; ID.; THE CONDUCT REQUIRED OF COURT OFFICIALS OR EMPLOYEES, FROM THE PRESIDING JUDGES TO THE LOWLIEST CLERKS, MUST ALWAYS BE IMBUED WITH THE HEAVY BURDEN OF RESPONSIBILITY AS TO REQUIRE THEM TO BE FREE FROM ANY SUSPICION THAT MAY TAINT THE IMAGE AND REPUTATION OF THE JUDICIARY.—** This Court has always emphasized that the conduct required of court officials or employees, from the presiding judges to the lowliest clerks, must always be imbued with the heavy burden of responsibility as to require them to be free from any suspicion that may taint the image and reputation of the Judiciary. Any act or omission that contravenes this norm of conduct disgraces the Judiciary. Anyone falling short of the norm must be sanctioned without hesitation lest he infect his co-workers with the same malaise.

6. ID.; ID.; REVISED RULES OF ADMINISTRATIVE CASES IN THE CIVIL SERVICE; PENALTIES; IN CASE OF TWO OR MORE CHARGES OR COUNTS, THE PENALTY TO BE IMPOSED SHALL BE THAT CORRESPONDING TO THE MOST SERIOUS OFFENSE, AND THE REST OF THE COUNTS SHALL BE TREATED AS AGGRAVATING CIRCUMSTANCES.— Section 46, Rule 10 of the *Revised Rules of Administrative Cases in the Civil Service* (RRACCS) classifies **gross neglect of duty** as a grave offense punishable by dismissal from the service even on the first violation. Although **gross insubordination** and **gross inefficiency and incompetence in the performance of official duties** each merits the penalty of suspension for six months and one day to one year for the first violation, Section 50 of the RRACCS provides that in case of two or more charges or counts, the penalty to be imposed shall be that corresponding to the most serious offense, and the rest of the counts shall be treated as aggravating circumstances. **Gross neglect of duty,** which is the most serious offense, is considered as aggravated herein by **gross insubordination** and **gross inefficiency and gross incompetence in the performance of his official duties.** Hence, the OCA's recommendation to dismiss the respondent from the service is proper and just.

D E C I S I O N

***PER CURIAM*:**

A court employee who fails to exercise diligence in performing his duties and repeatedly disregards the directives and instructions of his superiors for him to do so is a disgrace to the Judiciary, and should be dismissed from the service. His name should be stricken out from the roll.

The Case

We hereby consider and resolve the administrative complaint charging herein respondent Clerk III of Branch 270 in the Regional Trial Court (RTC) in Valenzuela City with **gross neglect of duty** and **gross disobedience to the directives and instructions of his superiors.**

Antecedents

On June 2, 2015, Milagros P. Malubay, the Officer-in-Charge (OIC) Branch Clerk of Court of Branch 270 of the RTC, initiated the administrative complaint,[1] alleging that the respondent had received two consecutive "unsatisfactory" performance ratings in the periods from July to December 2014 and from January to June 2015;[2] and that he had also continuously disobeyed the instructions contained in several memoranda issued by her[3] by Presiding Judge Evangeline M. Francisco, and by Clerk of Court Atty. Maribel M. Fernandez, namely:

(1) Memorandum dated December 6, 2012 directing the respondent to index the records of Criminal Case No. 835-V-10 (*People of the Philippines v. Raymond A. de Jesus*) for subsequent transmittal to the Court of Appeals (CA);

(2) Memorandum dated January 7, 2013 of Atty. Fernandez directing the respondent to submit in writing his report on the mishandling of Criminal Case No. 590-V-10 (*People of the Philippines v. Singh, et al.*), because he had insisted that he submitted the records of the case to Judge Francisco but a massive search revealed that the records were hidden in his filing cabinet;

(3) Memorandum dated January 16, 2013 of Atty. Fernandez updating Judge Francisco that as of date, the respondent had failed to comply with the January 7, 2013 directive to explain the mishandling of records;

(4) Memorandum dated March 10, 2014 of Atty. Fernandez directing the respondent to explain in writing why he had received documents from the Bureau of Jail Management and Penology (BJMP) in connection with

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[1] *Rollo,* pp. 1-5.

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

[3] *Id*. at 8-10; 12; 15-25.

Criminal Case Nos. 226-V-14 to 227-V-14 (*People of the Philippines v. Ivan Yanong*) despite being unauthorized to do so;

(5) Memorandum dated April 25, 2014 of Atty. Fernandez requiring the respondent to explain in writing why he had failed to prepare the records relevant to appealed cases docketed as Criminal Cases Nos. 5-V-12 (*People of the Philippines v. Ronald L. Calarabal*) and 753-V-II (*People of the Philippines v. Dean J. Martin*) for transmittal to the CA;

(6) Memorandum of the complainant directing the respondent to submit the necessary data to complete the monthly reports on or before 10th day of the month;

(7) Memorandum of the complainant regarding the respondent's failure to update the criminal dockets;

(8) Memorandum dated July 3, 2014 of the complainant directing the respondent to prepare the list of cases and their statuses subject of the semestral inventory for the period of June 2014;

(9) Memorandum dated July 7, 2014 of the complainant instructing the respondent to individually prepare the notices to produce and to attach the corresponding receipts of the case records;

(10) Memorandum dated July 10, 2014 of the complainant instructing the respondent and two other employees to ensure that all cases scheduled for hearing were included in the court's calendars;

(11) Memorandum dated July 25, 2014 of the complainant prohibiting the respondent from preparing notices or subpoenas without the directive from the Presiding Judge or from the complainant because of the inaccuracies in the court's calendars regarding several criminal cases;

(12) Memorandum dated September 29, 2014 of the complainant instructing the respondent to stitch the

transcript of stenographic notes (TSNs) to the case records immediately upon receipt; and

(13) Memorandum dated October 3, 2014 of the complainant regarding the loss of four TSNs in Criminal Case No. 1350-V-13 (*People of the Philippines v. Cecille Octubre*).

The complainant further alleged that Judge Francisco had relieved the respondent from his duties as the clerk-in-charge for criminal cases following the discovery of the loss while under his custody of TSNs in Criminal Case No. 1350-V-13 (*People of the Philippines v. Cecille Octubre*).[4]

Barely a month after the complainant initiated her complaint, Judge Francisco sent a letter to Court Administrator Jose Midas P. Marquez formally requesting that the respondent be dropped from the rolls on account of his two consecutive unsatisfactory ratings.[5]

On October 20, 2015, the Office of the Court Administrator (OCA) required the respondent to file his comment.[6]

The respondent complied by submitting a letter dated February 1, 2016 whereby he denied the allegations, and manifested instead that the complainant had the propensity to abuse her authority; that the matters raised in the memoranda and notices previously issued to him, despite being already answered and explained by him, were still being used by the complainant as a ground to dismiss him constructively; and that he had followed and complied with the instructions of the complainant despite the same being complex and difficult to comply with.[7]

OCA's Findings and Recommendation

According to its report dated November 8, 2017,[8] the OCA found that the respondent was liable for **gross neglect of duty** and for **gross insubordination.**

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[4] *Id*. at 4; 25.

[5] *Id*. at 83.

[6] *Id*. at 55.

[7] *Id*. at 56-57.

[8] *Id*. at 79-88.

Pertinent portions of the report of the OCA read as follows:

Respondent's assertion that he did not submit an explanation on the memorandum to him regarding the "lost" record of Criminal Case No. 590-V-10 as he was not told to do so is belied by the 07 January 2013 Memorandum of Atty. Fernandez which he received and signed on the same date it was issued. He was directed to immediately explain in writing the reason for the mishandling of the said record as the case was due for promulgation the following day and yet was nowhere to be found. He insisted that the record was submitted to Judge Francisco but after a diligent search, it was found hidden in his cabinet. This shows his prevarication and disobedience to his superior.

On the missing TSNs in Criminal Case No. 1350-V-13, the reason proffered by respondent is unacceptable. He admitted losing two (2) TSNs but not four (4). Regardless of the number of lost TSNs, this shows his negligence and unreasonable response to an allegation. In justifying the missing TSNs, it baffles us why respondent mentioned the lost record of Criminal Case No. 1393-V-13 (*People of the Philippines vs. Ralph De Leon*) which was imputed to him but for which he was not made to account by way of memorandum. Is this his way of asserting that simply because there was no memorandum issued to him, he should not feel responsible or concerned for its loss or that he should not do anything to recover the record?

When respondent failed to prepare Criminal Cases No. CRC-5-V- 12 and CRC 753-V-11 for transmittal to the Court of Appeals despite several reminders to him by Atty. Fernandez, he apologized and explained that the delay was due to the long weekend during the holy week, heavy workload, stitching of records and the non-functioning of their photocopying machine. It was only then that he stated that he would give immediate attention and priority to appealed cases which shows that he had no sense of urgency and priority on matters that required immediate action.

On the directive for him to constantly update the criminal records, to stitch all orders and other processes of the cases assigned to him, and to turn over the dockets and the records stitched to the OIC/BCC at the end of office hours everyday to give him a chance to improve his performance rating for the first semester of 2015, respondent explained that he was "in contemplation that the docketed records might be mixed with the other records in my area." Complainant's (sic) reason is flimsy and totally unacceptable. *Firstly,*

there is a standing Memorandum dated 26 January 2015 for his strict compliance. *Secondly,* there is no possibility that the records could be mixed with the other records because there is enough space. *Thirdly,* three (3) other court personnel religiously turned over the case records to complainant and, notably, none of them refused to turn over the records just because there was not enough space in the area or they could be mixed with other records. *Fourthly,* there was never an instance since 26 January 2015 when respondent approach and asked complainant where he could put the docketed records so they could not be placed with the other records. Further, only seven (7) to eight (8) records were being docketed by him in an eight (8)-hour daily work. Thus, the number of records are not that much to occupy a huge space and be mixed with other records. His adamant refusal to turn over the docketed records to complainant is a clear defiance of the 26 January 2015 Memorandum.

Anent the other concerns/issues cited above by complainant, respondent did not offer any explanation to rebut the same.

On respondent's performance ratings, we are convinced that he failed miserably to perform the duties and tasks assigned to him. Aside from the two (2) *unsatisfactory* semestral performance ratings from 01 July 2014 to 30 June 2015, he merely obtained satisfactory ratings during the previous years which demonstrate his lack of industry, efforts, enthusiasm, and determination to attain at least a very satisfactory rating. He gave unreasonable and unacceptable alibis for his poor performance but did not endeavor to really change and improve his work attitude and ethic.[9]

The OCA recommended that the respondent be dismissed from the service with forfeiture of all benefits, except accrued leave credits.[10]

Issue

Did the acts and omissions of the respondent constitute **gross neglect of duty** and **gross insubordination** that warrant his dismissal from the service?

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[9] *Id*. at 83-85.

[10] *Id*. at 88.

Ruling of the Court

We affirm the findings and recommendation by the OCA.

Neglect of duty is the failure a public official or employee to give attention to a task expected of him. The public official or employee of the Judiciary responsible for such act or omission cannot escape the disciplinary power of this Court. **Simple neglect of duty** is contrasted from **gross neglect. Gross neglect of duty** refers to negligence characterized by the glaring want of care; by acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally; or by acting with a conscious indifference to consequences with respect to other persons who may be affected.[11] It is such neglect which, from the gravity of the case or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare.[12] It does not necessarily include wilful neglect or intentional official wrongdoing.

As Clerk III, the respondent was tasked, among others, to take custody of the records of criminal cases raffled to and being heard by Branch 270; to update said records; and to prepare the accompanying documents for transmittal of the records of appealed criminal cases to the CA as the appellate court. Regrettably, he was frequently grossly remiss in discharging his duties. He repeatedly failed to update the criminal dockets under his custody; was careless in attaching documents to their corresponding case records; and did not prepare the case records for prompt transmission to the CA despite the specific instructions and constant reminders from his superiors. In addition, parts of the records of some criminal cases went missing while under his custody. Such loss of court records while in his custody reflected his lack of diligence in performing his duties, and indubitably revealed his uncharacteristic indifference to and

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[11] *Office of the Court Administrator v. Dequito,* A.M. No. P-15-3386, November 15, 2016, 809 SCRA I , 11.

[12] *Office of the Court Administrator v. Calija,* A.M. No. P-16-3586, June 5, 2018.

wanton abandonment of his regular assigned duties and responsibilities. He thereby became guilty of **gross neglect of duty.**

But **gross neglect of duty** was not the respondent's only sin. He further frequently disobeyed or ignored without any valid justification his superiors' directives and instructions for the conscientious performance of his duties. He persisted on his errant conduct and bad attitude despite the several opportunities that his superiors accorded to him to mend his ways. He thereby manifested his brazen disrespect for and defiance towards his superiors. He was thus also guilty of **gross insubordination,**which is the inexplicable and unjustified refusal to obey some order that a superior is entitled to give and have obeyed, and imports a willful or intentional disregard of the lawful and reasonable instructions of the superior.[13]

Lastly, the respondent received unsatisfactory ratings for two consecutive semesters, a true demonstration of how poorly and ineptly he had discharged his assigned tasks. In that regard the OCA aptly observed:

> On respondent's performance ratings, we are convinced that he failed miserably to perform the duties and tasks assigned to him. Aside from the two (2) unsatisfactory semestral performance ratings from 01 July 2014 to 30 June 2015. He merely obtained satisfactory ratings during the previous years which demonstrate his lack of industry, efforts, enthusiasm, and determination to attain at least a very satisfactory rating. He gave unreasonable and unacceptable alibis for his poor performance but did not endeavor to really change and improve his work attitude and ethic.[14]

As such, he was likewise guilty of **inefficiency and gross incompetence in the performance of his official duties.**

This Court has always emphasized that the conduct required of court officials or employees, from the presiding judges to

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[13] See *Arabani, Jr. v. Arabani,* A.M. No. SCC-10-14-P, A.M. No. SCC-10-15-P, A.M. No. SCC-11-17, February 21, 2017, 818 SCRA 245.

[14] *Rollo,* pp. 84-85.

the lowliest clerks, must always be imbued with the heavy burden of responsibility as to require them to be free from any suspicion that may taint the image and reputation of the Judiciary.[15] Any act or omission that contravenes this norm of conduct disgraces the Judiciary. Anyone falling short of the norm must be sanctioned without hesitation lest he infect his co-workers with the same malaise.

Section 46, Rule 10 of the *Revised Rules of Administrative Cases in the Civil Service* (RRACCS)[16] classifies **gross neglect of duty** as a grave offense punishable by dismissal from the service even on the first violation.[17] Although **gross insubordination** and **gross inefficiency and incompetence in the performance of official duties** each merits the penalty of suspension for six months and one day to one year for the first violation,[18] Section 50 of the RRACCS provides that in case of two or more charges or counts, the penalty to be imposed shall be that corresponding to the most serious offense, and the rest of the counts shall be treated as aggravating circumstances. **Gross neglect of duty,** which is the most serious offense, is considered as aggravated herein by **gross insubordination** and **gross inefficiency and gross incompetence in the performance of his official duties.** Hence, the OCA's recommendation to dismiss the respondent from the service is proper and just.

WHEREFORE, the Court **FINDS** and **PRONOUNCES** respondent **HONORIO RAUL C. GUEVARA GUILTY** of **GROSS NEGLECT OF DUTY, GROSS INSUBORDINATI ON** and **GROSS INEFFICIENCY AND INCOMPETENCE IN**

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[15] *Office of the Court Administrator v. Silonga,* P-13-3137, August 31, 2016, 801 SCRA 280, 294; *Concerned Citizens of Laoag City v. Arzaga,* A.M. No. P-94-1064, January 30, 1997, 267 SCRA 176, 184.

[16] CSC Resolution No. 1101502, November 8, 2011.

[17] See also *Alleged Loss of Various Boxes of Copy Paper During Their Transfer From the Property Division, Office of Administrative Services (OAS), to the Various Rooms of the Philippine Judicial Academy,* A.M. Nos. 2008-23-SC, 2014-025-Ret., September 30, 2014,737 SCRA 176, 191.

[18] Section 46, Rule 10 (B) (7), RRACCS.

THE PERFORMANCE OF OFFICIAL DUTIES; and, accordingly, **DISMISSES** him from the service **EFFECTIVE IMMEDIATELY** with **FORFEITURE** of all his benefits, except accrued leave credits.

The Court further **DISQUALIFIES** the respondent from re-employment in the government service, including government-owned and controlled corporations.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Gesmundo, Reyes, J. Jr., Hernando, and *Carandang, JJ.,* concur.

Reyes, A. Jr., J., on leave.

THIRD DIVISION

[G.R. No. 189162. January 30, 2019]

POLO PLANTATION AGRARIAN REFORM MULTIPURPOSE COOPERATIVE (POPARMUCO), represented by SILANDO GOMEZ and ELIAS RAMOS, *petitioner, vs.* **RODOLFO T. INSON, CESO III, as Regional Director of the Department of Agrarian Reform, Region VII - Cebu City,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; THE COMPREHENSIVE AGRARIAN REFORM LAW (REPUBLIC ACT NO. 6657, AS AMENDED); DEPARTMENT OF AGRARIAN REFORM; POWERS AND FUNCTIONS; INCLUDED AMONG THE FUNCTIONS OF THE DEPARTMENT OF

AGRARIAN REFORM IS THE INHERENT POWER TO IDENTIFY THE LANDHOLDINGS WITHIN THE COVERAGE OF THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP), AND TO IDENTIFY, SCREEN, AND SELECT AGRARIAN REFORM BENEFICIARIES.— The Comprehensive Agrarian Reform Law vested in the Department of Agrarian Reform the primary responsibility of implementing the Comprehensive Agrarian Reform Program. Section 50 defines the Department's powers over agrarian reform matters: x x x *Sta. Rosa Realty Development Corporation v. Amante* clarifies that Section 50 pertains to both the Department of Agrarian Reform's: (1) administrative function, which involves enforcing, administering, and carrying agrarian reform laws into operation; and (2) quasi-judicial function, which involves the determination of parties' rights and obligations in agrarian reform matters. Section 7 of the Comprehensive Agrarian Reform Law authorizes the Department of Agrarian Reform, in coordination with the Presidential Agrarian Reform Council, to plan and program the acquisition and distribution of all agricultural lands in accordance with the order of priority under the law. Inherent in this function is the Department of Agrarian Reform's power to identify the landholdings within the coverage of the Comprehensive Agrarian Reform Program, and to identify, screen, and select agrarian reform beneficiaries. The Department of Agrarian Reform is further tasked to make support and coordinative services available to farmer-beneficiaries and affected landowners.

2. ID.; ID.; TWO MODES OF ACQUIRING LAND UNDER THE COMPREHENSIVE AGRARIAN REFORM LAW, ENUMERATED.— There are two (2) modes of acquiring land under the Comprehensive Agrarian Reform Law: (1) compulsory acquisition and (2) voluntary offer for sale/land transfer. x x x Section 16 outlines the procedure for compulsory land acquisition: x x x Section 16(a) requires that after identification of the land, landowners, and farmer beneficiaries, the Department of Agrarian Reform will send a notice of acquisition to the landowner, through personal delivery or registered mail, and post it in a conspicuous place in the municipal building and barangay hall of the place where the property is located. While the law does not provide how the identification process must be made, the details or guidelines can be found in pertinent

administrative issuances of the Department of Agrarian Reform or the Provincial Agrarian Reform Council, per their rule-making power under Section 49.

3. ID.; ID.; DEPARTMENT OF AGRARIAN REFORM ADMINISTRATIVE ORDER NO. 01-03 (2003 RULES GOVERNING ISSUANCE OF NOTICE OF COVERAGE AND ACQUISITION OF AGRICULTURAL LANDS); COMPULSORY LAND ACQUISITION IS COMMENCED THROUGH A NOTICE OF COVERAGE OR THROUGH A PETITION FOR COVERAGE; DISTINGUISHED.— Under the Department of Agrarian Reform Administrative Order No. 01-03, or the 2003 Rules Governing Issuance of Notice of Coverage and Acquisition of Agricultural Lands Under Republic Act No. 6657, compulsory acquisition is commenced through two (2) ways. The first is through a Notice of Coverage. After determining that the land is covered by the Comprehensive Agrarian Reform Program and writing a pre-ocular inspection report, the Municipal Agrarian Reform Officer sends a Notice to the landowner. The Notice would be posted for at least seven (7) days in the bulletin boards of the barangay hall and municipal/city hall where the property is located. The other way is through a Petition for Coverage, filed by any party before the Department of Agrarian Reform's Regional Office or Provincial Office of the region or province where the property is located. Either of these offices transmits the case folder to the Municipal Agrarian Reform Officer where the property is located.

4. ID.; ID.; ID.; ID.; THE MUNICIPAL AGRARIAN REFORM OFFICER SERVES COPIES OF THE NOTICE OF COVERAGE OR PETITION FOR COVERAGE OR PETITION FOR COVERAGE ON THE LANDOWNER; RIGHTS AND PRIVILEGES WITH CORRESPONDING RESTRICTIONS AND CONDITIONS; ENUMERATED.— Under Department of Agrarian Reform Administrative Order No. 01-03, the Municipal Agrarian Reform Officer serves copies of the Notice of Coverage or Petition for Coverage on the landowner. Through the Notice, the landowner is informed that his or her landholding is subjected to the Comprehensive Agrarian Reform Program. He or she is invited to a public hearing or field investigation on the date specified in the Notice. Moreover, the landowner is informed of his or her rights and privileges

(with corresponding restrictions and conditions), as follows: 1. apply for an exemption clearance or for exclusion from the Comprehensive Agrarian Reform Program's coverage; 2. retain an area not exceeding five (5) hectares pursuant to Section 6 of Republic Act No. 6657; 3. nominate his/her child/ren who may qualify as beneficiary/ies to the subject landholding; and/or 4. submit evidence for determining just compensation of the subject landholding.

5. ID.; ID.; ID.; ID.; PROTEST OR PETITION TO LIFT COVERAGE FROM THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP); THE LANDOWNER OR ANY REAL PARTY-IN-INTEREST MAY FILE BEFORE THE DEPARTMENT OF AGRARIAN REFORM MUNICIPAL OFFICE A PROTEST OR PETITION TO LIFT THE COVERAGE OF THE CARP WITHIN 60 CALENDAR DAYS FROM RECEIPT OF THE NOTICE; EFFECT, EXPLAINED.— The landowner or any real party-in-interest may file before the Department of Agrarian Reform Municipal Office a protest or petition to lift the coverage of the Comprehensive Agrarian Reform Program within 60 calendar days from receipt of the Notice. The protest will be resolved in accordance with the procedure set forth in Department of Agrarian Reform Administrative Order No. 03-03, or the 2003 Rules for Agrarian Law Implementation Cases. Meanwhile, the process of identifying and screening potential agrarian reform beneficiaries is suspended until after the lapse of the 60-day period from the landowner's receipt of the Notice, or upon the authorized agency's final determination of the petition for retention, exclusion, and exemption, if any were filed. Upon receipt of the Memorandum of Valuation from the Land Bank of the Philippines and Claim Folder Profile and Valuation Summary, the Provincial Agrarian Reform Officer sends a Notice of Land Valuation and Acquisition to the landowner in accordance with the same service procedures in Department of Agrarian Reform Administrative Order No. 01-03. Section 16(e) mandates the Department to take immediate possession of the land only after full payment or deposit of the compensation with the bank (in case of rejection/non-response of landowner), and to request the Register of Deeds to transfer title in the name of the Republic of the Philippines, and later on to the intended beneficiaries.

6. ID.; ID.; ID.; ID.; THE MUNICIPAL OR PROVINCIAL AGRARIAN REFORM OFFICER, TOGETHER WITH THE BARANGAY AGRARIAN REFORM COMMITTEE, SCREENS AND SELECTS THE POSSIBLE AGRARIAN BENEFICIARIES.— Upon land acquisition, the Department of Agrarian Reform immediately proceeds to distribute the land to qualified beneficiaries. Sections 22 and 22-A of the Comprehensive Agrarian Reform Law provides the order of priority in the distribution of lands covered by the Comprehensive Agrarian Reform Program to landless farmers/farmworkers. The basic qualification for a beneficiary is his or her "willingness, aptitude, and ability to cultivate and make the land as productive as possible." Department of Agrarian Reform Administrative Order No. 07-03 provides the qualifications, disqualifications, and rights and obligations of agrarian reform beneficiaries. It also provides the operating procedures for their: (1) identification, screening, and selection; (2) resolution of protests in the selection; and (3) certificate of land ownership award generation and registration. The Municipal or Provincial Agrarian Reform Officer, together with the Barangay Agrarian Reform Committee, screens and selects the possible agrarian beneficiaries, under the criteria in Sections 4 and 5 of Department of Agrarian Reform Administrative Order No. 07-03: x x x All qualified agrarian reform beneficiaries are then ranked in accordance with the order of priority under Sections 22 and 22-A. Then, the master list of agrarian reform beneficiaries is posted for 15 days in at least three (3) conspicuous places in the barangay hall, municipal hall, and in the community where the property is located.

7. ID.; ID.; ID.; ID.; WRITTEN PROTEST FOR THE INCLUSION/EXCLUSION FROM THE MASTER LIST MAY BE FILED NOT LATER THAN 15 DAYS FROM THE LAST DAY OF POSTING OF THE MASTER LIST OF THE AGRARIAN REFORM BENEFICIARIES, WHICH MUST BE RESOLVED BY THE REGIONAL DIRECTOR THROUGH SUMMARY PROCEEDINGS.— Written protests for the inclusion/exclusion from the master list must be filed before the Department of Agrarian Reform's Regional or Provincial Office, as the case may be, not later than 15 days from the last day of posting of the list. The Regional Director will resolve the protest through summary proceedings within 30 days from receiving the Beneficiary Screening Committee's

case records or the Provincial Office's investigation report and recommendation. The master list becomes final and executory after the lapse of 15 days from receipt of the Regional Director's decision on the protest, but such finality is only for the specific purpose of generating the certificate of land ownership award. An appeal or motion for reconsideration from the Regional Director's decision or order for inclusion/exclusion of potential agrarian reform beneficiaries in/from the master list will be governed by Department of Agrarian Reform Administrative Order No. 03-03. After the issuance of certificates of land ownership award, a petition to reopen the identification and selection of agrarian reform beneficiaries may be filed on grounds of duress or threat by the landowner against the petitioner during the identification phase. Section 14 of Department of Agrarian Reform Administrative Order No. 07-03 provides: x x x As in protests for inclusion/exclusion of agrarian reform beneficiaries, petitions to reopen the identification and selection process are governed by Department of Agrarian Reform Administrative Order No. 03-03.

8. ID.; ID.; ID.; ID.; THE DEPARTMENT OF AGRARIAN REFORM IS MANDATED TO MONITOR THE PERFORMANCE OF BENEFICIARIES AND ENSURE THE INTEGRITY OF THE MASTER LIST OF AGRARIAN REFORM BENEFICIARIES.— In addition to identifying the qualified beneficiaries, Section 22 of the Comprehensive Agrarian Reform Law mandates the Department of Agrarian Reform to "adopt a system of monitoring the record or performance of each beneficiary, so that any beneficiary guilty of negligence or misuse of the land or any support extended to him shall forfeit his right to continue as such beneficiary." The Department of Agrarian Reform, mandated to monitor the performance of beneficiaries and ensure the integrity of its master list of agrarian reform beneficiaries, integrated the Agrarian Reform Beneficiaries Carding and Identification System in its land acquisition and distribution process. Under the Agrarian Reform Beneficiaries Carding and Identification System, agrarian reform beneficiaries with titles under the agrarian reform laws will be issued identification cards as proof of their being bona fide beneficiaries. These identification cards are validated yearly based on the Department of Agrarian Reform Municipal Office's

inspection of the beneficiaries' performance and compliance with their duties under the laws. The Municipal Office checks if they still own and cultivate the landholding awarded to them, or if they have committed any offense. Beneficiaries found to have violated the laws will be removed from the master list. Consequently, their identification cards and emancipation patents or certificates of land ownership award will be canceled.

9. ID.; ID.; ID.; ID.; ID.; FAILURE OF BENEFICIARIES TO COMPLY WITH THE PRESCRIBED CONDITIONS ON PAYMENT OF AMORTIZATIONS, TRASFERABILITY OF THE AWARDED LAND AND PROPER USE OF FINANCIAL AND SUPPORT SERVICES MAY RESULT IN THE FORFEITURE OF THE LAND AWARDED TO THEM.— Section 24 of the Comprehensive Agrarian Reform Law states that the rights and obligations of beneficiaries commence from the time the land is awarded to them. The certificate of land ownership award contains the restrictions and conditions provided in the law and other applicable statutes. x x x The restrictions and conditions refer to payment of annual amortizations, transferability of the awarded land, and proper use of financial and support services, which are found in the provisions of the Comprehensive Agrarian Reform Law: x x x Failure of beneficiaries to comply with the prescribed conditions may result in the forfeiture of the land awarded to them. A certificate of land ownership award may be corrected and canceled for violations of agrarian laws, rules, and regulations. Department of Agrarian Reform Administrative Order No. 03-09 provides the rules and procedures for canceling certificates of land ownership award and other titles under the Comprehensive Agrarian Reform Program. x x xDepartment of Agrarian Reform Administrative Order No. 03-09 further states that the cancellation of registered certificates of land ownership award, emancipation patents, and other titles "under any agrarian reform program shall be strictly regulated and may be allowed only in the manner and conditions prescribed" in the Administrative Order.

10. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; CONTEMPT OF COURT, DEFINED.— In *Rivulet Agro-Industrial Corporation v. Paruñgao*, this Court explained the concept of contempt of court: Contempt of court is defined as

a disobedience to the court by acting in opposition to its authority, justice, and dignity, and signifies not only *a willful disregard of the court's order, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or, in some manner, to impede the due administration of justice*. To be considered contemptuous, an act must be clearly contrary to or prohibited by the order of the court. Thus, a person cannot be punished for contempt for disobedience of an order of the Court, unless the act which is forbidden or required to be done is clearly and exactly defined, so that there can be no reasonable doubt or uncertainty as to what specific act or thing is forbidden or required. The court's contempt power should be exercised with restraint and for a preservative, and not vindictive, purpose. "Only in cases of clear and contumacious refusal to obey should the power be exercised."

11. ID.; ID.; ID.; THE RESPONDENT'S ERRONEOUS COGNIZANCE OF THE PETITION FOR INCLUSION/ EXCLUSION CAN ONLY BE DEEMED GRAVE ABUSE OF DISCRETION, WHICH IS MORE PROPERLY THE SUBJECT OF A PETITION FOR *CERTIORARI*, NOT A PETITION FOR CONTEMPT; CASE AT BAR.— In *Rivulet Agro-Industrial Corporation*, the Department officials' act of installing farmer-beneficiaries in Rivulet Agro-Industrial Corporation's landholding did not constitute an open defiance and disobedience of this Court's December 15, 2010 temporary restraining order in G.R. No. 193585. x x x Here, respondent justified his cognizance of the Petition for Inclusion/Exclusion based on the Department's exclusive prerogative in the identification, selection, and subsequent re-evaluation of agrarian reform beneficiaries. However, as earlier stated, the issue on the qualification of the existing Certificate of Land Ownership Award holders had long been laid to rest in this Court's final and executory September 3, 2008 Decision. Some of the petitioners in the inclusion/exclusion proceedings were even respondents in that case. Still, respondent's erroneous cognizance of the Petition for Inclusion/Exclusion can only be deemed as grave abuse of discretion, which is more properly the subject of a petition for *certiorari*, not a petition for contempt. "No one who is called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment." At any rate, whether respondent's actions were

improper is not an issue here. What is crucial in contempt proceedings is the intent of the alleged contemnor to disobey or defy the court as held in *St. Louis University, Inc. v. Olairez*: x x x All told, this Court finds no clear and contumacious conduct on the part of respondent. His acts do not qualify as a willful disobedience to this Court nor a willful disregard of its authority.

APPEARANCES OF COUNSEL

Yap-Siton Law Office for petitioner.
DAR Legal Assistance Division for respondent.

D E C I S I O N

LEONEN, *J.*:

Respondent Rodolfo T. Inson (Regional Director Inson)'s cognizance of the Petition for Inclusion/Exclusion of farmer beneficiaries, and his subsequent issuance of the March 12, 2010 Order disqualifying some members of petitioner Polo Plantation Agrarian Reform Multipurpose Cooperative (POPARMUCO), were improper. Nonetheless, these acts do not constitute an indirect contempt of court.

For this Court's resolution is a Petition for Contempt[1] filed by POPARMUCO, a duly organized and registered cooperative of agrarian reform beneficiaries,[2] against Regional Director Inson of the Department of Agrarian Reform, Region VII, Cebu City.

Sometime in 2003, a 394.9020-hectare portion of the landholding[3] owned by Polo Coconut Plantation, Inc. (Polo

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[1] *Id*. at 3-31. Filed under Rule 71, Section 3 of the Revised Rules of Court. The case is an offshoot of the case entitled *Department of Agrarian Reform v. Polo Coconut Plantation Company, Inc*., 586 Phil. 69 (2008) [Per *J*. Corona, First Division].

[2] *Id*. at 5.

[3] Described as Lot 3478-D of Psd-30972 and covered by TCT No. T-2304. The land had a total area of 431 hectares. See *Department of Agrarian*

Coconut) in Polo, Tanjay, Negros Oriental was placed under the coverage of the Comprehensive Agrarian Reform Program, pursuant to Republic Act No. 6657 or the Comprehensive Agrarian Reform Law.[4] A Notice of Coverage was sent on May 23, 2003 to Polo Coconut President Rene Espina (Espina).[5]

On December 11, 2003, the Department of Agrarian Reform received from the Land Bank of the Philippines a Memorandum of Valuation, indicating the amount of ₱85,491,784.60 as just compensation for 393.1327 hectares[6] of Polo Coconut property. A Notice of Land Valuation and Acquisition was then sent to Polo Coconut. On January 16, 2004, a Certificate of Deposit was issued to Polo Coconut for the said amount.[7]

After Polo Coconut failed to reply to the Notice of Land Valuation and Acquisition, the Department of Agrarian Reform conducted summary administrative proceedings to determine just compensation. In his March 31, 2004 Resolution,[8] Regional Adjudicator Atty. Arnold C. Arrieta (Regional Adjudicator Arrieta) of the Department of Agrarian Reform Adjudication Board (the Adjudication Board), Region VII, Cebu City affirmed the valuation offered by Land Bank of the Philippines in the amount of ₱85,491,784.60.[9]

Meanwhile, Polo Coconut's title was canceled in favor of the Republic of the Philippines. On January 27, 2004, a collective

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Reform v. Polo Coconut Plantation Company, Inc., 586 Phil. 69 (2008) [Per *J*. Corona, First Division].

[4] *Rollo*, p. 563; see also *Department of Agrarian Reform v. Polo Coconut Plantation Company, Inc.*, 586 Phil. 69, 75 (2008) [Per *J*. Corona, First Division].

[5] *Rollo*, p. 346.

[6] *Id.* at 516-522-A. Under the notation on the last page of TCT No. T-802, "the remaining area of 1.7693 hectares is subject for subsequent acquisition[.]"

[7] *Id*. at 9.

[8] *Id*. at 33-37. The administrative case for determination and fixing of just compensation was docketed as RARAD Case No. VII-N-1284-2004.

[9] *Id*. at 36.

Certificate of Land Ownership Award, with CLOA No. 00114438, was issued. It was registered on January 30, 2004, under Transfer Certificate of Title (TCT) No. T-802,[10] in favor of POPARMUCO members whom the Department of Agrarian Reform identified as agrarian reform beneficiaries.[11]

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[10] *Id*. at 107-113 and 516-522.

[11] *Id*. at 24, 516, and 519-522. According to TCT No. T-802, the parcel of land situated in Barangay Polo, Tanjay, Negros Oriental with an area of 3,949,020 square meters (or 394.902 hectares) is awarded to the following beneficiaries: Martina Q. Abarca, Tolentina E. Ablay, Conchita M. Ac-Ac, Josephina S. Ac-Ac, Loreta C. Ac-Ac, Caridad Q. Aguilar, Diosdado A. Aguilar, Romulo S. Aguilar, Sherlita T. Aguilar, Wilfredo T. Alcantara, Anacleto B. Alforque, Ricardo P. Baco, Rodrigo P. Baco, Sr., Dario B. Bajana, Sr., Demetrio F. Balbuena, Gregoria R. Barba, Tomas T. Barba, Wilfredo R. Barba, Vivian F. Barot, Domingo O. Baroy, Arturo A. Borromeo, Fedencia R. Borromeo, Juanita P. Cabil, Salvador A. Cabornay, Severino M. Cabug-Os, Aurea M. Calda, Baltazar R. Cataloña, Danilo B. Curato, Arnulfo B. Dael, Democrito B. Dagodog, Genaro C. Duran, Josephine M. Ellema, Albina R. Elmaga, Enrique R. Elmaga, Edwin L. Elumir, Tomas M. Gabihan, Alberto A. Gaso, Pedro R. Gaso, Visitacion S. Gaso, Erlinda S. Gazo, Andres M. Genel, Dioscoro M. Genel, Angel R. Gomez, Lorenzo S. Gomez, Santiago T. Gomez, Silando Q. Gomez, Consorcia G. Guevarra, Fredeswinda M. Guma, Celedonia A. Guzman, Herculano B. Guzman, Jr., Cesario Q. Haroy, Sr., Eddie Q. Haroy, Romeo E. Inoferio, Genara R. Juano, Gevino B. Juano, Sr., Rogelia B. Juano, Rosalita G. Juano, Diogracias R. Larazan, Relina H. Larena, Jose G. Magalso, Inocencia G. Malco, Lucena B. Malto, Santos S. Malto, Elina T. Marimat, Ramon C. Marimat, Mercy B. Maro, Ruthelma D. Maro, Charita S. Mateo, Alma B. Medina, Abundio M. Mendez, Reynold S. Mindez, Alberto B. Mira, Gaudencia S. Mira, Crestita D. Montaña, Dionisia T. Montaña, Loreto R. Napao, Alicia P. Nillas, Esperanza M. Omatang, Hermogenes A. Omatang, Jr., Felicisima M. Oracion, Joel M. Oracion, Patrocinio T. Pao, Lourdes T. Partosa, Fabian S. Piñero, Felix R. Publico, Maribelle B. Publico, Carmelita M. Quilario, Enrique R. Quilario, Manolita M. Quilario, Miguel S. Quilerio, Leonila J. Quinquilleria, Delta M. Ramirez, Rogelio S. Ramirez, Elias O. Ramos, Consolacion T. Real, Erlinda I. Regala, Dominga M. Reman, Eugenio O. Reman, Pepita R. Reman, Rodney D. Reman, Ronnie O. Reman, Sr., Dominador P. Rempojo, Eutiquio T. Rempojo, Rosita C. Rempojo, Carolina T. Reyes, Dionisia M. Reyes, Eugenia B. Reyes, Loreta D. Reyes, Mario S. Reyes, Laureano C. Rivera, Peter C. Rivera, Evangeline Q. Rodriguez, Ricardo R. Rodriguez, Patrocinio B. Sabihon, Felipe G. Saga, Valeriana R. Saga, Anesia D. Salin, Flaviano T. Salin, Jr., Wenefredo T. Salin, Virgilio B. Saloma, Estela S.

Subsequently, the Provincial Agrarian Reform Officer of Negros Oriental, Stephen Leonidas, sent Espina a letter dated July 16, 2004, informing him of the Department of Agrarian Reform's intention to proceed with the relocation survey of the property.[12] Polo Coconut moved for the suspension of the survey, but Regional Adjudicator Arrieta denied the Motion for lack of jurisdiction.[13]

Polo Coconut filed before the Court of Appeals a Petition for Certiorari questioning the propriety of subjecting its property to the Comprehensive Agrarian Reform Program. It contended that the City of Tanjay had already reclassified the area into a mixed residential, commercial, and industrial land. It also assailed the eligibility of the identified agrarian reform beneficiaries.[14]

On February 16, 2005, the Court of Appeals ruled in favor of Polo Coconut. It found that the Polo Coconut property was no longer an agricultural land when the Department of Agrarian Reform placed it under the Comprehensive Agrarian Reform Program. Further, it held that the identified beneficiaries were not qualified as beneficiaries, as they were not tenants of Polo Coconut.[15] The Court of Appeals disposed as follows:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DECLARING as NOT VALID the acts of the [Department of Agrarian Reform] of subjecting PCPCI's [Polo estate] to the coverage of the CARP, of canceling and causing the cancellation of [PCPCI's] Transfer Certificate of Title No. T-2304 covering such

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Salva, George R. Salva, Teofista R. Salva, Josephine T. Sedigo, Michael P. Segismar, Sr., Joseph S. Sevilla, Marissa H. Sienes, Ma. Gina M. Silva, Arturo T. Solitana, Marilyn M. Tabora, Gabino G. Temblor, Reynaldo Q. Temblor, Elsa A. Teves, Leonora D. Torco, Gregoria O. Toroy, Andres P. Torres, Hilario P. Torres, Leonardo G. Torres, Manolita T. Torres, Vicenta G. Torres, Generoso I. Torres, Leonardo F. Tubaga, Agripino P. Turco, Flordelico S. Verbo, Olympia T. Yorong, and Rosenda C. Zerna.

[12] *Id*. at 12.

[13] *Id*. at 39-41.

[14] *Id*. at 199.

[15] *Id*. at 565-566.

land, of issuing or causing the issuance of Transfer Certificate of Title No. T-36318 for this land in the name of the Republic of the Philippines by way of transfer to it, of issuing or causing the issuance of Transfer Certificate of Title No. T-802 for the said land in the names of [petitioner-beneficiaries] in the case at bench by way of award of them of such land as purported farm beneficiaries and of doing other things with the end in view of subjecting [the Polo estate] to CARP coverage, SETTING ASIDE and ENJOINING such acts and the consequence thereof, ORDERING the [petitioner-beneficiaries] to vacate the premises of [the Polo estate] if they had entered such premises, and ORDERING the respondent Register of Deeds of Negros Oriental to cancel Transfer Certificate of Title Nos. T-36318 and T-802 and to reinstate Transfer Certificate of Title No. T-2304 in the name of petitioner PCPCI.

SO ORDERED.[16] (Citation omitted)

In its September 3, 2008 Decision, this Court in *Department of Agrarian Reform v. Polo Coconut Plantation Company, Inc*.[17] reversed the Court of Appeals Decision.[18] It confirmed the acts of the Department of Agrarian Reform, through the Provincial Agrarian Reform Officer, and declared the issuance of TCT No. T-802 and CLOA No. 00114438 as valid. This Court also ruled that Polo Coconut did not exhaust its administrative remedies when it directly filed a Petition for Certiorari before the Court of Appeals instead of first filing a protest or opposition before the Department Secretary.[19] Furthermore, it held that the property was never placed beyond the scope of the Comprehensive Agrarian Reform Program, as the Department Secretary never approved the land's conversion.[20]

This Court further recognized the Department of Agrarian Reform as the proper authority to identify and select agrarian

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[16] *Department of Agrarian Reform v. Polo Coconut Plantation Company, Inc.*, 586 Phil. 69, 76-77 (2008) [Per J. Corona, First Division].

[17] 586 Phil. 69 (2008) [Per J. Corona, First Division].

[18] *Id*. at 83.

[19] *Id*. at 78-79.

[20] *Id*. at 79.

reform beneficiaries. Courts, it ruled, cannot substitute their judgment unless there is a clear showing of grave abuse of discretion.[21] This Court farther held that the Department of Agrarian Reform could not be deemed to have gravely abused its discretion just because its chosen beneficiaries were not tenants of Polo Coconut. Section 22 of the Comprehensive Agrarian Reform Law, it ruled, "does not limit qualified beneficiaries to tenants of the landowners."[22]

The September 3, 2008 Decision became final and executory on November 26, 2008.[23]

On June 30, 2009, 164 alleged regular farmworkers of Polo Coconut (Alcantara, et al.) filed a Petition for Inclusion as qualified beneficiaries in TCT No. T-802/CLOA No. 00114438 and Exclusion of those named as beneficiaries therein (Petition for Inclusion/Exclusion).[24] They were allegedly not informed when the Department of Agrarian Reform conducted the identification and screening process for potential beneficiaries.[25] They contend that the Certificate of Land Ownership Award holders were not qualified beneficiaries under Section 22 of the Comprehensive Agrarian Reform Law.[26]

On July 1, 2009, Alcantara, et al. also filed a Petition for Immediate Issuance of a Cease and Desist Order and/or Injunction.[27] They averred that the Certificate of Land Ownership Award holders had attempted to occupy the property even without authority from the Department of Agrarian Reform. Moreover, the Municipal Agrarian Reform Officer of Tanjay had allegedly

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[21] *Id*. at 82.

[22] *Id*. at 83.

[23] *Rollo*, p. 13.

[24] *Id*. at 199 and 314-342. The case was docketed as DARRO ADM. Case Nos. A-0700-453-01-2009 to A-0700-453-147-2009.

[25] *Id*. at 342.

[26] *Id*.

[27] *Id*. at 63 and 199.

scheduled the relocation and subdivision of the property for the final installation of the qualified beneficiaries. Thus, they sought a Cease and Desist Order to preserve their legal rights while the administrative proceedings for the inclusion/exclusion of farmer beneficiaries were pending resolution.[28]

Acting on the Petition, Regional Director Inson issued a Cease and Desist Order[29] dated July 7, 2009, disposing as follows:

WHEREFORE, in the light of the foregoing ORDER is hereby issued:

1. DIRECTING the [Certificate of Land Ownership Award holders], their agents, representatives, or assigns, to CEASE and DESIST from entering, occupying, and/or taking possession of the property pending final determination of the inclusion-exclusion proceedings, to attain and maintain a peaceful and orderly implementation of CARP in the subject landholding;

2. ENJOINING the PARO of Oriental Negros and the MARO of Tanjay not to undertake any relocation/subdivision survey on the subject landholding until the matter of the inclusion-exclusion of farmer beneficiaries [has been] decided, except the areas utilized as roads, residential, commercial, institutional and recreational portions, creeks and rivers, etc[.]

SO ORDERED.[30]

On July 20, 2009, Regional Director Inson also issued Special Order No. 070, series of 2009,[31] creating an independent body[32]

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[28] *Id*. at 64.

[29] *Id*. at 60-67.

[30] *Id*. at 65.

[31] *Id*. at 183.

[32] *Id*. Composed of the following Department of Agrarian Reform personnel, namely:

Atty. Esther Doron Nadela	-	Chairperson
SARPO Alan B. Tudtud	-	Member
LO I Rudylin B. Tudtud	-	Member

to conduct a revalidation of farmers-beneficiaries in the property. The independent body conducted their interviews from August 3 to 7, 2009.[33]

On July 23, 2009, POPARMUCO members, who are Certificate of Land Ownership Award holders, filed a Motion to Quash the Cease and Desist Order with Motion for Reconsideration.[34] They alleged that they were not given prior notice of the filing of the Petition for Inclusion/Exclusion,[35] and that the Cease and Desist Order defied this Court's September 3, 2008 Decision.[36] Further, they were indeed qualified under the Comprehensive Agrarian Reform Law as their families were landless farmworkers.[37] Alcantara, et al. allegedly did not submit their applications during the Department of Agrarian Reform's investigation on qualified beneficiaries from 1999 to 2000.[38] POPARMUCO members added that as Certificate of Land Ownership Award holders, they were entitled to all ownership rights.[39]

On July 30, 2009,[40] POPARMUCO members filed before the Department of Agrarian Reform Regional Adjudication Board a Motion for Issuance of a Writ of Execution[41] dated July 14, 2009, seeking to enforce the September 3, 2008 Decision.

Representative (OPNS)	-	Member
Representative (MARO)	-	Member
SARPT Remedios O. Josol	-	Documentor
ADM. Asst. III Floresa T. Banglos	-	Documentor

[33] *Id*. at 200.

[34] *Id*. at 18 and 68-106.

[35] *Id*. at 71.

[36] *Id*. at 78.

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

[38] *Id*. at 74.

[39] *Id*. at 82.

[40] *Id*. at 19.

[41] *Id*. at 176-180.

POPARMUCO filed before this Court a Petition for Contempt[42] against respondent Inson, raising the following grounds:

1. Respondent issued a Cease and Desist Order without any notice in violation of petitioner's members' constitutional right to due Process.[43]
2. Respondent defied this Court's September 3, 2008 Decision, which ruled with finality on the qualification of petitioner's members as beneficiaries in Polo Coconut's landholding covered under TCT No. T-802/ CLOA No. 00114438.[44]
3. Petitioner's members, as registered owners of the landholding involved, are entitled to the property as the last step in the Comprehensive Agrarian Reform Program implementation.[45]

Petitioner prayed that a restraining order or writ of preliminary injunction be issued, directing respondent to cease: (1) from enforcing the Cease and Desist Order in light of the Petition; and (2) from reviewing the beneficiaries, as this Court had decided with finality on the issue. It further prayed that this Court hold respondent guilty of contempt of court.[46]

In his Comment,[47] respondent, through counsel, asserts that the September 3, 2008 Decision is no legal impediment to his taking cognizance of the Petition for Inclusion/Exclusion and issuance of a Cease and Desist Order.[48] He adds that this Court had recognized the Department Secretary's exclusive jurisdiction

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[42] *Id*. at 3-32.

[43] *Id*. at 434.

[44] *Id*. at 20-22.

[45] *Id*. at 23.

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

[47] *Id*. at 197-206.

[48] *Id*. at 201.

over the implementation of the Comprehensive Agrarian Reform Program, including the identification and selection of its beneficiaries.[49] Further, his issuance of the Cease and Desist Order is authorized under Section 22, which vests in the Department of Agrarian Reform the power to reassess the qualification of identified beneficiaries, and even strip them of their rights if found to have violated agrarian laws.[50]

Petitioner filed a Reply,[51] stating the following arguments:

1. Respondent's Comment should be expunged from the records for having been improperly signed by respondent's counsel;[52]
2. Petitioners in the Petition for Inclusion/Exclusion were under the control of the previous landowner and some of the parties in G.R. Nos. 168787 and 169271; thus, they were bound by the September 3, 2008 Decision;[53]
3. Section 105 of Presidential Decree No. 1529, on the indefeasibility of a title, cannot be subverted by the Department of Agrarian Reform's rules and regulations.[54]

During the pendency of this Petition, respondent dismissed in a September 29, 2009 Order[55] the Motion to Quash and upheld the validity of his Cease and Desist Order.

Thus, petitioner filed a Manifestation with Leave of Court and Supplement to the Petition for Contempt,[56] alleging that:

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[49] *Id*. at 202-203.

[50] *Id*. at 204.

[51] *Id*. at 222-247.

[52] *Id*. at 222-225.

[53] *Id*. at 243.

[54] *Id*.

[55] *Id*. at 213-218.

[56] *Id*. at 273-304.

1. Despite the pendency of the Petition, respondent proceeded to conduct a reinvestigation and re-qualification of the farmer beneficiaries, "in complete defiance and lack of respect for a final and executory judgment" issued by this Court;[57] and

2. Respondent had proceeded to issue his March 12, 2010 Order[58] disqualifying some of petitioner's members.[59] Specifically, the March 12, 2010 Order declared, among others, that:

    a. 109 of the petitioners in the Petition for Inclusion/Exclusion are qualified agrarian reform beneficiaries because they were connected with, or working in, the Polo Coconut property before a Notice of Coverage was served on Polo Coconut;[60]

    b. 62 of the petitioners were disqualified on the grounds that they worked for Polo Coconut after the Notice of Coverage was sent, and are not yet connected with Polo Coconut during the beneficiary identification. They also did not appear during the investigation, are retired from service, or those whose work do not include cultivation of the land;[61]

    c. 39 Certificate of Land Ownership Award holders (petitioner's members) were disqualified because they were not connected with Polo Coconut;[62]

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[57] *Id*. at 274-275.

[58] *Id*. at 314-356.

[59] *Id*. at 274.

[60] *Id*. at 346-347 and 353.

[61] *Id*. at 353-354.

[62] *Id*. at 354.

d. Six (6) Certificate of Land Ownership Award holders (petitioner's members) were disqualified as they have already migrated to other places, and thus, were disinterested to occupy and cultivate their awarded lots;[63] and

e. 102 existing Certificate of Land Ownership Award holders maintained their status as qualified farmer beneficiaries.[64]

Respondent further directed the Provincial Agrarian Reform Officer of Oriental Negros "to facilitate the inclusion of the . . . qualified agrarian reform beneficiaries in CLOA No. 00114438 under TCT No. T-802 by filing a petition before the [Provincial Agrarian Reform Adjudicator] of Oriental Negros for the amendment/correction of the subject [Certificate of Land Ownership Award]."[65]

In his Comments (to the Supplemental Petition for Contempt),[66] respondent reiterates his allegations in his previous Comment. He further informs this Court that petitioner's members have voluntarily submitted to the Department of Agrarian Reform's jurisdiction when they filed a Motion for Reconsideration and subsequent Appeal of respondent's March 12, 2010 Order, despite the pendency of this Petition. Thus, he avers, this Petition is considered moot.[67]

In its Reply,[68] petitioner contends that respondent's Comments should be expunged for his counsel's failure to indicate his Mandatory Continuing Legal Education Number. It further avers that the adjudged agrarian reform beneficiaries have not been

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[63] *Id*.

[64] *Id*. at 355.

[65] *Id*. at 355-356.

[66] *Id*. at 360-366.

[67] *Id*. at 366.

[68] *Id*. at 369-396.

installed in the land despite the September 3, 2008 Decision's finality, and that the Petition has not been mooted.

In compliance with this Court's November 12, 2012 Resolution,[69] both parties submitted their respective Memoranda.[70]

Petitioner argues that respondent, in issuing the Cease and Desist Order, committed acts amounting to "disobedience of or resistance to a lawful writ, process, order, judgment"[71] of this Court in G.R. Nos. 168787 and 169271.[72]

On the other hand, respondent argues that the September 3, 2008 Decision "did not pass on the merits of [petitioner's members'] qualifications as farmer beneficiaries."[73] According to him, nowhere in the Decision did this Court pronounce that they were qualified as beneficiaries. He contends that *Department of Agrarian Reform*[74] mainly involved the validity of placing the Polo Coconut property under the coverage of the Comprehensive Agrarian Reform Program.[75] The discussion on beneficiaries, he avers, was included merely to highlight the Department of Agrarian Reform's exclusive jurisdiction over issues on the program's implementation,[76] and that, without proof that the Department of Agrarian Reform committed grave abuse of discretion, this Court will not substitute its judgment.[77]

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

[70] *Id*. at 429-467 (petitioner's Memorandum) and 542-553 (respondent's Memorandum).

[71] *Id*. at 458.

[72] *Id*. at 457-458.

[73] *Id*. at 547.

[74] 586 Phil. 69 (2008) [Per J. Corona, First Division].

[75] *Rollo*, p. 547.

[76] *Id*. at 547 and 549.

[77] *Id*. at 547.

Respondent adds that he had legal and factual bases to issue the Cease and Desist Order. It was alleged in the Petition for Inclusion/Exclusion that petitioner's members were not seasonal farmworkers, but outsiders not related to the Polo Coconut management and the land.[78] He points out that, per the amended Section 22 of Republic Act No. 6657, the Department of Agrarian Reform is mandated to monitor the beneficiaries' performance; thus, it can reevaluate their qualification, and even strip them of their rights if they violated agrarian reform laws.[79] He further states that Section 20 of Department of Agrarian Reform Administrative Order No. 03-03 authorizes the Regional Director to issue a Cease and Desist Order on any of these grounds:

1. That any party may suffer grave or irreparable damage;
2. That the doing of or continuance of certain acts will render the case moot and academic; or
3. That there is a need to maintain peace and order and prevent injury or loss of life and property.[80]

Finally, respondent avers that petitioner's voluntary submission to the Department of Agrarian Reform's jurisdiction, through the Motion for Reconsideration and Appeal, has rendered this case moot. The Department of Agrarian Reform Secretary's April 3, 2013 Order, he claims, affirms his position that his cognizance of the Petition for Inclusion/Exclusion and issuance of related Resolutions and Orders did not constitute defiance of the September 3, 2008 Decision.[81]

The issue for this Court's resolution is whether or not respondent Regional Director Rodolfo T. Inson's cognizance of the Petition for Inclusion/Exclusion of farmer beneficiaries, and his subsequent issuance of the July 7, 2009 Cease and Desist Order and the March 12, 2010 Order disqualifying some of

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[78] *Id*. at 550.

[79] *Id*.

[80] *Id*. at 551.

[81] *Id*. at 551.

petitioner's members, constitute defiance of this Court's September 3, 2008 Decision in G.R. Nos. 168787 and 169271.

This Court dismisses the Petition.

The validity of the July 7, 2009 Cease and Desist Order and the correctness of the March 12, 2010 Order will not be discussed in this Petition for Contempt. They should instead be tackled in a more appropriate mode and forum. Petitioner had appealed the Order partially granting the Petition for Inclusion/Exclusion and the July 14, 2010 Order[82] denying their Motion for Reconsideration. In an April 3, 2013 Order,[83] the Department of Agrarian Reform Secretary dismissed the appeal for lack of merit.

We proceed first to discuss the scope of the Department of Agrarian Reform's jurisdiction in agrarian law implementation cases.

I

The Comprehensive Agrarian Reform Law vested in the Department of Agrarian Reform the primary responsibility of implementing the Comprehensive Agrarian Reform Program. Section 50 defines the Department's powers over agrarian reform matters:

> SECTION 50. Quasi-Judicial Powers of the DAR. — The DAR is hereby vested with *primary jurisdiction to determine and adjudicate agrarian reform matters* and shall have *exclusive original jurisdiction over all matters involving the implementation of agrarian reform* except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR).
>
> . . . . . .

[82] *Id*. at 502-506.

[83] *Id*. at 554-606.

Notwithstanding an appeal to the Court of Appeals, the decision of the DAR shall be immediately executory.[84] (Emphasis supplied)

Sta. Rosa Realty Development Corporation v. Amante[85] clarifies that Section 50 pertains to both the Department of Agrarian Reform's: (1) administrative function, which involves enforcing, administering, and carrying agrarian reform laws into operation; and (2) quasi-judicial function, which involves the determination of parties' rights and obligations in agrarian reform matters.

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[84] Rep. Act No. 9700, or An Act Strengthening the Comprehensive Agrarian Reform Program (CARP), Extending the Acquisition and Distribution of All Agricultural Lands, Instituting Necessary Reforms, Amending for the Purpose Certain Provisions of Republic Act No. 6657, Otherwise Known as the Comprehensive Agrarian Reform Law of 1988, as Amended, and Appropriating Funds Therefor (2009), Sec. 50-A provides:

Section 50-A. *Exclusive Jurisdiction on Agrarian Dispute*. — No court or prosecutor's office shall take cognizance of cases pertaining to the implementation of the CARP except those provided under Section 57 of Republic Act No. 6657, as amended. If there is an allegation from any of the parties that the case is agrarian in nature and one of the parties is a farmer, farmworker, or tenant, the case shall be automatically referred by the judge or the prosecutor to the DAR which shall determine and certify within fifteen (15) days from referral whether an agrarian dispute exists: *Provided*, That from the determination of the DAR, an aggrieved party shall have judicial recourse. In cases referred by the municipal trial court and the prosecutor's office, the appeal shall be with the proper regional trial court, and in cases referred by the regional trial court, the appeal shall be to the Court of Appeals.

In cases where regular courts or quasi-judicial bodies have competent jurisdiction, agrarian reform beneficiaries or identified beneficiaries and/or their associations shall have legal standing and interest to intervene concerning their individual or collective rights and/or interests under the CARP.

The fact of non-registration of such associations with the Securities and Exchange Commission, or Cooperative Development Authority, or any concerned government agency shall not be used against them to deny the existence of their legal standing and interest in a case filed before such courts and quasi-judicial bodies.

[85] 493 Phil. 570 (2005) [*J.* Austria-Martinez, Special First Division].

Prior to the Comprehensive Agrarian Reform Law, however, Executive Order No. 129-A[86] created the Adjudication Board and authorized it to assume the Department of Agrarian Reform's quasi-judicial functions:

> SECTION 13. Agrarian Reform Adjudication Board. — There is hereby created an Agrarian Reform Adjudication Board under the Office of the Secretary. The Board shall be composed of the Secretary as Chairman, two (2) Undersecretaries as may be designated by the Secretary, the Assistant Secretary for Legal Affairs, and three (3) others to be appointed by the President upon the recommendation of the Secretary as members. A Secretariat shall be constituted to support the Board. *The Board shall assume the powers and functions with respect to the adjudication of agrarian reform cases under Executive Order No. 229 and this Executive Order*. These powers and functions may be delegated to the regional offices of the Department in accordance with rules and regulations to be promulgated by the Board. (Emphasis supplied)

Section 7 of the Comprehensive Agrarian Reform Law authorizes the Department of Agrarian Reform, in coordination with the Presidential Agrarian Reform Council, to plan and program the acquisition and distribution of all agricultural lands in accordance with the order of priority under the law. Inherent in this function is the Department of Agrarian Reform's power to identify the landholdings within the coverage of the Comprehensive Agrarian Reform Program, and to identify, screen, and select agrarian reform beneficiaries.[87] The Department

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[86] Reorganization Act of the Department of Agrarian Reform (1987).

[87] Rep. Act No. 6657 (1988), Secs. 15 and 16 provide:

> SECTION 15. Registration of Beneficiaries. — The DAR in coordination with the Barangay Agrarian Reform Committee (BARC) as organized in this Act, shall register all agricultural lessees, tenants and farmworkers who are qualified to be beneficiaries of the CARP. These potential beneficiaries with the assistance of the BARC and the DAR shall provide the following data:
>
> (a) names and members of their immediate farm household;
>
> (b) owners or administrators of the lands they work on and the length of tenurial relationship;

of Agrarian Reform is further tasked to make support and coordinative services available to farmer-beneficiaries and affected landowners.[88]

There are two (2) modes of acquiring land under the Comprehensive Agrarian Reform Law: (1) compulsory acquisition[89] and (2) voluntary offer for sale/land transfer.[90]

I (A)

Section 16 outlines the procedure for compulsory land acquisition:

SECTION 16. Procedure for Acquisition of Private Lands. — For purposes of acquisition of private lands, the following procedures shall be followed:

(a) After having identified the land, the landowners and the beneficiaries, the DAR shall send its notice to acquire the

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(c) location and area of the land they work;

(d) crops planted; and

(e) their share in the harvest or amount of rental paid or wages received.

A copy of the registry or list of all potential CARP beneficiaries in the barangay shall be posted in the barangay hall, school or other public buildings in the barangay where it shall be open to inspection by the public at all reasonable hours.

SECTION 16. Procedure for Acquisition of Private Lands. — For purposes of acquisition of private lands, the following procedures shall be followed:

(a) *After having identified the land, the landowners and the beneficiaries*, the DAR shall send its notice to acquire the land to the owners thereof, by personal delivery or registered mail, and post the same in a conspicuous place in the municipal building and barangay hall of the place where the property is located. Said notice shall contain the offer of the DAR to pay a corresponding value in accordance with the valuation set forth in Sections 17, 18, and other pertinent provisions hereof. (Emphasis supplied)

[88] Rep. Act No. 6657 (1988), Secs. 35-38.

[89] Rep. Act No. 6657 (1988), Sec. 16.

[90] Rep. Act No. 6657 (1988), Secs. 19-21. Under Rep. Act No. 9700 (2009), Sec. 5, voluntary land transfer will no longer be allowed as a mode of acquisition after June 30, 2009.

land to the owners thereof, by personal delivery or registered mail, and post the same in a conspicuous place in the municipal building and barangay hall of the place where the property is located. Said notice shall contain the offer of the DAR to pay a corresponding value in accordance with the valuation set forth in Sections 17, 18, and other pertinent provisions hereof.

(b) Within thirty (30) days from the date of receipt of written notice by personal delivery or registered mail, the landowner, his administrator or representative shall inform the DAR of his acceptance or rejection of the offer.

(c) If the landowner accepts the offer of the DAR, the Land Bank of the Philippines (LBP) shall pay the landowner the purchase price of the land within thirty (30) days after he executes and delivers a deed of transfer in favor of the Government and surrenders the Certificate of Title and other monuments of title.

(d) In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation for the land by requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.

(e) Upon receipt by the landowner of the corresponding payment or, in case of rejection or no response from the landowner, upon the deposit with an accessible bank designated by the DAR of the compensation in cash or in LBP bonds in accordance with this Act, the DAR shall take immediate possession of the land and shall request the proper Register of Deeds to issue a Transfer Certificate of Title (TCT) in the name of the Republic of the Philippines. The DAR shall thereafter proceed with the redistribution of the land to the qualified beneficiaries.

(f) Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.

Section 16(a) requires that after identification of the land, landowners, and farmer beneficiaries, the Department of Agrarian Reform will send a notice of acquisition to the landowner, through personal delivery or registered mail, and post it in a conspicuous place in the municipal building and barangay hall of the place where the property is located.

While the law does not provide how the identification process must be made, the details or guidelines can be found in pertinent administrative issuances of the Department of Agrarian Reform or the Provincial Agrarian Reform Council, per their rule-making power under Section 49.[91]

Under the Department of Agrarian Reform Administrative Order No. 01-03, or the 2003 Rules Governing Issuance of Notice of Coverage and Acquisition of Agricultural Lands Under Republic Act No. 6657, compulsory acquisition is commenced through two (2) ways.

The first is through a Notice of Coverage. After determining that the land is covered by the Comprehensive Agrarian Reform Program and writing a pre-ocular inspection report, the Municipal Agrarian Reform Officer sends a Notice to the landowner. The Notice would be posted for at least seven (7) days in the bulletin boards of the barangay hall and municipal/city hall where the property is located.

The other way is through a Petition for Coverage, filed by any party before the Department of Agrarian Reform's Regional Office or Provincial Office of the region or province where the property is located. Either of these offices transmits the case folder to the Municipal Agrarian Reform Officer where the property is located.[92]

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[91] Rep. Act No. 6657 (1988), Sec. 49 provides:

SECTION 49. Rules and Regulations. — The PARC and the DAR shall have the power to issue rules and regulations, whether substantive or procedural, to carry out the objects and purposes of this Act. Said rules shall take effect ten (10) days after publication in two (2) national newspapers of general circulation.

[92] DAR Adm. Order No. 01-03 (2003), Secs. 1 and 2.

Under Department of Agrarian Reform Administrative Order No. 01-03, the Municipal Agrarian Reform Officer serves copies of the Notice of Coverage or Petition for Coverage on the landowner. Through the Notice, the landowner is informed that his or her landholding is subjected to the Comprehensive Agrarian Reform Program. He or she is invited to a public hearing or field investigation on the date specified in the Notice. Moreover, the landowner is informed of his or her rights and privileges (with corresponding restrictions and conditions), as follows:

1. apply for an exemption clearance or for exclusion from the Comprehensive Agrarian Reform Program's coverage;
2. retain an area not exceeding five (5) hectares pursuant to Section 6 of Republic Act No. 6657;
3. nominate his/her child/ren who may qualify as beneficiary/ies to the subject landholding; and/or
4. submit evidence for determining just compensation of the subject landholding.

The landowner or any real party-in-interest may file before the Department of Agrarian Reform Municipal Office a protest or petition to lift the coverage of the Comprehensive Agrarian Reform Program within 60 calendar days from receipt of the Notice.[93] The protest will be resolved in accordance with the procedure set forth in Department of Agrarian Reform Administrative Order No. 03-03, or the 2003 Rules for Agrarian Law Implementation Cases.

Meanwhile, the process of identifying and screening potential agrarian reform beneficiaries is suspended until after the lapse of the 60-day period from the landowner's receipt of the Notice, or upon the authorized agency's final determination of the petition for retention, exclusion, and exemption, if any were filed.[94]

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[93] DAR Adm. Order No. 03-03 (2003), Sec. 13.2.

[94] DAR Adm. Order No. 07-03 (2003), Sec. 2.19.

Upon receipt of the Memorandum of Valuation from the Land Bank of the Philippines and Claim Folder Profile and Valuation Summary, the Provincial Agrarian Reform Officer sends a Notice of Land Valuation and Acquisition to the landowner in accordance with the same service procedures in Department of Agrarian Reform Administrative Order No. 01-03.

Section 16(e) mandates the Department to take immediate possession of the land only after full payment or deposit of the compensation with the bank (in case of rejection/non-response of landowner), and to request the Register of Deeds to transfer title in the name of the Republic of the Philippines, and later on to the intended beneficiaries.

I (B)

Upon land acquisition, the Department of Agrarian Reform immediately proceeds to distribute the land to qualified beneficiaries.[95]

Sections 22 and 22-A[96] of the Comprehensive Agrarian Reform Law provides the order of priority in the distribution of lands

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[95] DAR Adm. Order No. 07-03 (2003), Sec. 2.1.

[96] Rep. Act No. 6657 (1988), Sec. 22 provides:

> SECTION 22. Qualified Beneficiaries. — The lands covered by the CARP shall be distributed as much as possible to landless residents of the same barangay, or in the absence thereof, landless residents of the same municipality in the following order of priority:
>
> (a) agricultural lessees and share tenants;
>
> (b) regular farmworkers;
>
> (c) seasonal farmworkers;
>
> (d) other farmworkers;
>
> (e) actual tillers or occupants of public lands;
>
> (f) collectives or cooperatives of the above beneficiaries; and
>
> (g) others directly working on the land.
>
> *Provided, however*, That the children of landowners who are qualified under Section 6 of this Act shall be given preference in the distribution of the land of their parents: and *Provided, further*, That actual tenant-tillers in the landholdings shall not be ejected or removed therefrom.

covered by the Comprehensive Agrarian Reform Program to landless farmers/farmworkers. The basic qualification for a beneficiary is his or her "willingness, aptitude, and ability to cultivate and make the land as productive as possible."

Department of Agrarian Reform Administrative Order No. 07-03[97] provides the qualifications, disqualifications, and rights and obligations of agrarian reform beneficiaries. It also provides the operating procedures for their: (1) identification, screening, and selection; (2) resolution of protests in the selection; and (3) certificate of land ownership award generation and registration.

Beneficiaries under Presidential Decree No. 27 who have culpably sold, disposed of, or abandoned their land are disqualified to become beneficiaries under this Program.

A basic qualification of a beneficiary shall be his willingness, aptitude, and ability to cultivate and make the land as productive as possible. The DAR shall adopt a system of monitoring the record or performance of each beneficiary, so that any beneficiary guilty of negligence or misuse of the land or any support extended to him shall forfeit his right to continue as such beneficiary. The DAR shall submit periodic reports on the performance of the beneficiaries to the PARC.

If, due to the landowner's retention rights or to the number of tenants, lessees, or workers on the land, there is not enough land to accommodate any or some of them, they may be granted ownership of other lands available for distribution under this Act, at the option of the beneficiaries.

Farmers already in place and those not accommodated in the distribution of privately-owned lands will be given preferential rights in the distribution of lands from the public domain. (Emphasis in the original)

Rep. Act No. 9700, Sec. 22-A further provides:

SECTION 22-A. Order of Priority. — A landholding of a landowner shall be distributed first to qualified beneficiaries under Section 22, subparagraphs (a) and (b) of that same landholding up to a maximum of three (3) hectares each. Only when these beneficiaries have all received three (3) hectares each, shall the remaining portion of the landholding, if any, be distributed to other beneficiaries under Section 22, subparagraphs (c), (d), (e), (f), and (g).

[97] Guidelines on the Identification, Screening and Selection of, and Distribution to Agrarian Reform Beneficiaries (ARBs) of Private Agricultural Lands under Republic Act (R.A.) No. 6657.

The Municipal or Provincial Agrarian Reform Officer, together with the Barangay Agrarian Reform Committee, screens and selects the possible agrarian beneficiaries, under the criteria in Sections 4 and 5 of Department of Agrarian Reform Administrative Order No. 07-03:

Section 4. Qualifications. Only those who meet the following qualifications shall be eligible as beneficiaries:

4.1 General Qualifications. All agrarian reform beneficiaries must be:

4.1.1 Landless as defined by R.A. No. 6657;

4.1.2 Filipino citizen;

4.1.3 Permanent resident of the barangay and/or municipality, if applicable[;]

4.1.4 At least fifteen (15) years of age or head of family at the time of acquisition of the property (titled in the name of the Republic of the Philippines), or at least 18 years old as of 15 June 1988 in the case of Commercial Farms (CFs); and

4.1.5 Willing and have the ability and aptitude to cultivate and make the land productive.

4.2 Specific Qualifications for Farmworkers in Commercial Farms. In addition to item 4.1 above, the applicant must have been employed in the property being covered on June 15, 1988.

Section 5. Grounds for Disqualification/Exclusion. The following shall be the grounds for disqualification/exclusion as ARBs of the CARP:

5.1. Failure to meet the qualifications as provided for under Section 22 of R.A. No. 6657;

5.2. Non-payment of an aggregate of three (3) annual amortizations or default in payment of three (3) annual amortizations with the landowner (LO) that resulted to the foreclosure of mortgage on the awarded land by the LBP or repossession by the landowners (in the case of voluntary land transfer/direct payment scheme or VLT/DPS) of the awarded lands except if the non-payment of the rental is due to crop failure as a result of fortuitous events per

Section 36(6) of R.A. No. 3844, to the extent of seventy-five percent (75%);

5.3. Misuse or diversion of financial support services extended to them (Section 37 of R.A. No. 6657);

5.4. Negligence or misuse of the land or any support extended to them (Section 22 of R.A. No. 6657);

5.5. Material misrepresentation of the ARB's basic qualifications as provided for under Section 22 of R.A. No. 6657, P.D. No. 27, and other agrarian laws;

5.6. Sale, disposition, or abandonment of the lands awarded by government under CARP or P.D. No. 27 which is violative of the agrarian laws;

5.7. Conversion of agricultural lands to non-agricultural use without prior approval from the DAR;

5.8. Retirement from the service, whether optional or mandatory, or voluntary resignation, provided this was not attended by coercion and/or deception, and there is no case questioning said retirement or voluntary resignation by the applicant as of the date of approval of this Order;

5.9. Dismissal from the service for cause and there is no case filed questioning said dismissal as of the approval of this Order and if there is any such case, the same has been affirmed by the proper entity of government;

5.10. Obtaining a substantially equivalent and regular employment, as defined in Section 3 (m) of this A.O.;

5.11. Retrenchment from the farm and receipt of separation pay, and the retrenchment not having been appealed or questioned in the proper government entity as of the approval of this A.O.;

5.12. Execution of a waiver of right to become an ARB in exchange for due compensation and waiver not having been questioned in the proper government entity as of the approval of this A.O.;

5.13. Refusal to be listed as an ARB and to provide pertinent information as requested by the DAR in the invitation letter, which shall be construed as unwillingness on the part of the potential beneficiary to be listed;

5.14. Forcible entry into the property or illegal detainer (e.g. after beneficiaries were paid by the LO); and

5.15. Commission of any violation of the agrarian reform laws and regulations, or related issuances, as determined with finality after proper proceedings by the appropriate tribunal or agency.

All qualified agrarian reform beneficiaries are then ranked in accordance with the order of priority under Sections 22 and 22-A.[98] Then, the master list of agrarian reform beneficiaries is posted for 15 days in at least three (3) conspicuous places in the barangay hall, municipal hall, and in the community where the property is located.[99]

Written protests for the inclusion/exclusion from the master list must be filed before the Department of Agrarian Reform's Regional or Provincial Office, as the case may be, not later than 15 days from the last day of posting of the list.[100] The Regional Director will resolve the protest through summary proceedings within 30 days from receiving the Beneficiary Screening Committee's case records or the Provincial Office's investigation report and recommendation.[101]The master list becomes final and executory after the lapse of 15 days from receipt of the Regional Director's decision on the protest, but such finality is only for the specific purpose of generating the certificate of land ownership award.[102]

An appeal or motion for reconsideration from the Regional Director's decision or order for inclusion/exclusion of potential

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[98] Department of Agrarian Reform Administrative Order No. 07-03 (2003), Sec. 10.2.4.

[99] Department of Agrarian Reform Administrative Order No. 07-03 (2003), Sec. 8.3 in relation to Sec. 10.2.5.

[100] Department of Agrarian Reform Administrative Order No. 07-03 (2003), Secs. 11.1.1 and 11.2.1.

[101] Department of Agrarian Reform Administrative Order No. 07-03 (2003), Secs. 11.3.1 and 11.3.2.

[102] Department of Agrarian Reform Administrative Order No. 07-03 (2003), Sec. 11.3.4.

agrarian reform beneficiaries in/from the master list will be governed by Department of Agrarian Reform Administrative Order No. 03-03.

After the issuance of certificates of land ownership award, a petition to reopen the identification and selection of agrarian reform beneficiaries may be filed on grounds of duress or threat by the landowner against the petitioner during the identification phase. Section 14 of Department of Agrarian Reform Administrative Order No. 07-03 provides:

> SECTION 14. Re-Opening of ARB Identification and Selection
>
> 14.1 Subsequent to the issuance of CLOAs but prior to the installation of ARBs, the Regional Director may grant due course to a sworn petition to re-open the identification, screening and selection process on the grounds of duress or threat by the landowner against the petitioner during the identification phase. After installation of the ARBs, only the Secretary may grant due course to such a petition.
>
> 14.2 Any petition to re-open the ARB identification, screening and selection process subsequent to installation shall be directly filed with the Office of the Regional Director where the property is located which shall have the exclusive jurisdiction to act on the petition. The procedures shall be in accordance with A.O. No. 3, Series of 2003 titled, "2003 Rules for Agrarian Law Implementation Cases".
>
> The re-opening of ARB identification, screening and selection shall, however, subscribe to the provisions for qualification, disqualification, rights and obligations, and procedures prescribed under pertinent sections of this Administrative Order.

As in protests for inclusion/exclusion of agrarian reform beneficiaries, petitions to reopen the identification and selection process are governed by Department of Agrarian Reform Administrative Order No. 03-03.[103]

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[103] Department of Agrarian Reform Administrative Order No. 03-03 (2003), Rule I, Sec. 2.14.

I (C)

Under Department of Agrarian Reform Administrative Order No. 03-03,[104] the Regional Director[105] has primary jurisdiction over all agrarian law implementation cases, while the Department of Agrarian Reform Secretary[106] has appellate jurisdiction over them. Rule I, Section 2 provides:

SECTION 2. ALI cases. These Rules shall govern all cases, arising from or involving:

2.1 Classification and identification of landholdings for coverage under the agrarian reform program and the initial issuance of Certificate of Land Ownership Awards (CLOAs) and Emancipation Patents (EPs), including protests or oppositions thereto and petitions for lifting of such coverage;

2.2 *Classification, identification, inclusion, exclusion, qualification, or disqualification of potential/actual farmer-beneficiaries*;

2.3 Subdivision surveys of land under Comprehensive Agrarian Reform [Program] (CARP);

2.4 Recall, or cancellation of provisional lease rentals, Certificates of Land Transfers (CLTs) and CARP Beneficiary Certificates (CBCs) in cases outside the purview of Presidential Decree (PD) No. 816, including *the issuance, recall, or cancellation of Emancipation Patents (EPs) or Certificates of Land Ownership Awards (CLOAs) not yet registered with the Register of Deeds*;

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[104] 2003 Rules for Agrarian Law Implementation Cases (2003).

[105] DAR Administrative Order No. 03-03 (2003), Rule II, Sec. 7 provides:

SECTION 7. General Jurisdiction. The Regional Director shall exercise primary jurisdiction over all agrarian law implementation cases except when a separate special rule vests primary jurisdiction in a different DAR office.

[106] DAR Administrative Order No. 03-03 (2003), Rule II, Sec. 10 provides:

SECTION 10. Appellate Jurisdiction. The Secretary shall exercise appellate jurisdiction over all ALI cases, and may delegate the resolution of appeals to any Undersecretary.

2.5 Exercise of the right of retention by landowner;

2.6 Application for exemption from coverage under Section 10 of RA 6657;

2.7 Application for exemption pursuant to Department of Justice (DOJ) Opinion No. 44 (1990);

2.8 Exclusion from CARP coverage of agricultural land used for livestock, swine, and poultry raising;

2.9 Cases of exemption/exclusion of fishpond and prawn farms from the coverage of CARP pursuant to RA 7881;

2.10 Issuance of Certificate of Exemption for land subject of Voluntary Offer to Sell (VOS) and Compulsory Acquisition (CA) found unsuitable for agricultural purposes;

2.11 Application for conversion of agricultural land to residential, commercial, industrial, or other non agricultural uses and purposes including protests or oppositions thereto;

2.12 Determination of the rights of agrarian reform beneficiaries to homelots;

2.13 Disposition of excess area of the tenant's/farmer-beneficiary's landholdings;

2.14 Increase in area of tillage of a tenant/farmer-beneficiary;

2.15 Conflict of claims in landed estates administered by DAR and its predecessors; and

2.16 Such other agrarian cases, disputes, matters or concerns referred to it by the Secretary of the DAR.

On the other hand, in the exercise of its quasi-judicial function, the Department of Agrarian Reform, through its adjudication arm— the Adjudication Board and its regional and provincial adjudication boards— adopted the 2003 DARAB Rules of Procedure. Under Rule II, Section 2, the Adjudication Board shall have exclusive appellate jurisdiction to review, reverse, modify, alter, or affirm resolutions, orders, and decisions of its Adjudicators who have primary and exclusive original jurisdiction over the following cases:

Rule II
Jurisdiction of the Board and its Adjudicators

SECTION 1. Primary and Exclusive Original Jurisdiction. — The Adjudicator shall have primary and exclusive original jurisdiction to determine and adjudicate the following cases:

1.1 The rights and obligations of persons, whether natural or juridical, engaged in the management, cultivation, and use of all agricultural lands covered by Republic Act (RA) No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL), and other related agrarian laws;

1.2 The preliminary administrative determination of reasonable and just compensation of lands acquired under Presidential Decree (PD) No. 27 and the Comprehensive Agrarian Reform Program (CARP);

1.3 The annulment or cancellation of lease contracts or deeds of sale or their amendments involving lands under the administration and disposition of the DAR or Land Bank of the Philippines (LBP);

1.4 Those cases involving the ejectment and dispossession of tenants and/or leaseholders;

1.5 Those cases involving the sale, alienation, pre-emption, and redemption of agricultural lands under the coverage of the CARL or other agrarian laws;

1.6 *Those involving the correction, partition, cancellation, secondary and subsequent issuances of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents (EPs) which are registered with the Land Registration Authority[.]*

Rule II, Section 3 further states that neither the Adjudicator nor the Adjudication Board has jurisdiction over matters involving the administrative implementation of the Comprehensive Agrarian Reform Law and other agrarian laws, as they are exclusively cognizable by the Department of Agrarian Reform Secretary.

In *Sutton v. Lim*,[107] this Court clarified that the Adjudication Board's jurisdiction over petitions for cancellation of registered certificates of land ownership award is confined to agrarian disputes:

> While the DARAB may entertain petitions for cancellation of CLOAs, as in this case, its jurisdiction is, however, confined only to agrarian disputes. As explained in the case of *Heirs of Dela Cruz v. Heirs of Cruz* and reiterated in the recent case of *Bagongahasa v. Spouses Cesar Caguin*, for the DARAB to acquire jurisdiction, the controversy must relate to an agrarian dispute between the landowners and tenants in whose favor CLOAs have been issued by the DAR Secretary, to wit:
>
> > The Court agrees with the petitioners' contention that, under Section 2(f), Rule II of the DARAB Rules of Procedure, the DARAB has jurisdiction over cases involving the issuance, correction and cancellation of CLOAs which were registered with the LRA. However, for the DARAB to have jurisdiction in such cases, they must relate to an agrarian dispute between landowner and tenants to whom CLOAs have been issued by the DAR Secretary. ***The cases involving the issuance, correction and cancellation of the CLOAs by the DAR in the administrative implementation of agrarian reform laws, rules and regulations to parties who are not agricultural tenants or lessees are within the jurisdiction of the DAR and not the DARAB.***
>
> Thus, it is not sufficient that the controversy involves the cancellation of a CLOA already registered with the Land Registration Authority. What is of primordial consideration is the existence of an agrarian dispute between the parties.[108] (Emphasis supplied, citations omitted)

In *Concha v. Rubio*,[109] this Court, citing *Lercana v. Jalandoni*[110] and *Sta. Rosa Realty Development Corporation*

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[107] 700 Phil. 67 (2012) [Per J. Perlas-Bernabe, Second Division]. See also *Cañas-Manuel v. Egano*, 767 Phil. 412 (2015) [Per J. Brion, Second Division].

[108] *Id*. at 74.

[109] 631 Phil. 21 (2010) [Per J. Peralta, Third Division].

[110] 426 Phil. 319 (2002) [Per J. Quisumbing, Second Division].

v. Amante,[111] held that the identification and selection of agrarian reform beneficiaries involve the administrative implementation of the Comprehensive Agrarian Reform Program, which is within the exclusive jurisdiction of the Department of Agrarian Reform. Hence, when seeking to contest the selection of beneficiaries, a party should avail of the administrative remedies under the Department of Agrarian Reform, not under the Adjudication Board. In *Concha*:

> In *Department of Agrarian Reform v. Department of Education, Culture and Sports*, this Court held that the administrative prerogative of DAR to identify and select agrarian reform beneficiaries holds sway upon the courts:
>
> > In the case at bar, the BARC certified that herein farmers were potential CARP beneficiaries of the subject properties. Further, on November 23, 1994, the Secretary of Agrarian Reform through the Municipal Agrarian Reform Office (MARO) issued a Notice of Coverage placing the subject properties under CARP. **Since the identification and selection of CARP beneficiaries are matters involving strictly the administrative implementation of the CARP, it behooves the courts to exercise great caution in substituting its own determination of the issue, unless there is grave abuse of discretion committed by the administrative agency . . .**

Thus, the Municipal Agrarian Reform Officer's (MARO) decision not to include respondents as farmer-beneficiaries must be accorded respect in the absence of abuse of discretion. It bears stressing that it is the MARO or the Provincial Agrarian Reform Officer (PARO) who, together with the *Barangay* Agrarian Reform Committee, screens and selects the possible agrarian beneficiaries. If there are farmers who claim they have priority over those who have been identified by the MARO as beneficiaries of the land, said farmers can file a protest with the MARO or the PARO who is currently processing the Land Distribution Folder. Afterwards, the proper recourse of any individual who seeks to contest the selection of beneficiaries is to avail himself of the administrative remedies under the DAR

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[111] 493 Phil. 570 (2005) [Per *J*. Austria-Martinez, Special First Division].

and not under the DARAB, which is bereft of jurisdiction over this matter.[112] (Emphasis in the original, citations omitted)

Under the new law, Republic Act No. 9700,[113] all cases involving the cancellation of certificates of land ownership award and other titles issued under any agrarian reform program are within the exclusive and original jurisdiction of the Department of Agrarian Reform Secretary. Section 9 provides:

SECTION 9. Section 24 of Republic Act No. 6657, as amended, is hereby further amended to read as follows:

SEC. 24. . . .

. . . . . .

All cases involving the cancellation of registered emancipation patents, certificates of land ownership award, and other titles issued under any agrarian reform program are within the exclusive and original jurisdiction of the Secretary of the DAR.

I (D)

In addition to identifying the qualified beneficiaries, Section 22 of the Comprehensive Agrarian Reform Law mandates the Department of Agrarian Reform to "adopt a system of monitoring the record or performance of each beneficiary, so that any beneficiary guilty of negligence or misuse of the land or any support extended to him shall forfeit his right to continue as such beneficiary."[114]

The Department of Agrarian Reform, mandated to monitor the performance of beneficiaries and ensure the integrity of its

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[112] *Concha v. Rubio*, 631 Phil. 21, 35-36 (2010) [Per J. Peralta, Third Division].

[113] An Act Strengthening the Comprehensive Agrarian Reform Program (CARP), Extending the Acquisition and Distribution of All Agricultural Lands, Instituting Necessary Reforms, Amending for the Purpose Certain Provisions of Republic Act No. 6657, otherwise, known as The Comprehensive Agrarian Reform Law of 1988, as amended, and Appropriating Funds Therefor (August 7, 2009).

[114] Rep. Act No. 6657(1988), Sec. 22.

master list of agrarian reform beneficiaries, integrated the Agrarian Reform Beneficiaries Carding and Identification System[115] in its land acquisition and distribution process.

Under the Agrarian Reform Beneficiaries Carding and Identification System, agrarian reform beneficiaries with titles under the agrarian reform laws will be issued identification cards as proof of their being bona fide beneficiaries. These identification cards are validated yearly based on the Department of Agrarian Reform Municipal Office's inspection of the beneficiaries' performance and compliance with their duties under the laws. The Municipal Office checks if they still own and cultivate the landholding awarded to them, or if they have committed any offense. Beneficiaries found to have violated the laws will be removed from the master list. Consequently, their identification cards and emancipation patents or certificates of land ownership award will be canceled.

Section 24 of the Comprehensive Agrarian Reform Law states that the rights and obligations of beneficiaries commence from the time the land is awarded to them. The certificate of land ownership award contains the restrictions and conditions provided in the law and other applicable statutes. Thus:

> *SECTION 24. Award to Beneficiaries.* — ***The rights and responsibilities of the beneficiary shall commence from the time the DAR makes an award of the land to him***, which award shall be completed within one hundred eighty (180) days from the time the DAR takes actual possession of the land. Ownership of the beneficiary shall be evidenced by a Certificate of Land Ownership Award, which shall contain the restrictions and conditions provided for in this Act, and shall be recorded in the Register of Deeds concerned and annotated on the Certificate of Title. (Emphasis supplied)

The restrictions and conditions refer to payment of annual amortizations, transferability of the awarded land, and proper use

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[115] DAR Administrative Order No. 03-08 (2008). Guidelines on ARB Carding and Identification System and its Mainstreaming in Land Acquisition and Distribution Process.

of financial and support services, which are found in the following provisions of the Comprehensive Agrarian Reform Law:

SECTION 26. *Payment by Beneficiaries*. — Lands awarded pursuant to this Act shall be paid for by the beneficiaries to the LBP in thirty (30) annual amortizations at six percent (6%) interest *per annum*. The payments for the first three (3) years after the award may be at reduced amounts as established by the PARC: *Provided*, That the first five (5) annual payments may not be more than five percent (5%) of the value of the annual gross production as established by the DAR. Should the scheduled annual payments after the fifth year exceed ten percent (10%) of the annual gross production and the failure to produce accordingly is not due to the beneficiary's fault, the LBP may reduce the interest rate or reduce the principal obligation to make the repayment affordable.

The LBP shall have a lien by way of mortgage on the land awarded to the beneficiary; and this mortgage may be foreclosed by the LBP for non-payment of an aggregate of three (3) annual amortizations. The LBP shall advise the DAR of such proceedings and the latter shall subsequently award the forfeited landholdings to other qualified beneficiaries. A beneficiary whose land, as provided herein, has been foreclosed shall thereafter be permanently disqualified from becoming a beneficiary under this Act.

SECTION 27. *Transferability of Awarded Lands*. — ***Lands acquired by beneficiaries under this Act may not be sold, transferred or conveyed except through hereditary succession, or to the government, or to the LBP, or to other qualified beneficiaries for a period of ten (10) years****: Provided, however*, That the children or the spouse of the transferor shall have a right to repurchase the land from the government or LBP within a period of two (2) years. ***Due notice of the availability of the land shall be given by the LBP to the Barangay Agrarian Reform Committee (BARC) of the barangay where the land is situated.*** The Provincial Agrarian Reform Coordinating Committee (PARCCOM) as herein provided, shall, in turn, be given due notice thereof by the BARC.

If the land has not yet been fully paid by the beneficiary, the rights to the land may be transferred or conveyed, with prior approval of the DAR, to any heir of the beneficiary or to any other beneficiary who, as a condition for such transfer or conveyance, shall cultivate the land himself. Failing compliance herewith, the land shall be

transferred to the LBP which shall give due notice of the availability of the land in the manner specified in the immediately preceding paragraph.

In the event of such transfer to the LBP, the latter shall compensate the beneficiary in one lump sum for the amounts the latter has already paid, together with the value of improvements he has made on the land.

. . . . . .

SECTION 37. *Support Services to the Beneficiaries*. — The PARC shall ensure that support services to farmer-beneficiaries are provided, such as:

(a) Land surveys and titling;

(b) Liberalized terms on credit facilities and production loans;

(c) Extension services by way of planting, cropping, production and post-harvest technology transfer, as well as marketing and management assistance and support to cooperatives and farmers' organizations;

(d) Infrastructure such as access trails, mini-dams, public utilities, marketing and storage facilities; and

(e) Research, production and use of organic fertilizers and other local substances necessary in farming and cultivation.

. . . . . .

Misuse or diversion of the financial and support services herein provided shall result in sanctions against the beneficiary guilty thereof, including the forfeiture of the land transferred to him or lesser sanctions as may be provided by the PARC, without prejudice to criminal prosecution. (Emphasis supplied)

Failure of beneficiaries to comply with the prescribed conditions may result in the forfeiture of the land awarded to them. A certificate of land ownership award may be corrected and canceled for violations of agrarian laws, rules, and regulations.[116]

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[116] See *Almagro v. Spouses Amaya, Sr.*, 711 Phil. 493 (2013) [Per *J.* Velasco, Jr., Third Division].

Department of Agrarian Reform Administrative Order No. 03-09[117] provides the rules and procedures for canceling certificates of land ownership award and other titles under the Comprehensive Agrarian Reform Program.[118] The causes of action in a petition for cancellation of a certificate of land ownership award are:

SECTION 4. Causes of Action. — No petition for cancellation shall be filed unless it has been determined and ruled with finality by the DAR Secretary or the Courts that:

(a) The land subject matter of the CLOA, EP or other title under agrarian reform program is found to be:

1. The retention area of the landowner;
2. Excluded from the coverage of CARP, PD No. 27 or other agrarian reform program;
3. Exempted from the coverage of CARP, PD No. 27 or other agrarian reform program;
4. Outside of the authority of the DAR to dispose and award, as the same falls within the authority of the DENR to distribute;
5. Consist in the erroneous issuance of the said title resulting from the defect or lacking in documentation (DNYP or DNYD generated titles but not yet distributed).

(b) The CLOA or EP holder is found to have:

1. Misused or diverted the financial and support services;
2. Misused the land;
3. Materially misrepresented his basic qualifications as agrarian reform beneficiary;

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[117] Rules and Procedures Governing the Cancellation of Registered Certificates of Land Ownership Awards (CLOAs), Emancipation Patents (EPs), and Other Titles Issued Under Any Agrarian Reform Program.

[118] DAR Adm. Order No. 03-09 (2009), Sec. 47 states that the Administrative Order shall take effect on July 1, 2009 pursuant to Rep. Act No. 9700, Sec. 31.

4. Illegally converted into other uses the awarded the land;
5. Sold, transferred, conveyed the awarded land to other person;
6. Defaulted in the payment of obligation for three (3) consecutive years in the case of Voluntary Land Transfer/Direct Payment Scheme;
7. Failed to pay the amortization for at least three (3) annual amortizations;
8. Neglected or abandoned the awarded land; and
9. Circumvented the laws related to the implementation of the agrarian reform program.

Department of Agrarian Reform Administrative Order No. 03-09 further states that the cancellation of registered certificates of land ownership award, emancipation patents, and other titles "under any agrarian reform program shall be strictly regulated and may be allowed only in the manner and conditions prescribed"[119] in the Administrative Order.

II

Here, the collective Certificate of Land Ownership Award, with CLOA No. 00114438, was issued in favor of petitioner's members[120] on January 27, 2004, and registered on January 30, 2004 under TCT No. T-802.[121]

On July 16, 2004, the Provincial Agrarian Reform Officer informed Polo Coconut that a resurvey of the land will be conducted. Polo Coconut filed a Motion to suspend the survey before the Adjudication Board, but it was denied for lack of jurisdiction. Thus, Polo Coconut filed a Petition for Certiorari.

Polo Coconut raised two (2) issues before the Court of Appeals: (1) the propriety of land coverage under the Comprehensive

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[119] DAR Adm. Order No. 03-09 (2009), Sec. 2.

[120] *Rollo*, p. 24.

[121] *Id*. at 107-113 and 516-522.

Agrarian Reform Program and (2) the qualification of the identified beneficiaries.[122] The Court of Appeals ruled in favor of Polo Coconut and nullified CLOA No. 00114438/TCT No. T-802. It held that the identified beneficiaries were not tenants of Polo Coconut, and thus, could not qualify under the program.[123]

Both the Department of Agrarian Reform and petitioner's members moved for reconsideration, but their Motions were denied.[124] Hence, the Department filed before this Court a Petition for Review, docketed as G.R. No. 168787. Petitioner's members filed a separate Petition for Review, entitled "*Abarca, et al. v. Polo Coconut Plantation Company, Inc., et al*." docketed as G.R. No. 169271. They contended that while they were neither farmers nor regular farmworkers of Polo Coconut, they were either seasonal or other farmworkers eligible to receive land under the Comprehensive Agrarian Reform Law.[125] The two (2) Petitions were later consolidated.

In its September 3, 2008 Decision, this Court reversed and set aside the Court of Appeals Decision. It found that Polo Coconut did not exhaust its administrative remedies because Polo Coconut did not file a protest or opposition before the Department of Agrarian Reform Secretary.[126] Moreover, on the issue of qualification of the identified beneficiaries, this Court found no grave abuse of discretion on the part of the Department.[127] It ruled that Section 22 of the Comprehensive Agrarian Reform Law allows the designation of eligible beneficiaries other than the tenants of the landowners.[128] Hence,

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[122] *Department of Agrarian Reform v. Polo Coconut Plantation Company, Inc.*, 586 Phil. 69, 76 (2008) [Per *J.* Corona, First Division].

[123] *Id*.

[124] *Id*. at 77.

[125] *Id*.

[126] *Id*. at 79.

[127] *Id*. at 83.

[128] *Id*.

this Court declared CLOA No. 00114438/TCT No. T-802 as valid.[129] Its Decision attained finality on November 26, 2008.

Seven (7) months later, on June 30, 2009, Alcantara, et al. filed the Petition for Inclusion/Exclusion. They questioned the inclusion of petitioner's members as beneficiaries and recipients of Certificates of Land Ownership Award. They contended that the existing certificate holders were "outsiders" and have no connection with the Polo Coconut property.[130] Respondent took cognizance of the Petition and granted the Cease and Desist Order.

By that time, however, the September 3, 2008 Decision[131] had already become final and executory. Consequently, this Court affirmed the Department of Agrarian Reform's previous identification and designation of qualified agrarian reform beneficiaries, who were named in CLOA No. 00114438. The finality of this Decision meant that:

> [T]he decrees thereof could no longer be altered, modified, or reversed even by the Court en banc. Nothing is more settled in law than that a judgment, once it attains finality, becomes immutable and unalterable, and can no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. This rule rests on the principle that all litigation must come to an end, however unjust the result of error may appear; otherwise, litigation will become even more intolerable than the wrong or injustice it is designed to correct.[132] (Citations omitted)

A certificate of title serves as evidence of an indefeasible title. The title becomes incontrovertible after expiration of the

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[129] *Id*.

[130] *Rollo*, p. 342.

[131] 586 Phil. 69 (2008) [Per *J*. Corona, First Division].

[132] *Land Bank of the Philippines v. Suntay*, 678 Phil. 879, 908-909 (2011) [Per *J*. Bersamin, First Division].

one (1)-year period from the issuance of the registration decree, upon which it was based.[133]

In *Estribillo v. Department of Agrarian Reform*,[134] the petitioners were issued emancipation patents and transfer certificates of title over parcels of land in Barangay Angas, Sta. Josefa, Agusan del Sur, with a total area of 527.83 hectares, from 1984 to 1988. The landholding was brought within the coverage of the Operation Land Transfer under Presidential Decree No. 27 upon the request of its previous owner, Hacienda Maria, Inc.

However, in December 1997, Hacienda Maria, Inc. filed 17 petitions before the Regional Agrarian Reform Adjudicator of CARAGA, Region XIII. These petitions sought the declaration of erroneous coverage under Presidential Decree No. 27 of 277.5008 hectares of its former landholdings. Hacienda Maria, Inc. claimed that the area was untenanted, and that it was not paid compensation for it. It sought that the emancipation patents covering the disputed area be canceled.

The Regional Agrarian Reform Adjudicator declared as void the transfer certificates of title and emancipation patents over the disputed area. The Adjudication Board affirmed this decision. The Court of Appeals dismissed petitioners' appeal on technicality, since the Verification and Certification against Forum Shopping was not signed by all petitioners.

This Court sustained the validity of the transfer certificates of title and emancipation patents. It held that certificates of title issued pursuant to emancipation patents are as indefeasible as transfer certificates of title issued in registration proceedings. Further, it ruled that the transfer certificates of title issued to the petitioners became indefeasible upon the expiration of one (1) year from the issuance of the emancipation patents. Thus:

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[133] See *Lebrudo v. Loyola*, 660 Phil. 456 (2011) [Per *J.* Carpio, Second Division].

[134] 526 Phil. 700 (2006) [Per *J.* Chico-Nazario, First Division].

Ybañez v. Intermediate Appellate Court, provides that certificates of title issued in administrative proceedings are as indefeasible as certificates of title issued in judicial proceedings:

. . . . . .

The same confusion, uncertainty and suspicion on the distribution of government-acquired lands to the landless would arise if the possession of the grantee of an EP would still be subject to contest, just because his certificate of title was issued in an administrative proceeding. The silence of Presidential Decree No. 27 as to the indefeasibility of titles issued pursuant thereto is the same as that in the Public Land Act where Prof. Antonio Noblejas commented:

> Inasmuch as there is no positive statement of the Public Land Law, regarding the titles granted thereunder, such silence should be construed and interpreted in favor of the homesteader who come into the possession of his homestead after complying with the requirements thereof. Section 38 of the Land Registration Law should be interpreted to apply by implication to the patent issued by the Director of Lands, duly approved by the Minister of Natural Resources, under the signature of the President of the Philippines, in accordance with law.

After complying with the procedure, therefore, in Section 105 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree (where the DAR is required to issue the corresponding certificate of title after granting an EP to tenant-farmers who have complied with Presidential Decree No. 27), the TCTs issued to petitioners pursuant to their EPs acquire the same protection accorded to other TCTs. "The certificate of title becomes indefeasible and incontrovertible upon the expiration of one year from the date of the issuance of the order for the issuance of the patent, . . . Lands covered by such title may no longer be the subject matter of a cadastral proceeding, nor can it be decreed to another person."

. . . . . .

The EPs themselves, like the Certificates of Land Ownership Award (CLOAs) in Republic Act No. 6657 (the Comprehensive Agrarian Reform Law of 1988), are enrolled in the Torrens system of registration. The Property Registration Decree in fact devotes Chapter IX on the subject of EPs. Indeed, such EPs and CLOAs are, in themselves,

entitled to be as indefeasible as certificates of title issued in registration proceedings.[135] (Emphasis supplied)

In *Heirs of Nuñez, Sr. v. Heirs of Villanoza*,[136] where the issue was the retention limit of the purported heirs of the landowner, this Court held:

> Finally, the issuance of the title to Villanoza could no longer be revoked or set aside by Secretary Pangandaman. Acquiring the lot in good faith, Villanoza registered his Certificate of Land Ownership Award title under the Torrens system. He was issued a new and regular title, TCT No. NT-299755, in fee simple; that is to say, it is an absolute title, without qualification or restriction.
>
> *Estribillo v. Department of Agrarian Reform* has held that "certificates of title issued in administrative proceedings are as indefeasible as [those] issued in judicial proceedings." Section 2 of Administrative Order No. 03-09 provides that "[t]he State recognizes the indefeasibility of [Certificate of Land Ownership Awards], [Emancipation Patents] and other titles issued under any agrarian reform program."
>
> Here, a Certificate of Land Ownership Award title was already issued and registered in Villanoza's favor on December 7, 2007. Villanoza's Certificate of Land Ownership Award was titled under the Torrens system on November 24, 2004. After the expiration of one (1) year, the certificate of title covering the property became irrevocable and indefeasible. Secretary Pangandaman's August 8, 2007 Order, which came almost three (3) years later, was thus ineffective.[137]

Section 24 of the Comprehensive Agrarian Reform Law, as amended by Republic Act No. 9700, now explicitly provides that certificates of land ownership award, "being titles brought under the operation of the [T]orrens [S]ystem," enjoy the same

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[135] *Estribillo v. Department of Agrarian Reform*, 526 Phil. 700, 717-719 (2006) [Per *J.* Chico-Nazario, First Division].

[136] G.R. No. 218666, April 26, 2017, < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63094 > [Per *J.* Leonen, Second Division].

[137] *Id*.

indefeasibility and security afforded to all titles under the Torrens System:

> Section 24. Award to beneficiaries. — The rights and responsibilities of the beneficiaries shall commence from their receipt of a duly registered emancipation patent or certificate of land ownership award and their actual physical possession of the awarded land. Such award shall be completed in not more than one hundred eighty (180) days from the date of registration of the title in the name of the Republic of the Philippines: Provided, That the emancipation patents, ***the certificates of land ownership award, and other titles issued under any agrarian reform program shall be indefeasible and imprescriptible after one (1) year from its registration with the Office of the Registry of Deeds***, *subject to the conditions, limitations and qualifications of this Act, the property registration decree, and other pertinent laws.* The emancipation patents or ***the certificates of land ownership award being titles brought under the operation of the Torrens system, are conferred with the same indefeasibility and security afforded to all titles under the said system, as provided for by Presidential Decree No. 1529, as amended by Republic Act No. 6732.***

It is the ministerial duty of the Registry of Deeds to register the title of the land in the name of the Republic of the Philippines, after the Land Bank of the Philippines (LBP) has certified that the necessary deposit in the name of the landowner constituting full payment in cash or in bond with due notice to the landowner and the registration of the certificate of land ownership award issued to the beneficiaries, and to cancel previous titles pertaining thereto.

Identified and qualified agrarian reform beneficiaries, based on Section 22 of Republic Act No. 6657, as amended, shall have usufructuary rights over the awarded land as soon as the DAR takes possession of such land, and such right shall not be diminished even pending the awarding of the emancipation patent or the certificate of land ownership award.

All cases involving the cancellation of registered emancipation patents, certificates of land ownership award, and other titles issued under any agrarian reform program are within the exclusive and original jurisdiction of the Secretary of the DAR.

Here, by the time the Petition for Inclusion/Exclusion was filed on June 30, 2009, the September 3, 2008 Decision declaring the validity of CLOA No. 00114438 had attained finality and

TCT No. T-802 had already become incontrovertible. As registered property owners, petitioner's members were entitled to the protection given to every Torrens title holder. Their rights may only be forfeited in case of violations of agrarian laws, as well as noncompliance with the restrictions and conditions under the Comprehensive Agrarian Reform Law.

III

However, petitioner's assertion that respondent's cognizance of the Petition for Inclusion/Exclusion constituted defiance of the September 3, 2008 Decision does not lie.

In *Rivulet Agro-Industrial Corporation v. Paruñgao*,[138] this Court explained the concept of contempt of court:

> Contempt of court is defined as a disobedience to the court by acting in opposition to its authority, justice, and dignity, and signifies not only *a willful disregard of the court's order, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or, in some manner, to impede the due administration of justice*. To be considered contemptuous, an act must be clearly contrary to or prohibited by the order of the court. Thus, a person cannot be punished for contempt for disobedience of an order of the Court, unless the act which is forbidden or required to be done is clearly and exactly defined, so that there can be no reasonable doubt or uncertainty as to what specific act or thing is forbidden or required.[139] (Emphasis supplied)

The court's contempt power should be exercised with restraint and for a preservative, and not vindictive, purpose. "Only in cases of clear and contumacious refusal to obey should the power be exercised."[140]

In *Rivulet Agro-Industrial Corporation*, the Department officials' act of installing farmer-beneficiaries in Rivulet Agro-

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[138] 701 Phil. 444 (2013) [Per *J*. Perlas-Bernabe, Second Division].

[139] *Id*. at 452.

[140] *Bank of the Philippine Islands v. Calanza*, 647 Phil. 507, 514 (2010) [Per *J*. Nachura, Second Division].

Industrial Corporation's landholding did not constitute an open defiance and disobedience of this Court's December 15, 2010 temporary restraining order in G.R. No. 193585. This Court held:

> [W]hile the DAR was an intervenor in G.R. No. 193585, the December 15, 2010 TRO issued by the Court was only expressly directed against the LRA Administrator, the Register of Deeds of Negros Occidental and/or all persons acting upon their order or in their place and stead, and specifically for the following acts: "(a) from canceling Transfer Certificate of Title No. 105742 issued in favor of petitioner RIVULET Agro-Industrial Corporation; (b) from issuing a new certificate of title in the name of the Republic of the Philippines; (c) from issuing Certificate of Land Ownership Award in favor of anyone covering Hacienda Bacan, a 157.2992-hectare property situated in the Municipality of Isabela, Province of Negros Occidental; and (d) distributing such Certificate of Land Ownership Award that it may have heretofore issued pending trial on the merits." Clearly, the DAR and its officials were not among those enjoined. Neither can they be considered agents of the LRA Administrator and the Register of Deeds of Negros Occidental. Moreover, the installation of farmer-beneficiaries was not among the acts specifically restrained, negating the claim that the performance thereof was a contumacious act.[141]

Here, respondent justified his cognizance of the Petition for Inclusion/Exclusion based on the Department's exclusive prerogative in the identification, selection, and subsequent re-evaluation of agrarian reform beneficiaries.[142]

However, as earlier stated, the issue on the qualification of the existing Certificate of Land Ownership Award holders had long been laid to rest in this Court's final and executory September 3, 2008 Decision. Some of the petitioners in the inclusion/exclusion proceedings were even respondents in that case.[143]

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[141] *Rivulet Agro-Industrial Corp. v. Paruñgao*, 701 Phil. 444, 452-453 (2013) [Per *J.* Perlas-Bernabe, Second Division].

[142] *Rollo*, pp. 202 and 204.

[143] *Rollo*, pp. 344-345. Namely: Nole Alcantara, Zosimo Barba, Robert Bajana, Juvenal Mendez, Shiela Reyes, Prisco Baco, Benjamin Dayap, Antonio

Still, respondent's erroneous cognizance of the Petition for Inclusion/Exclusion can only be deemed as grave abuse of discretion, which is more properly the subject of a petition for certiorari, not a petition for contempt. "No one who is called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment."[144]

At any rate, whether respondent's actions were improper is not an issue here. What is crucial in contempt proceedings is the intent of the alleged contemnor to disobey or defy the court as held in *St. Louis University, Inc. v. Olairez*:[145]

> In contempt, the intent goes to the gravamen of the offense. Thus, the good faith or lack of it, of the alleged contemnor is considered. Where the act complained of is ambiguous or does not clearly show on its face that it is contempt, and is one which, if the party is acting in good faith, is within his rights, the presence or absence of a contumacious intent is, in some instances, held to be determinative of its character. . . . *To constitute contempt, the act must be done wil[l]fully and for an illegitimate or improper purpose*.[146] (Emphasis in the original, citations omitted)

All told, this Court finds no clear and contumacious conduct on the part of respondent. His acts do not qualify as a willful disobedience to this Court nor a willful disregard of its authority.

WHEREFORE, the Petition for Contempt is **DISMISSED** for lack of merit.

SO ORDERED.

Peralta (*Chairperson*), *Reyes, A. Jr., Hernando*, and *Carandang,*[*] *JJ*., concur.

Dedeles, Narciso Diaz, Juveniano Reyes, Rodolfo Salva, Avelino Bajana, Praxedes Bajana, Alejandro Gimol, Herminigildo Villaflores, and Florencia Remollo.

[144] *Bank of the Philippine Islands v. Calanza*, 647 Phil. 507, 516 (2010) [Per *J*. Nachura, Second Division].

[145] 730 Phil. 444 (2014) [Per *J*. Mendoza, Third Division].

[146] *Id*. at 461.

[*] Designated additional Member per Special Order No. 2624 dated November 28, 2018.

FIRST DIVISION

[G.R. No. 193534. January 30, 2019]

SPOUSES MANUEL and EVELYN TIO, *petitioners, vs.* **BANK OF THE PHILIPPINE ISLANDS,** *respondent.*

[G.R. No. 194091. January 30, 2019]

BANK OF THE PHILIPPINE ISLANDS, *petitioner, vs.* **GOLDSTAR MILLING CORPORATION and/or SPOUSES MANUEL and EVELYN TIO,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; JUDGMENT BASED ON COMPROMISE AGREEMENT; CONSIDERED PROPER AND IN ORDER IN CASE AT BAR.— In April 2013, BPI filed a Manifestation, Submission and/or Motion for Judgment based on a Compromise Agreement entered into by the parties on February 15, 2013. x x x Spouses Tio affirmed and confirmed the execution of the said Compromise Agreement in their Omnibus Comment. In compliance with the Court's February 26, 2014 Resolution, copies of: (1) the Board Resolution 3-14 of Goldstar authorizing Manuel Tio to represent the said corporation and to sign the Compromise Agreement; and (2) the Corporate Secretary's Certificate of BPI, authorizing Maureen Therese C. Santos to enter into a compromise agreement, were submitted by the parties. After reviewing the Compromise Agreement, the Court finds the same to be proper and in order. **ACCORDINGLY**, the Court hereby approves the same and renders judgment in accordance therewith, and accordingly, orders the parties to comply with all the terms and stipulations contained therein.

APPEARANCES OF COUNSEL

Meris Rigos & Associates for Sps. Tio and Goldstar Milling Corp.

Mila Catabay-Lauigan for Bank of the Philippine Islands.

D E C I S I O N

DEL CASTILLO, *J.*:

Before this Court are Consolidated Petitions for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court.

In G.R. No. 193534, petitioner spouses Manuel and Evelyn Tio (spouses Tio) assail the April 28, 2010 Decision[2] and the August 26, 2010 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 92580.

In G.R. No. 194091, petitioner Bank of the Philippine Islands (BPI) assails the April 29, 2010 Decision[4] and October 5, 2010 Resolution[5] of the CA in CA-G.R. CV No. 88638.

Factual Antecedents

Sometime in 1998, Goldstar Milling Corporation (Goldstar), a corporation engaged in the business of rice milling and the buying and selling of corn and palay, together with spouses Tio, majority stockholders of Goldstar, obtained several loans (a Term Loan and an Omnibus Credit Line) from the Far East Bank and Trust Company (FEBTC), now BPI.[6] To secure the loans, spouses Tio executed various promissory notes and real estate mortgages over several properties, including the properties where their business and residence were located.[7]

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[1] *Rollo*, G.R. No. 193534, pp. 10-33 and *rollo*, G.R. No. 194091, pp. 3-26.

[2] *Rollo*, G.R. No. 193534, pp. 35-51; penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Remedios A. Salazar-Fernando and Michael P. Elbinias.

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

[4] *Rollo*, G.R. No. 194091, pp. 34-58; penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Florito S. Macalino.

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

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

[7] *Id.* at 35-37.

On June 18, 2001, BPI sent a demand letter to Goldstar and spouses Tio giving them five days from receipt thereof, within which to settle their outstanding obligation in the total amount of ₱67,791,897.15.[8]

Due to the failure of Goldstar and spouses Tio to pay the loan despite repeated demands, BPI instituted foreclosure proceedings against the mortgaged properties.[9]

On August 22, 2001, Goldstar and/or spouses Tio filed before the Regional Trial Court (RTC) of Cauayan City, Isabela a Complaint for Annulment of Promissory Notes, Real Estate Mortgage, Notice of Sheriff's Sale, Certificate of Sale, Accounting, Injunction and Damages, docketed as Civil Case No. Br. 19-1083, against BPI.[10] The case was raffled to Branch 19 of the RTC.

Sometime in February 2003, BPI filed before the RTC, Cauayan City, Isabela a Petition for the Issuance of a Writ of Possession, docketed as SCA Case No. Br. 20-156.[11] The Petition was raffled to Branch 20 of the RTC.

The Ruling of the RTC in SCA Case No. Br. 20-156

On August 8, 2003, the RTC, in SCA Case No. Br. 20-156, issued an Order for the issuance of a Writ of Possession.[12]

Aggrieved, spouses Tio filed a Petition for *Certiorari* and Prohibition before the CA, docketed as CA-G.R. SP No. 79865.[13]

On April 23, 2004, the CA, in CA-G.R. SP No. 79865, rendered a Decision, dismissing the Petition for *Certiorari* and

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[8] *Id*. at 37.

[9] *Id*.

[10] *Id*.

[11] *Rollo*, G.R. No. 193534, p. 36.

[12] *Id*. at 39.

[13] *Id*. at 40.

Prohibition.[14] The CA found no grave abuse of discretion in the issuance of the Order dated August 8, 2003.[15]

Unfazed, spouses Tio filed a Petition for the Cancellation of the Writ of Possession in SCA Case No. Br. 20-156 and sought the consolidation of the said case with Civil Case No. Br. 19-1083.[16]

On October 9, 2007, the RTC denied the Petition for the Cancellation of the Writ of Possession for lack of merit.[17]

Spouses Tio sought reconsideration but the RTC denied the same in its Order dated August 8, 2008.[18]

Thus, spouses Tio appealed the case to the CA. The case was docketed as CA-G.R. CV No. 92580.

The Ruling of the RTC in Civil Case No. Br. 19-1083

Meanwhile, on July 4, 2006, the RTC, in Civil Case No. Br. 19-1083, rendered a Decision,[19] the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered:

1) Declaring as null and void the promissory notes subject of this case; the real estate mortgages and their amendments; the Sheriff's notice of sale, the consolidation of ownership and the transfer certificates of title issued in the name of [BPI];

2) Ordering [BPI] to render an accounting of the outstanding loan obligation of [spouses Tio] computed at the interest rates as stated in the corresponding Disclosure Statements attached to the corresponding promissory notes, and to furnish them a copy of such accounting;

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[14] *Id*.

[15] *Id*.

[16] *Id*.

[17] *Id.* at 41-42.

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

[19] *Rollo*, G.R. No. 194091, pp. 64-77; penned by Executive Judge Raul V. Babaran.

3) Ordering [BPI] to pay [spouses Tio]

a) PHP500,000.00 by way of moral damages;

b) PHP200,000.00 as exemplary damages;

c) PHP400,000.00 as attorney's fees;

d) PHP10,000.00 per court appearance attended by counsel [for Goldstar and spouses Tio];

And cost of suit.

SO ORDERED.[20]

BPI moved for reconsideration but the RTC denied the same in an Order[21] dated November 28, 2006.

Hence, BPI appealed the case to the CA. The case was docketed as CA-G.R. CV No. 88638.

Ruling of the Court of Appeals in CA-G.R. CV No. 92580

On April 28, 2010, the CA rendered the Decision denying the appeal for lack of merit, and thus, affirming the October 9, 2007 and August 8, 2008 Orders of the RTC in SCA Case No. Br. 20-156.

Spouses Tio filed a Motion for Reconsideration.

On August 26, 2010, the CA issued a Resolution denying the Motion for Reconsideration.

Hence, spouses Tio filed before this Court a Petition for Review on *Certiorari*, docketed as G.R. No. 193534, seeking the cancellation of the Writ of Possession in view of the annulment of the foreclosure proceedings, notice of sale, consolidation of ownership, and transfer certificates of title issued in the name of BPI.[22]

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[20] *Id*. at 76-77.

[21] *Id*. at 79.

[22] *Rollo*, G.R. No. 193534, pp. 20-29.

Ruling of the Court of Appeals in CA-G.R. CV No. 88638

On April 29, 2010, the CA rendered the Decision affirming the July 4, 2006 Decision of the RTC with modification that the Promissory Notes and the Deeds of Real Estate Mortgages were declared valid.[23]

Unsatisfied, BPI filed a Motion for Reconsideration.

On October 5, 2010, the CA issued the Resolution denying the Motion for Reconsideration for lack of merit.

Hence, BPI filed before this Court a Petition for Review on *Certiorari*, docketed as G.R. No. 194091, arguing that the CA erred in ruling that the foreclosure of the mortgaged properties was premature and in failing to recognize the validity of and the legality of the Escalation Clauses in the Promissory Notes.[24]

On April 4, 2011, the Court issued a Resolution[25] consolidating G.R. No. 193534 with G.R. No. 194091.

In April 2013, BPI filed a Manifestation, Submission and/or Motion for Judgment based on a Compromise Agreement[26] entered into by the parties on February 15, 2013. The Compromise Agreement[27] reads:

THE HEREIN BELOW NAMED PARTIES, through their respective counsels, respectfully submit their Compromise Agreement as follows:

1. After a series of talks and negotiations, the PARTIES, assisted by their respective counsels, agreed to settle their respective claims in Case No. 165053 and SCA Case No. 20-156.

2. [BPI] sold two (2) foreclosed properties of Goldstar Milling Corp. covered by Transfer Certificates of Title Nos. T-328511

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[23] *Rollo*, G.R. No. 194091, pp. 34-57.

[24] *Id*. at 13-25.

[25] *Id*. at 228.

[26] *Rollo*, G.R. No. 193534, pp. 192-193.

[27] *Id*. at 194-197.

and T-328512 located at Bo. Dapdap (now San Miguel) Luna, Isabela in favor of Sps. Jose & Lydia Morante (brother-in-law and sister of Manuel Tio) under the following terms and conditions:

a. FORTY MILLION FIVE HUNDRED THOUSAND PESOS (₱40,500,000.00) payable in cash in favor of the Bank as purchase price for the sale of the two (2) foreclosed properties to Sps. Jose & Lydia Morante.

b. A down payment in the amount of THIRTY MILLION PESOS (Php30,000,000.00) was paid on October 23, 2012.

c. The full payment of the remaining amount of TEN MILLION FIVE HUNDRED THOUSAND PESOS (Php10,500,000.00) payable on or before October 31, 2012 but actual full payment was made in December 20, 2012.

3. The BANK shall execute/issue/ deliver a Deed of Absolute Sale only after full payment of the above purchase price and after both PARTIES have submitted and signed the instant Compromise Agreement.

4. The PARTIES confirm that both have examined the titles covering the subject properties and their respective conditions and that both PARTIES are satisfied in all respects as to the present status and condition of said properties.

5. That Sps. Jose & Lydia Morante, their designated nominee or third party buyer will be given by the Bank one (1) year from date of full payment or up to December 20, 2013 to buy the properties described hereunder located at San Fermin and Poblacion, Cauayan City at a price mutually acceptable to both parties:

(Property No. 1)

TCT No.	AREA (sq.ms.)	LOCATION
T-325513	5,000	San Fermin, Cauayan City
T-325514	5,000	San Fermin, Cauayan City
T-325515	118,851	San Fermin, Cauayan City

(Property No. 2)

TCT No.	AREA (sq.ms.)	LOCATION
T-325516	742	Poblacion, Cauayan City
T-325517	737	Poblacion, Cauayan City

6. The PARTIES hereby warrant that they have the full capacity to enter into this agreement and mutually agree to settle their differences including any and all cases arising from the cases filed by them.

7. THE PARTIES, hereby waive their respective rights and claims against each other and have fully settled their differences on the basis of the above settlement including any and all causes arising therefrom in this Honorable Court or in any court, tribunal or any government agency.

(sgd.)
Manuel A. Tio

Bank of the Philippine Islands

(sgd.)
Evelyn P. Tio

(sgd.)
Maureen Therese C. Santos
Authorized Bank Representative

Assisted by:

(sgd.)
ATTY. RAYMUNDO NERRIS

(sgd.)
ATTY. MILA LAUIGAN[28]

Spouses Tio affirmed and confirmed the execution of the said Compromise Agreement in their Omnibus Comment.[29]

In compliance with the Court's February 26, 2014 Resolution,[30] copies of: (1) the Board Resolution 3-14[31] of Goldstar authorizing Manuel Tio to represent the said corporation and to sign the Compromise Agreement; and (2) the Corporate Secretary's Certificate of BPI,[32] authorizing Maureen Therese C. Santos to enter into a compromise agreement, were submitted by the parties.

After reviewing the Compromise Agreement, the Court finds the same to be proper and in order.

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[28] *Id*.

[29] *Id*. at 204-206.

[30] *Id*. at 213-214.

[31] *Id*. at 217-219.

[32] *Id*. at 262-265.

ACCORDINGLY, the Court hereby approves the same and renders judgment in accordance therewith, and accordingly, orders the parties to comply with all the terms and stipulations contained therein.

SO ORDERED.

Bersamin, C.J., Caguioa,[*] *Gesmundo*, and *Carandang, JJ.*, concur.

SECOND DIVISION

[G.R. No. 211829. January 30, 2019]

JACINTO J. BAGAPORO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; THE NATURE OF AN ACTION, AS WELL AS WHICH COURT HAS JURISDICTION OVER IT, IS DETERMINED BASED ON THE ALLEGATIONS CONTAINED IN THE COMPLAINT OF THE PLAINTIFF, IRRESPECTIVE OF WHETHER OR NOT THE PLAINTIFF IS ENTITLED TO RECOVER UPON ALL OR SOME OF THE CLAIMS ASSERTED THEREIN.— The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. Notably, the petition for relief was filed in the same case, which resolution had already become final. An examination of petitioner's

[*] Per Raffle dated September 24, 2018.

averments and relief sought, *i.e.*, the setting aside of a final and executory resolution denying an appeal, leads to no other conclusion than that it is the mode provided under Rule 38 of the Rules of Court whether or not that was what petitioner intended. The CA cannot, thus, be faulted for treating the petition as one which sought the relief provided by Rule 38, and consequently dismissing it. It is settled that a petition for relief from judgment is not an available remedy in the CA.

2. ID.; ID.; APPEALS; THE RIGHT TO APPEAL IS A MERE STATUTORY PRIVILEGE, AND MAY BE EXERCISED ONLY IN THE MANNER AND IN ACCORDANCE WITH THE PROVISIONS OF LAW.— The right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. Indeed, any liberality in the application of the rules of procedure may be properly invoked only in cases of some excusable formal deficiency or error in a pleading, but definitely not in cases like now where a liberal application would directly subvert the essence of the proceedings or results in the utter disregard of the Rules of Court.

3. CRIMINAL LAW; REVISED PENAL CODE; BIGAMY; THE JUDICIAL DECLARATION OF THE PRESUMPTIVE DEATH OF THE ABSENT SPOUSE CONSTITUTES PROOF THAT THE SPOUSE PRESENT ACTED IN GOOD FAITH, AND WOULD NEGATE CRIMINAL INTENT ON HIS PART WHEN HE CONTRACTS A SECOND MARRIAGE, AND AS A CONSEQUENCE, HE COULD NOT BE HELD GUILTY OF BIGAMY IN SUCH CASE.— There can be no quibbling over whether or not the elements of bigamy were successfully proven by the prosecution. Petitioner does not deny that he contracted a second marriage without a judicial declaration that his absent spouse from a prior marriage may be legally presumed dead. The gist of petitioner's claim is alleged good faith and that there is no need for a judicial declaration of a disputable presumption (of death of the absent spouse) that has already been provided by law. x x x As discussed in *Manuel v. People of the Philippines*: x x x Such judicial declaration also constitutes proof that the petitioner acted in good faith, and would negate criminal intent on his part when he married the private complainant and, as a consequence, he

could not be held guilty of bigamy in such case. The petitioner, however, failed to discharge his burden. The phrase "or before the absent spouse has been declared presumptively dead by means of a judgment rendered on the proceedings" in Article 349 of the Revised Penal Code was not an aggroupment of empty or useless words. The requirement for a judgment of the presumptive death of the absent spouse is for the benefit of the spouse present, as protection from the pains and the consequences of a second marriage, precisely because he/she could be charged and convicted of bigamy if the defense of good faith based on mere testimony is found incredible. The requirement of judicial declaration is also for the benefit of the State. Under Article II, Section 12 of the Constitution, "the State shall protect and strengthen the family as a basic autonomous social institution." Marriage is a social institution of the highest importance. Public policy, good morals and the interest of society require that the marital relation should be surrounded with every safeguard and its severance only in the manner prescribed and the causes specified by law.

APPEARANCES OF COUNSEL

Causing Sabarre Castro Pelagio for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

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

Before this Court is a Petition for Review on *Certiorari*[1] with application for temporary restraining order assailing the January 29, 2014 Resolution[2] of the Court of Appeals (CA), which denied petitioner Jacinto Bagaporo *y* Jabon's "Petition for Relief from Resolution or Judgment in Case Entry was

[1] *Rollo*, pp. 7-52.

[2] Penned by Associate Justice Ramon M. Bato, Jr., with then Presiding Justice Andres B. Reyes, Jr. (now a member of the Court) and Associate Justice Rodil V. Zalameda, concurring; *id*. at 79-80.

Already Ordered," and its March 24, 2014 Resolution[3] denying reconsideration.

We briefly go over the antecedents.

Petitioner was indicted for Bigamy in an Information[4] dated May 31, 2006, worded as follows:

> That on or about the 11th day of September 1991, in the Municipality of Calauag, province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the accused Jacinto Bagaporo, being then legally married to one Dennia Dumlao in a marriage ceremony solemnized on March 10, 1986 at Quezon City by Judge Perfecto Laguio, Jr., and without said marriage having been legally dissolved or annulled, did then and there willfully[,] unlawfully and feloniously contract a second and subsequent marriage with Milagros Lumas.
>
> Contrary to law.[5]

Docketed as Crim. Case No. 4789-C before the Regional Trial Court (RTC) of Calauag in Quezon, Branch 63, trial ensued.

In a Decision[6] dated October 1, 2012, the RTC found petitioner guilty beyond reasonable doubt of the crime of Bigamy. Petitioner was sentenced to suffer the indeterminate penalty of imprisonment with a minimum term of two years, four months, and one day of *prision correccional*, to a maximum term of eight years and one day of *prision mayor*, with the accessory penalties.

Petitioner appealed his conviction. According to the petitioner, his then counsel of record, Atty. Angelo Cerdon (Atty. Cerdon), broached the idea that he might want to engage a new lawyer based near in Manila to henceforth handle the appeal. This allegedly prompted the petitioner to consult his present counsel, Atty. Berteni Cataluna Causing (Atty. Causing), in January of 2013.

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[3] *Id.* at 55.

[4] *Id.* at 82.

[5] *Id.*

[6] *Id.* at 82-90.

Atty. Causing advised the petitioner to secure first Atty. Cerdon's formal withdrawal as counsel. Nonetheless, upon Atty. Causing's advice and assistance, ostensibly as collaborating counsel, petitioner filed a Motion to Withdraw Notice of Appeal and a Motion for Reconsideration before the RTC on January 11, 2013.[7] Copies of both motions were allegedly furnished to Atty. Cerdon when the petitioner visited the former's office on February 25, 2013. It was then that petitioner supposedly clarified with Atty. Cerdon's secretary that Atty. Cerdon remained to be his counsel of record to take charge of the appeal before the CA, notwithstanding Atty. Causing's engagement to pursue post-judgment remedies before the RTC.

Meanwhile, the appeal before the CA proceeded. Petitioner was, thus, required by the CA on March 18, 2013 to file an appeal brief. The notice was received by Atty. Cerdon on April 8, 2013.

On July 31, 2013, the CA dismissed petitioner's appeal for failure to file the required appellant's brief. Entry of Judgment then followed after the **dismissal** became final on August 31, 2013.

Aggrieved, petitioner filed in the same case a "Petition for Relief from Resolution or Judgment in Case Entry was Already Ordered" dated December 26, 2013, alleging gross negligence on the part of Atty. Cerdon. Treated as a petition for relief under Rule 38 of the Rules of Court, the petition was denied by the CA on January 29, 2014.

Undeterred, petitioner filed a Motion for Reconsideration[8] on February 17, 2014, which the CA denied for utter lack of merit on March 24, 2014. Hence, petitioner's present recourse.

Without necessarily giving due course to the instant petition, the Office of the Solicitor General (OSG) was required to file its Comment, which it complied with on September 18, 2014.[9]

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[7] *Id*. at 91-105.

[8] *Id*. at 57-77.

[9] *Id*. at 122 and 143-155.

The OSG points out that petitioner's conviction had already attained finality and is, thus, no longer subject to review; the negligence of petitioner's counsels binds him; and that, the elements of the crime of bigamy were proven beyond reasonable doubt.

Through a Reply[10] filed on October 7, 2014, petitioner invokes this Court's authority to vacate null and void decisions notwithstanding their finality. Reasoning that his collaborating counsel could have only done so much, petitioner argues that he should not be bound by the negligence of his lead counsel. Finally, petitioner insists that the elements of bigamy were not proven in his case.

The present petition essentially seeks the reopening of petitioner's lost appeal and reasserts the merits of his case. Framed as one raising questions of law,[11] petitioner argues that Article 349 of the Revised Penal Code, particularly the last clause,[12] violates the equal protection clause and the due process clause. The petitioner also claims that he was convicted on facts not stated in the Information.

On procedural grounds, petitioner asserts that he could still withdraw his appeal before the CA and substitute the same with a motion for reconsideration before the RTC. Allegedly, the CA unjustly and incorrectly treated his petition as one under Rule 38 of the Rules of Court. Contending that there are compelling reasons to give due course to his appeal, petitioner claims that he was a victim of gross ignorance of the law and that there exists a "gross negligence of counsel" remedy established by jurisprudence, under which his petition for relief should have been recognized by the CA.

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[10] *Id*. at 156-163.

[11] *Id*. at p. 13.

[12] ***Bigamy***.— *The penalty of prision mayor* shall be imposed upon any person who shall contract a second or subsequent marriage before the former marriage has been legally dissolved, or **before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings.** (Emphasis supplied)

The Court's Ruling

We address first the propriety of the CA's outright denial of the petition.

The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.[13] Notably, the petition for relief was filed in the same case, which resolution had already become final. An examination of petitioner's averments and relief sought, *i.e.*, the setting aside of a final and executory resolution denying an appeal, leads to no other conclusion than that it is the mode provided under Rule 38 of the Rules of Court whether or not that was what petitioner intended. The CA cannot, thus, be faulted for treating the petition as one which sought the relief provided by Rule 38, and consequently dismissing it. It is settled that a petition for relief from judgment is not an available remedy in the CA.[14]

Citing *Spouses Mesina v. Meer*[15] in its assailed January 29, 2014 Resolution, the CA reasoned that a petition for relief is not the proper remedy from a CA Resolution dismissing an appeal. As explained in *Mesina*:

> x x x While Rule 38 uses the phrase "any court," it refers only to municipal/metropolitan and regional trial courts.
>
> The procedure in the Court of Appeals and the Supreme Court are governed by separate provisions of the Rules of Court and may, from time to time, be supplemented by additional rules promulgated by the Supreme Court through resolutions or circulars. As it stands, neither the Rules of Court nor the Revised Internal Rules of the Court of Appeals allow the remedy of petition for relief in the Court of Appeals.[16] (Underscoring supplied)

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[13] *City of Dumaguete v. Philippine Ports Authority*, 671 Phil. 610, 629 (2011).

[14] *Purcon, Jr. v. MRM Philippines, Inc.*, 588 Phil. 308, 314 (2008).

[15] 433 Phil. 124 (2002).

[16] *Id*. at 135-136.

Petitioner nonetheless insists that his petition for relief is different from that under Rule 38 of the Rules of Court. As his petition was based on the alleged gross negligence of his counsel, he asserts that there exists a distinct remedy provided by jurisprudence and not by the Rules of Court. There is, however, no such mode that is independent of the Rules.

While the Court indeed provides relief to litigants when gross negligence of counsel is manifest, in such cases, petitioners go to court through modes specifically provided by law and the Rules. In both *APEX Mining, Inc. v. Court of Appeals*,[17] and *Legarda v. Court of Appeals*,[18] cited by petitioner, the remedy availed of before the CA was a petition for annulment of judgment under Rule 47 of the Rules of Court. In *Callangan v. People of the Philippines*,[19] the petitioner resorted to a Rule 45 petition on a pure question of law before this Court, which assailed the RTC's dismissal of a Rule 65 petition questioning the MTC's denial of a motion for new trial in a criminal case. We are, thus, confounded by what mode of relief petitioner is referring to in his contention that the CA erred in treating his petition before it as one filed under Rule 38 of the Rules of Court.

As to petitioner's vain attempt to withdraw his notice of appeal to give way to a motion for reconsideration before the RTC, without manifesting such fact before the CA, the same smacks of forum shopping. The allegation that Atty. Causing was consulted so that the handling lawyer at the appeal stage would be based near in Manila contradicts petitioner's feigned expectation that Atty. Cerdon would continue to represent him before the CA. It puts into doubt the claim that petitioner left word with Atty. Cerdon's secretary that Atty. Cerdon shall continue to be his counsel of record to take charge of the appeal. While Atty. Causing ostensibly signed on as collaborating counsel, as Atty. Cerdon has not formally withdrawn from the case, there was in fact no collaboration between the two counsels.

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[17] 377 Phil. 482 (1999).

[18] 272-A Phil. 394 (1991).

[19] 526 Phil. 239 (2006).

At any rate, it remains incumbent upon the petitioner to manifest before the CA the engagement of present counsel, the filing of motions before the RTC, and to follow-up the status of the case at the appellate stage.

Even if we were to presume good faith, petitioner cannot avoid responsibility for any confusion caused by his engagement of a new lawyer without securing the written withdrawal or conforme of the lawyer who handled his case during the trial stage. Furthermore, on petitioner's averments alone, this Court does not have sufficient basis to conclude that Atty. Cerdon was grossly negligent, especially without having heard Atty. Cerdon's side on the matter. Petitioner must, therefore, bear the loss of his appeal.

To emphasize:

> x x x The doctrinal rule is that negligence of the counsel binds the client because, otherwise, there would never be an end to a suit so long as new counsel could be employed who could allege and [prove] that prior counsel had not been sufficiently diligent, or experienced, or learned.
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> x x x x x x x x x
>
> x x x Jurisprudence is replete with pronouncements that clients are bound by the actions of their counsel in the conduct of their case. If it were otherwise, and a lawyer's mistake or negligence was admitted as a reason for the opening of the case, there would be no end to litigation so long as counsel had not been sufficiently diligent or experienced or learned. The only exception to the general rule is when the counsel's actuations are gross or palpable, resulting in serious injustice to client, that courts should accord relief to the party. Indeed, if the error or negligence of the counsel did not result in the deprivation of due process to the client, nullification of the decision grounded on grave abuse of discretion is not warranted. The instant case does not fall within the exception since petitioners were duly given their day in court.
>
> x x x To rule otherwise would result to a situation that every defeated party, in order to salvage his case, would just have to claim neglect or mistake on the part of his counsel as a ground for reversing an adverse judgment. There would be no end to litigation if this were allowed as every shortcoming of counsel could be the subject of

challenge of his client through another counsel who, if he is also found wanting, would likewise be disowned by the same client through another counsel, and so on *ad infinitum*. x x x

x x x x x x x x x

Truly, a litigant bears the responsibility to monitor the status of his case, for no prudent party leaves the fate of his case entirely in the hands of his lawyer. It is the client's duty to be in contact with his lawyer from time to time in order to be informed of the progress and developments of his case; hence, to merely rely on the bare reassurance of his lawyer that everything is being taken care of is not enough.[20]

The right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law.[21] Indeed, any liberality in the application of the rules of procedure may be properly invoked only in cases of some excusable formal deficiency or error in a pleading, but definitely not in cases like now where a liberal application would directly subvert the essence of the proceedings or results in the utter disregard of the Rules of Court.[22]

Although the petitioner cannot successfully invoke gross negligence of counsel to reinstate his lost appeal, it cannot be said that he was deprived of due process. It is beyond question that the petitioner had his day in court. His case was tried on the merits and he was ably represented during the trial stage. Furthermore, the merits of the petitioner's case deserve scant consideration.

There can be no quibbling over whether or not the elements of bigamy were successfully proven by the prosecution. Petitioner does not deny that he contracted a second marriage without a judicial declaration that his absent spouse from a prior marriage

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[20] *Mendoza v. Court of Appeals*, 764 Phil. 53, 63-65 (2015).

[21] *Boardwalk Business Ventures, Inc. v. Villareal*, 708 Phil. 443, 452 (2013).

[22] *Heirs of Arturo Garcia I v. Municipality of Iba, Zambales*, 764 Phil. 408, 416-417 (2015).

may be legally presumed dead. The gist of petitioner's claim is alleged good faith and that there is no need for a judicial declaration of a disputable presumption (of death of the absent spouse) that has already been provided by law.

According to petitioner, it was the prosecution's burden to prove that his absent wife was still alive when he contracted his second marriage. Petitioner essentially asks, what if his absent spouse was in fact already dead, which is undeniably possible? It is argued that there is no substantial distinction between such a situation and that of a present spouse who contracts a subsequent marriage with the knowledge that the absent spouse is already dead.

The legal questions raised are not novel. As discussed in *Manuel v. People of the Philippines*:[23]

> x x x Such judicial declaration also constitutes proof that the petitioner acted in good faith, and would negate criminal intent on his part when he married the private complainant and, as a consequence, he could not be held guilty of bigamy in such case. The petitioner, however, failed to discharge his burden.
>
> The phrase "or before the absent spouse has been declared presumptively dead by means of a judgment rendered on the proceedings" in Article 349 of the Revised Penal Code was not an aggroupment of empty or useless words. The requirement for a judgment of the presumptive death of the absent spouse is for the benefit of the spouse present, as protection from the pains and the consequences of a second marriage, precisely because he/she could be charged and convicted of bigamy if the defense of good faith based on mere testimony is found incredible.
>
> The requirement of judicial declaration is also for the benefit of the State. Under Article II, Section 12 of the Constitution, "the State shall protect and strengthen the family as a basic autonomous social institution." Marriage is a social institution of the highest importance. Public policy, good morals and the interest of society require that the marital relation should be surrounded with every safeguard and its severance only in the manner prescribed and the causes specified by law. The laws regulating civil marriages are necessary to serve

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[23] 512 Phil. 818, 836-838 (2005).

the interest, safety, good order, comfort or general welfare of the community and the parties can waive nothing essential to the validity of the proceedings.

A civil marriage anchors an ordered society by encouraging stable relationships over transient ones; it enhances the welfare of the community.

In a real sense, there are three parties to every civil marriage; two willing spouses and an approving State. On marriage, the parties assume new relations to each other and the State touching nearly on every aspect of life and death. The consequences of an invalid marriage to the parties, to innocent parties and to society, are so serious that the law may well take means calculated to ensure the procurement of the most positive evidence of death of the first spouse or of the presumptive death of the absent spouse after the lapse of the period provided for under the law. One such means is the requirement of the declaration by a competent court of the presumptive death of an absent spouse as proof that the present spouse contracts a subsequent marriage on a well-grounded belief of the death of the first spouse. Indeed, "men readily believe what they wish to be true," is a maxim of the old jurists. To sustain a second marriage and to vacate a first because one of the parties believed the other to be dead would make the existence of the marital relation determinable, not by certain extrinsic facts, easily capable of forensic ascertainment and proof, but by the subjective condition of individuals. Only with such proof can marriage be treated as so dissolved as to permit second marriages. Thus, Article 349 of the Revised Penal Code has made the dissolution of marriage dependent not only upon the personal belief of parties, but upon certain objective facts easily capable of accurate judicial cognizance, namely, a judgment of the presumptive death of the absent spouse.

All told, the assailed Resolutions of the CA must be upheld.

WHEREFORE, the petition is **DENIED** for lack of merit.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe, Caguioa*, and *Hernando,*[*] *JJ.*, concur.

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[*] Additional Member per S.O. No. 2630 dated December 18, 2018.

THIRD DIVISION

[G.R. No. 217978. January 30, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NANCY LASACA RAMIREZ a.k.a. "ZOY" or "SOY",** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9208 (THE ANTI-TRAFFICKING IN PERSONS ACT OF 2003), AS AMENDED; TRAFFICKING IN PERSONS; THE CRIME IS STILL CONSIDERED TRAFFICKING IF IT INVOLVES THE RECRUITMENT, TRANSPORTATION, TRANSFER, HARBORING, OR RECEIPT OF A CHILD FOR THE PURPOSE OF EXPLOITATION EVEN IF IT DOES NOT INVOLVE ANY OF THE MEANS STATED UNDER THE LAW.—** Republic Act No. 9208 defines trafficking in persons x x x. The crime is still considered trafficking if it involves the "recruitment, transportation, transfer, harboring[,] or receipt of a child for the purpose of exploitation" even if it does not involve any of the means stated under the law. Trafficking is considered qualified when "the trafficked person is a child[.]"

2. **ID.; ID.; ID.; ELEMENTS.—** In *People v. Casio*, this Court enumerated the elements that must be established to successfully prosecute the crime: The elements of trafficking in persons can be derived from its definition under Section 3 (a) of Republic Act No. 9208, thus: (1) The act of "recruitment, transportation, transfer or harbouring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders." (2) The means used which include "threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another["]; and (3) The purpose of trafficking is exploitation which includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs." Republic Act No. 9208 has since been amended by Republic

Act No. 10364 on February 6, 2013. In recognition of the amendments to the law, *Casio* clarifies that crimes prosecuted under Republic Act No. 10364 must have the following elements: Under Republic Act No. 10364, the elements of trafficking in persons have been expanded to include the following acts: (1) The act of "recruitment, *obtaining, hiring, providing, offering*, transportation, transfer, *maintaining*, harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders[";] (2) The means used include "by means of threat, or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person"[;] (3) The purpose of trafficking includes "the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs[.]"

3. ID.; ID.; VIOLATION OF SECTION 4(e), AS QUALIFIED BY SECTION 6(a); DULY ESTABLISHED IN CASE AT BAR.— Here, accused-appellant was charged with having violated qualified trafficking in relation to Section 4(e) of Republic Act No. 9208, which provides that it is unlawful for anyone "[t]o maintain or hire a person to engage in prostitution or pornography[.]" The prosecution established that on the night of December 5, 2009, accused-appellant approached PO1 Nemenzo and offered him the sexual services of four (4) girls, two (2) of whom were minors, for ₱2,400.00. The police operation had been the result of previous surveillance conducted within the area by the Regional Anti-Human Trafficking Task Force. Both minor victims testified that this incident was not the first time that accused-appellant pimped them out to customers, and that any payment to them would include the payment of commission to accused-appellant. x x x Accused-appellant hired children to engage in prostitution, taking advantage of their vulnerability as minors. AAA's and BBB's acquiescence to the illicit transactions cannot be considered as a valid defense. x x x This Court, therefore, affirms the trial court and the Court of Appeals' conviction of accused-appellant in violation of Republic Act No. 9208, Section 4(e), as qualified by Section 6(a) and punished under Section 10(c).

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

LEONEN, *J.*:

This is an Appeal assailing the Court of Appeals October 23, 2014 Decision[1] in CA-G.R. CEB-CR HC No. 01655, which affirmed the Regional Trial Court January 9, 2013 Judgment[2] in Crim. Case No. R-LLP-09-05622-CR. The trial court found Nancy Lasaca Ramirez a.k.a. "ZOY" or "SOY" (Ramirez) guilty beyond reasonable doubt of qualified trafficking of persons in relation to Section 4(e)[3] of Republic Act No. 9208, or the Anti-Trafficking in Persons Act of 2003.

In an Information, Ramirez was charged with qualified trafficking of persons in relation to Section 4(e) of Republic Act No. 9208. It read:

That on the 5th day of December, 2009, at or about 9:45 o'clock (sic) in the evening, in [redacted], Lapu-Lapu City, Philippines, within the jurisdiction of this Honorable Court, the afore-named accused, did then and there willfully and unlawfully maintain or hire Nica Jean U. Goc-ong, 20 years old, AAA, 16 year old minor, Cindy Pancho, 20 years old and BBB, 15 year old minor, to engage in prostitution and offered them for sex or any form of sexual exploitation to poseur customers.

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[1] *Rollo*, pp. 3-14. The Decision was penned by Associate Justice Ramon Paul L. Hernando (now an Associate Justice of this Court) and concurred in by Associate Justices Ma. Luisa C. Quijano-Padilla and Marie Christine Azcarraga-Jacob of the Twentieth Division, Court of Appeals, Cebu City.

[2] CA *rollo*, pp. 38-41. The Judgment was penned by Presiding Judge Toribio S. Quiwag of Branch 27, Regional Trial Court, Lapu-Lapu City.

[3] Rep. Act No. 9208 (2003), Sec. 4 provides:

SECTION 4. Acts of Trafficking in Persons. — It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

. . . . . .

(e) To maintain or hire a person to engage in prostitution or pornography[.]

CONTRARY TO LAW.[4]

Ramirez pleaded not guilty on arraignment. Trial on the merits ensued.[5]

The prosecution alleged that at around 9:45 p.m. on December 5, 2009, Police Officer 1 Nef Nemenzo (PO1 Nemenzo) and 13 other members of the Regional Anti-Human Trafficking Task Force conducted an entrapment operation in [redacted], Lapu-Lapu City. The operation was "based on their surveillance of a widespread sexual service for sale by young girls"[6] in the area.[7]

The operation was divided into two (2) groups. PO1 Nemenzo's group targeted the area of [redacted] KTV Bar in front of [redacted] Grill. He would be disguised as a customer negotiating for the prices of the minors' services.[8]

In the bar, PO1 Nemenzo and a team member, Police Officer 1 Llanes (PO1 Llanes), ordered beers and waited for the pimps. Two (2) women approached them and introduced themselves as AAA and BBB.[9] Upon hearing that they would need two (2) more girls, another woman approached them and introduced herself as Nancy, who was later identified as Ramirez. She told the police officers that she could provide the girls. Then, BBB and Ramirez left, and after a while, returned with two (2) more girls. They agreed that each girl would cost ₱600.00 as payment for sexual services.[10]

After Ramirez provided the four (4) girls, the group left and hailed a taxi heading for [redacted] Motel. Ramirez had

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[4] RTC records, p. 2.

[5] CA *rollo*, p. 38.

[6] *Id*. at 39.

[7] *Id*. at 38-39.

[8] *Id*. at 39.

[9] *Id*.

[10] *Id*.

told the girls to accept the money that they would be given. In the taxi, PO1 Llanes handed ₱2,400.00 to one (1) of the girls. As soon as the girl received it, PO1 Nemenzo and PO1 Llanes introduced themselves as police officers, and turned the girls over to their team leader in a civilian van parked near them. The police officers were told to return to the area and await the other teams' return. Later, Ramirez was arrested when BBB pointed to her as the pimp.[11]

The prosecution also presented the testimony of BBB, a minor, who testified knowing Ramirez and that she herself was pimped out by Ramirez several times already. BBB stated that on the night of the incident, Ramirez approached her and asked if she wanted to have sex for ₱200.00. She accepted and later, she and another girl, AAA, approached two (2) customers. The men said that they needed two (2) more girls, so Ramirez instructed BBB to get a couple more. She came back with two (2) girls, Nica and Cindy. After the deal was made, the six (6) of them boarded a taxi.[12]

Before they left, Ramirez instructed BBB to get the money from the two (2) men. While in the taxi, one (1) of the men handed her ₱2,400.00. She received the money and told her companions to set aside ₱400.00 as their pimp's share. Instead of going to the motel, the taxi stopped and the men introduced themselves as police officers.[13]

The prosecution likewise presented the testimony of AAA, a minor, who testified that she had already been pimped by Ramirez twice. On the night of the incident, AAA testified that Ramirez pimped her and three (3) other girls out to two (2) customers for ₱2,400.00. She stated that she knew Ramirez to be a pimp because Ramirez would look for customers, negotiate prices, get girls to have sex with the customers, and get commission from it.[14]

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[11] CA *rollo*, p. 39.

[12] *Id*.

[13] *Id*.

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

In her defense, Ramirez testified that at about 9:00p.m. on December 5, 2009, she and her sister, Francy Ramirez, were at [redacted] Grill watching a live band when two (2) men rushed to them, arrested her, and pushed her into a van. She asked why she was being arrested but the men just laughed. In the van, she saw BBB, who told her that police officers were around the area to arrest prostitutes. The men then brought her to a gas station, where they were made to board another van with other women and two (2) gay men. They were brought to the police station in [redacted], Cebu City, where they were investigated for prostitution.[15]

In its January 9, 2013 Judgment,[16] the Regional Trial Court found Ramirez guilty. The dispositive portion read:

> WHEREFORE, in view of the foregoing premises, judgment is hereby rendered finding the accused, Nancy Lasaca Ramirez guilty of the crime of Qualified Trafficking of Person in Relation to Sec. 4 (e) of R.A. 9208 beyond reasonable doubt and sentences her to suffer the penalty of life imprisonment and a fine of Two million pesos (₱2,000,000.00).
>
> SO ORDERED.[17]

Ramirez appealed before the Court of Appeals.[18] She argued that she does not work at [redacted] KTV Bar, and that it was BBB who negotiated with the poseur customers about the girls' prices and received the supposed payment for sexual services.[19] She posits that the advanced payment made to BBB was "contrary to human nature and natural course of events"[20] since no sexual activity had occurred yet. She insists that she was in the area just to watch a live band.[21]

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[15] *Id*. at 40.

[16] *Id*. at 38-41.

[17] *Id*. at 41.

[18] *Id*. at 25-37.

[19] *Id*. at 33-34.

[20] *Id*. at 34.

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

In its October 23, 2014 Decision,[22] the Court of Appeals denied the Appeal and affirmed the Regional Trial Court January 9, 2013 Judgment. It highlighted the trial court's finding of overwhelming evidence against Ramirez, as two (2) of the minor victims positively identified her as their pimp.[23]

The Court of Appeals held that Ramirez not being employed at the [redacted] KTV Bar was irrelevant. It also found that even if BBB initiated the negotiation with the poseur customers, the deal was only closed when Ramirez brought another pair of girls.[24] It further noted that it was not uncommon for the payment to be received by the hired girls instead of the pimps. In any case, BBB testified that ₱400.00 had already been earmarked from the ₱2,400.00 payment as Ramirez' commission. This was enough to conclude that she was the girls' pimp.[25]

Ramirez filed a Notice of Appeal,[26] to which the Court of Appeals gave due course,[27] elevating the case records to this Court.[28]

In its June 29, 2015 Resolution,[29] this Court noted the elevation of records and directed the parties to file their supplemental briefs. Both parties manifested that they were no longer submitting supplemental briefs and moved that this Court instead consider the arguments in their briefs submitted before the Court of Appeals.[30]

While the case was pending, accused-appellant sent a handwritten letter[31] to this Court, insisting that on the night of

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[22] *Rollo*, pp. 3-14.

[23] *Id*. at 8.

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

[25] *Id*. at 13.

[26] *Id*. at 15-16.

[27] *Id*. at 17.

[28] *Id*. at 1.

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

[30] *Id*. at 22-26 and 29-31.

[31] *Id*. at 34-41.

the incident, she was merely in the area with her sister to watch a live band. She claims that she only met BBB that night, and that BBB suddenly dragged her to look for two (2) more girls. She further alleges that it was BBB who negotiated with the two (2) customers and that she had no idea what was going on.[32] She submits that BBB pointed to her as a pimp only because the police officers were threatening to detain her instead.[33]

This Court is confronted with the sole issue of whether or not the prosecution proved accused-appellant Nancy Lasaca Ramirez' guilt beyond reasonable doubt of qualified trafficking of persons.

Republic Act No. 9208 defines trafficking in persons as:

SECTION 3. Definition of Terms. — As used in this Act:

(a) Trafficking in Persons — refers to the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the persons, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.

The crime is still considered trafficking if it involves the "recruitment, transportation, transfer, harboring[,] or receipt of a child for the purpose of exploitation" even if it does not involve any of the means stated under the law.[34] Trafficking is considered qualified when "the trafficked person is a child[.]"[35]

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[32] *Id*. at 35.

[33] *Id.* at 37.

[34] Rep. Act No. 9208 (2003), Sec. 3(a).

[35] Rep. Act No. 9208 (2003), Sec. 6(a).

In *People v. Casio*,[36] this Court enumerated the elements that must be established to successfully prosecute the crime:

> The elements of trafficking in persons can be derived from its definition under Section 3 (a) of Republic Act No. 9208, thus:
>
> (1) The act of "recruitment, transportation, transfer or harbouring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders."
>
> (2) The means used which include "threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another["]; and
>
> (3) The purpose of trafficking is exploitation which includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs."[37]

Republic Act No. 9208 has since been amended by Republic Act No. 10364[38] on February 6, 2013. In recognition of the amendments to the law, *Casio* clarifies that crimes prosecuted under Republic Act No. 10364 must have the following elements:

> Under Republic Act No. 10364, the elements of trafficking in persons have been expanded to include the following acts:
>
> (1) The act of "recruitment, *obtaining, hiring, providing, offering*, transportation, transfer, *maintaining*, harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders[";]
>
> (2) The means used include "by means of threat, or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or

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[36] 749 Phil. 458 (2014) [Per *J.* Leonen, Third Division].

[37] *Id.* at 472-473 *citing* Rep. Act No. 9208, Sec. 3(a).

[38] Expanded Anti-Trafficking in Persons Act of 2012.

benefits to achieve the consent of a person having control over another person"[;]

(3) The purpose of trafficking includes "the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs[.]"[39] (Emphasis in the original)

Here, accused-appellant was charged with having violated qualified trafficking in relation to Section 4(e) of Republic Act No. 9208, which provides that it is unlawful for anyone "[t]o maintain or hire a person to engage in prostitution or pornography[.]"

The prosecution established that on the night of December 5, 2009, accused-appellant approached PO1 Nemenzo and offered him the sexual services of four (4) girls, two (2) of whom were minors, for ₱2,400.00. The police operation had been the result of previous surveillance conducted within the area by the Regional Anti-Human Trafficking Task Force. Both minor victims testified that this incident was not the first time that accused-appellant pimped them out to customers, and that any payment to them would include the payment of commission to accused-appellant.

This Court in *People v. Rodriguez*[40] acknowledged that as with *Casio*, the corroborating testimonies of the arresting officer and the minor victims were sufficient to sustain a conviction under the law. In *People v. Spouses Ybanez, et al.*,[41] this Court likewise affirmed the conviction of traffickers arrested based on a surveillance report on the prostitution of minors within the area. In *People v. XXX and YYY*,[42] this Court held that the exploitation of minors, through either prostitution or pornography,

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[39] *People v. Casio*, 749 Phil. 458, 474 (2014) [Per *J.* Leonen, Third Division].

[40] G.R. No. 211721, September 20, 2017, 840 SCRA 388 [Per *J.* Martires, Third Division].

[41] 793 Phil. 877 (2016) [Per *J.* Peralta, Third Division].

[42] G.R. No. 235652, July 9, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/july2018/235652.pdf> [Per *J.* Perlas-Bemabe, Second Division].

is explicitly prohibited under the law. *Casio* also recognizes that the crime is considered consummated even if no sexual intercourse had taken place since the mere transaction consummates the crime.[43]

Here, accused-appellant cannot use as a valid defense either BBB's and AAA's consent to the transaction, or that BBB received the payment on her behalf. In *Casio*:[44]

> The victim's consent is rendered meaningless due to the coercive, abusive, or deceptive means employed by perpetrators of human trafficking. Even without the use of coercive, abusive, or deceptive means, a minor's consent is not given out of his or her own free will.[45]

Similarly, in *People v. De Dios*:[46]

> It did not matter that there was no threat, force, coercion, abduction, fraud, deception or abuse of power that was employed by De Dios when she involved AAA in her illicit sexual trade. AAA was still a minor when she was exposed to prostitution by the prodding, promises and acts of De Dios. Trafficking in persons may be committed also by means of taking advantage of the persons' vulnerability as minors, a circumstance that applied to AAA, was sufficiently alleged in the information and proved during the trial. This element was further achieved through the offer of financial gain for the illicit services that were provided by AAA to the customers of De Dios.[47]

Accused-appellant hired children to engage in prostitution, taking advantage of their vulnerability as minors. AAA's and

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[43] *People v. Casio*,749 Phil. 458 (2014) [Per J. Leonen, Third Division]. See also *People v. Aguirre*, G.R. No. 219952, November 20, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/november2017/219952.pdf> [Per J. Tijam, First Division].

[44] 749 Phil. 458 (2014) [Per J. Leonen, Third Division].

[45] *Id.* at 475-476 *citing* United Nations Office on Drugs and Crime, "Human Trafficking FAQs" <https://www.unodc.org/unodc/en/human-trafficking/faqs.html>.

[46] G.R. No. 234018, June 6, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/june2018/234018.pdf> [Per J. Reyes, Jr., Second Division].

[47] *Id.* at 7-8.

BBB's acquiescence to the illicit transactions cannot be considered as a valid defense.

Accused-appellant initially used the defense of denial, testifying that she was merely in the area to listen to a live band when the police rushed to her and arrested her. Denial, however, becomes a weak defense against the positive identification by the poseur-buyer and the minor victims.[48]

Moreover, accused-appellant, in her handwritten letter to this Court,[49] seemingly abandoned her earlier statement that she was just in the area to watch a live band when the police rushed to and arrested her. This time, she alleged that it was BBB who approached and dragged her to the police officers, and who also started negotiating prices.[50] This contradicts her earlier statement that she had no knowledge of the transaction. Worse, this appears to corroborate the prosecution witnesses' testimonies that she was indeed at the transaction.

In any case, PO1 Nemenzo had categorically testified that he and PO1 Llanes were approached by accused-appellant, who had negotiated prices on AAA and BBB's behalf.[51] Accused-appellant has not alleged any ill motive on PO1 Nemenzo's part to testify against her.

This Court, therefore, affirms the trial court and the Court of Appeals' conviction of accused-appellant in violation of Republic Act No. 9208, Section 4(e), as qualified by Section 6(a) and punished under Section 10(c).[52] In *Casio*,[53]

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[48] See *People v. Bandojo, Jr.*, G.R. No. 234161, October 17, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/october2018/234161.pdf> [Per J. Reyes, A. Jr., Second Division].

[49] *Rollo*, pp. 34-41.

[50] *Id.* at 35.

[51] CA *rollo*, p. 39.

[52] Rep. Act No. 9208 (2003), Sec. 10. Penalties and Sanctions. — The following penalties and sanctions are hereby established for the offenses enumerated in this Act:

however, this Court held that moral damages and exemplary damages must also be imposed. In *People v. Aguirre*:[54]

> The criminal case of Trafficking in Persons as a Prostitute is an analogous case to the crimes of seduction, abduction, rape, or other lascivious acts. In fact[,] it is worse, thus, justifying the award of moral damages. Exemplary damages are imposed when the crime is aggravated, as in this case.[55]

Thus, in line with jurisprudence, this Court deems it proper to impose moral damages of ₱500,000.00 and exemplary damages of ₱100,000.00.

WHEREFORE, the Appeal is **DISMISSED**. The Court of Appeals October 23, 2014 Decision in CA-G.R. CEB-CR HC No. 01655 is **AFFIRMED** with **MODIFICATION**. Accused-appellant Nancy Lasaca Ramirez a.k.a "ZOY" or "SOY" is found **GUILTY** beyond reasonable doubt of having violated Republic Act No. 9208, Section 4(e), as qualified by Section 6(a). She is sentenced to suffer the penalty of life imprisonment and to pay a fine of Two Million Pesos (₱2,000,000.00). She is further ordered to pay Five Hundred Thousand Pesos (₱500,000.00) as moral damages and One Hundred Thousand Pesos (₱100,000.00) as exemplary damages to each of the minor victims, AAA and BBB.

. . . . . .

(c) Any person found guilty of qualified trafficking under Section 6 shall suffer the penalty of life imprisonment and a fine of not less than Two million pesos (₱2,000,000.00) but not more than Five million pesos (₱5,000,000.00)[.]

[53] 749 Phil. 458 (2014) [Per *J.* Leonen, Third Division].

[54] G.R. No. 219952, November 20, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/november2017/219952.pdf> [Per *J.* Tijam, First Division].

[55] *Id.* at 11, citing *People v. Lalli, et al.*, 675 Phil. 126 (2011) [Per *J.* Carpio, Second Division]; *People v. Casio*, 749 Phil. 458 (2014) [Per *J.* Leonen, Third Division]; and *People v. Hirang*, 803 Phil. 277 (2017) [Per *J.* Reyes, Third Division].

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.[56]

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 198008. February 4, 2019]

REPUBLIC OF THE PHILIPPINES, represented by the Regional Executive Director, Region X, Department of Public Works and Highways, *petitioner, vs.* **BENJOHN FETALVERO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; THE ADMINISTRATIVE CODE OF 1987; OFFICE OF THE SOLICITOR GENERAL; ROLE OF A DEPUTIZED COUNSEL IN RELATION TO THE OFFICE OF THE SOLICITOR GENERAL, CLARIFIED.— [T]his Court takes this opportunity to reiterate our ruling in *Republic of the Philippines v. Viaje, et al.,* which clarified the role of a deputized counsel in relation to the Office of the Solicitor General: The power of the OSG to deputize legal officers of government departments, bureaus, agencies and offices to assist it in

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

[*] Designated additional Member per Raffle dated January 28, 2019.

representing the government is well settled. The Administrative Code of 1987 explicitly states that the OSG shall have the power to "deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases." But it is likewise settled that the OSG's deputized counsel is "no more than the 'surrogate' of the Solicitor General in any particular proceeding" and the latter remains the principal counsel entitled to be furnished copies of all court orders, notices, and decisions. . . . The appearance of the deputized counsel did not divest the OSG of control over the case and did not make the deputized special attorney the counsel of record. Here, the Office of the Solicitor General, as the principal counsel, is shown in both the deputation letter addressed to Atty. Lorea and the Notice of Appearance filed before the trial court.

2. ID.; ID.; ID.; ID.; THE COMPROMISE AGREEMENT IS BINDING ON THE GOVERNMENT DESPITE THE LACK OF THE SOLICITOR GENERAL'S APPROVAL DUE TO LACHES.— [D]espite the lack of the Solicitor General's approval, this Court holds that the government is still bound by the Compromise Agreement due to laches. The Solicitor General is assumed to have known of the Compromise Agreement since, as principal counsel, she was furnished a copy of the trial court's June 27, 2008 Order, which referred the case to mediation. Even if she did not know that Atty. Lorea signed a Compromise Agreement, she was later informed of it through the copy of the trial court's October 17, 2008 Order, which approved the Compromise Agreement. The Solicitor General received the October 17, 2008 Order on November 6, 2008; yet, she filed no appeal or motion to contest the Order or the Compromise Agreement's validity. Thus, based on the deputation letter, which stated that "only notices of orders, resolutions, and decisions served on [the Office of the Solicitor General] will bind the [g]overnment, the entity, agency[,] and/or official represented[,]" and the Notice of Appearance, which stated that "only notices of orders, resolutions, and decisions served on [the Office of the Solicitor General] will bind the party represented[,]" the Solicitor General's receipt of the October 17, 2008 Order bound petitioner to the trial court's judgment.

x x x. The Solicitor General could have contested the June 27, 2008 and October 17, 2008 Orders, but she did not. There was no explanation of her inaction in any of the pleadings. By the time petitioner filed a Petition for Certiorari, estoppel by laches has already set in.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; CANNOT BE ALLOWED WHEN A PARTY TO A CASE FAILS TO APPEAL A JUDGMENT DESPITE THE AVAILABILITY OF THAT REMEDY, AS *CERTIORARI IS* NOT A SUBSTITUTE FOR LOST APPEAL.— [P]etitioner only resorted to a petition for certiorari when it failed to appeal the case within the reglementary period. In *Nippon Paint Employees Union-Olalia v. Court of Appeals:* It is elementary in remedial law that the use of an erroneous mode of appeal is cause for dismissal of the petition for *certiorari* and it has been repeatedly stressed that a petition for *certiorari* is not a substitute for a lost appeal. This is due to the nature of a Rule 65 petition for *certiorari* which lies only where there is "no appeal," and "no plain, speedy and adequate remedy in the ordinary course of law." As previously ruled by this Court: . . . We have time and again reminded members of the bench and bar that a special civil action for *certiorari* under Rule 65 lies only when "there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law." *Certiorari* can not be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy, *certiorari* not being a substitute for lost appeal. The remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive.

4. ID.; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; IT IS IMPROPER FOR THE COURT TO CONSIDER FACTUAL ISSUES IN A PETITION FOR REVIEW ON CERTIORARI, AS THE FINDINGS OF FACT OF THE TRIAL COURT, AS AFFIRMED ON APPEAL BY THE COURT OF APPEALS, ARE CONCLUSIVE ON THE COURT; REASON.— Petitioner's second claim is a question of fact improper in a petition for review under Rule 45. In *DST Movers Corporation v. People's General Insurance Corporation:* A Rule 45 petition pertains to questions of law and not to factual issues. x x x. Seeking recourse from this court through a petition for review

on certiorari under Rule 45 bears significantly on the manner by which this court shall treat findings of fact and evidentiary matters. As a general rule, it becomes improper for this court to consider factual issues: the findings of fact of the trial court, as affirmed on appeal by the Court of Appeals, are conclusive on this court. "The reason behind the rule is that [this] Court is not a trier of facts and it is not its duty to review, evaluate, and weigh the probative value of the evidence adduced before the lower courts."

5. ID.; ID.; JUDGMENTS; WRIT OF EXECUTION; WHERE THE STATE GIVES ITS CONSENT TO BE SUED BY PRIVATE PARTIES EITHER BY GENERAL OR SPECIAL LAW, IT MAY LIMIT CLAIMANT'S ACTION "ONLY UP TO THE COMPLETION OF PROCEEDINGS ANTERIOR TO THE STAGE OF EXECUTION" AND THAT THE POWER OF THE COURTS ENDS WHEN THE JUDGMENT IS RENDERED, SINCE GOVERNMENT FUNDS AND PROPERTIES MAY NOT BE SEIZED UNDER WRITS OF EXECUTION OR GARNISHMENT TO SATISFY SUCH JUDGMENTS.— The general rule is that government funds cannot be seized by virtue of writs of execution or garnishment. This doctrine has been explained in *Commissioner of Public Highways v. San Diego:* The universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimant's action "only up to the completion of proceedings anterior to the stage of execution" and that the power of the Courts ends when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on obvious considerations of public policy. Disbursements of public funds must be covered by the corresponding appropriation as required by law. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law. Simply put, "no money can be taken out of the treasury without an appropriation[.]"

6. ID.; ID.; ID.; ID.; COURT'S ADMINISTRATIVE CIRCULAR NO. 10-2000 AND COMMISSION ON AUDIT CIRCULAR NO. 2001-002, WHICH GOVERN THE ISSUANCE OF WRITS OF EXECUTION TO SATISFY MONEY

JUDGMENTS AGAINST THE GOVERNMENT; MONEY CLAIM CANNOT BE ENTERTAINED BY THE COURTS THROUGH A WRIT OF EXECUTION ABSENT ANY SHOWING THAT THEY HAVE BEEN FIRST RAISED BEFORE THE COMMISSION ON AUDIT.— Even petitioner admitted in its Memorandum "the approval of allocation for payment of road right of way projects within Region 10 under SAA-SR 2009-001538[.]" Since there is an existing appropriation for the payment of just compensation, and this Court already settled that petitioner is bound by the Compromise Agreement, respondent is legally entitled to his money claim. However, he still has to go through the appropriate procedure for making a claim against the Government. In *Atty. Roxas v. Republic Real Estate Corporation,* this Court elaborated on the proper process of raising money claims against the government. x x x. This Court held: x x x. The Writ of Execution and Sheriff De Jesus' Notice [of Execution] violate this Court's Administrative Circular No. 10-2000 and Commission on Audit Circular No. 2001-002, which govern the issuance of writs of execution to satisfy money judgments against government. x x x. As a rule, public funds may not be disbursed absent an appropriation of law or other specific statutory authority. Commonwealth Act No. 327, as amended by Presidential Decree No. 1445, requires that all money claims against government must first be filed before the Commission on Audit, which , in turn, must act upon them within 60 days. Only when the Commission on Audit rejects the claim can the claimant elevate the matter to this Court on certiorari and, in effect, sue the state. x x x. Here, as in *Atty. Roxas,* respondent failed to show that he first raised his claim before the Commission on Audit. Without this necessary procedural step, respondent's money claim cannot be entertained by the courts through a writ of execution.

7. **ID.; SPECIAL CIVIL ACTIONS; EMINENT DOMAIN; JUST COMPENSATION; LEGAL INTEREST OF TWELVE PERCENT (12%) AND SIX PERCENT (6%) PER ANNUM, IMPOSED.—** Under Article III, Section 9 of the 1987 Constitution, "[p]rivate property shall not be taken for public use without just compensation. This Court notes that for almost 20 years now, petitioner had been enjoying the use of respondent's property without paying the full amount of just

compensation under the Compromise Agreement. Respondent had been deprived of his property for almost two (2) decades. In keeping with substantial justice, this Court imposes the payment of legal interest on the remaining just compensation due to respondent. Consistent with this Court's ruling in *Nacar v. Gallery Frames,* this Court imposes interest at the rate of twelve percent (12%) per annum from the time of taking until June 30, 2013, and six percent (6%) per annum from July 1, 2013 until fully paid. Thus, respondent's money claim under the Compromise Agreement should be adjusted to reflect the interest rates imposed by this Court.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Moises G. Dalisay, Jr. for respondent.

D E C I S I O N

LEONEN, *J.*:

Money claims against the government cannot be the subject of writs of execution absent any showing that they have been brought before the Commission on Audit, under this Court's Administrative Circular No. 10-2000[1] and Commission on Audit Circular No. 2001-002.[2]

This is a Petition for Review on Certiorari[3] praying that the July 29, 2011 Decision[4] of the Court of Appeals be reversed,

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[1] Supreme Court Administrative Circular No. 10-2000 (2000). Exercise of Utmost Caution, Prudence and Judiciousness in the Issuance of Writs of Execution to Satisfy Money Judgments Against Government Agencies and Local Government Units.

[2] Commission on Audit Circular No. 2001-002 (2001)<https://www.coa.gov.ph/phocadownloadpap/userupload/Issuances/Circulars/Circ2001/COA_C2001-002.pdf> (last accessed on January 23, 2019).

[3] *Rollo,* pp. 144-174.

[4] *Id*. at 175-186. The Decision, in the case docketed as CA-G.R. SP No. 03710-MIN, was penned by Associate Justice Rodrigo F. Lim, Jr. and

and that the September 22, 2009[5] and April 23, 2010[6] Orders of the Regional Trial Court be annulled.[7] Further, it is prayed that a temporary restraining order be issued to enjoin the trial court from implementing the assailed Orders. The Court of Appeals affirmed the trial court Orders, which granted the Motion for the Issuance of an Order for a Writ of Garnishment filed by Benjohn Fetalvero (Fetalvero).[8]

Fetalvero owned a 2,787-square meter parcel of land in Iligan City, Lanao del Norte. The lot was covered by Transfer Certificate of Title (TCT) No. T-25,233 (a.f.).[9]

In 1999, the Department of Public Works and Highways, Region X took 569 square meters from Fetalvero's property to be used in its flood control project. Fetalvero stated that the project's construction on that portion of land rendered the remaining part useless, so he demanded payment for the entire area at ₱15,000.00 per square meter. However, under Presidential Administrative Order No. 50, series of 1999, the just compensation Fetalvero was entitled to was only ₱2,500.00 per square meter, or a total of ₱1,422,500.00, plus 10% thereof. The rate was based on the Bureau of Internal Revenue zonal valuation in 1999, when the property was taken. Despite negotiations, the parties failed to agree on the amount of just compensation.[10]

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concurred in by Associate Justices Pamela Ann Abella Maxino and Zenaida T. Galapate-Laguilles of the Twenty-Third Division, Court of Appeals, Cagayan de Oro City.

[5] *Id*. at 211-213. The Order, in the case docketed as Civil Case No. 7118, was penned by Presiding Judge Albert B. Abragan of Branch 3, Regional Trial Court, Iligan City.

[6] *Id*. at 214. The Order, in the case docketed as Civil Case No. 7118, was penned by Presiding Judge Albert B. Abragan of Branch 3, Regional Trial Court, Iligan City.

[7] *Id*. at 169.

[8] *Id*. at 213.

[9] *Id*. at 176.

[10] *Id*.

On February 13, 2008, the Republic of the Philippines (Republic), through the Office of the Solicitor General, filed before the Regional Trial Court a Complaint[11] for expropriation against Fetalvero.[12] It prayed "for the determination and payment of the just compensation and the entry of a judgment of condemnation of the 569 square meters portion of [Fetalvero's] property."[13] The case, docketed as Civil Case No. 7118, was raffled to Branch 3 under Presiding Judge Albert B. Abragan (Judge Abragan).[14]

Subsequently, the Office of the Solicitor General sent a letter[15] dated April 10, 2008 to Atty. Earnest Anthony L. Lorea (Atty. Lorea), the Legal Staff Chief of the Department of Public Works and Highways, Region X. In its letter, the Office of the Solicitor General deputized Atty. Lorea to assist it in Civil Case No. 7118, as his authority was "subject to the reservation contained in the Notice of Appearance filed by [the] Solicitor General[.]"[16]

On April 16, 2008, the Office of the Solicitor General filed before the trial court a Notice of Appearance[17] dated April 10, 2008. It entered its appearance as counsel for the Republic in Civil Case No. 7118, and informed the trial court that it authorized Atty. Lorea to appear on its behalf. It emphasized that since it "retain[ed] supervision and control of the representation in [the] case and [had] to approve withdrawal of the case, non-appeal[,] or other actions which appear to compromise the interest of the Government, only notices of orders, resolutions, and decisions served on him will bind the [Republic]."[18]

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[11] *Id*. at 232-236.

[12] *Id*. at 176.

[13] *Id*. at 176-177.

[14] *Id*. at 175 and 177.

[15] *Id*. at 238.

[16] *Id*. at 238.

[17] *Id*. at 242.

[18] *Id*.

On June 27, 2008, the trial court issued an Order[19] and referred the case to the Philippine Mediation Center for mediation.[20]

On September 1, 2008, the parties entered into a Compromise Agreement, which read:

> UNDERSIGNED PARTIES:
>
> Regional Executive Director, Region 10, DPWH
>
> -And-
>
> Benjohn Fetalvero
>
> AGREE as follows:
>
> 1. That the area involved is 1,428 square meters.
> 2. That the price per square meter is Nine Thousand Five Hundred Pesos (PHP 9,500.00) per square meter or a total of Thirteen Million Five Hundred Sixty[-]Six Thousand & 00/100 (PHP 13,566,000.00) which latter is the amount to be paid in full b[y] the plaintiff to the defendant not later than September, 2009.
> 3. After September, 2009, it will earn interest at 12% per annum until fully paid.
> 4. Expenses for documentation and transfer to the account of Plaintiff.
>
> IN WITNESS WHEREOF, the parties hereto have mutually and voluntarily agreed to the above stipulations and sign this Agreement at PMC Iligan City, on this 1st day of September, 2008 for the consideration and approval of the Honorable Court.
>
> (Sgd) illegible.
> Atty. Ernest Lorea
> Plaintiff/Complainant
>
> (Sgd) Benjohn Fetalvero
> Defendant

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[19] *Id*. at 239.

[20] *Id*. at 177.

Assisted by:

Atty. GERARDO D. PAGUIO Mediator	ERWIN TRACY E. DACUP Mediation Staff Asst. II Mediation Supervisor/Coordinator[21]

Fetalvero filed before the trial court a motion to approve the Compromise Agreement and for the issuance of judgment.[22]

On October 17, 2008, the trial court issued an Order[23] approving the Compromise Agreement. On November 6, 2008, the Republic received a copy of the Order.[24]

In a letter dated May 13, 2009, Jaime A. Pacanan, Assistant Secretary and Central Right of Way Committee Chair of the Department of Public Works and Highways, Manila, requested advice from the Office of the Solicitor General regarding the Compromise Agreement's legality.[25]

In its letter[26] dated June 4, 2009, the Office of the Solicitor General replied that the government cannot be bound by the Compromise Agreement since it was not submitted to its office for review, which is a condition under the deputation letter and the Notice of Appearance. Thus, it was improper for the Department of Public Works and Highways to directly submit the Compromise Agreement to the trial court for judgment. Further, the Compromise Agreement failed to state how it arrived at the just compensation of ₱9,500.00 per square meter.[27]

Meanwhile, Fetalvero filed on July 20, 2009 a Motion for the Issuance of an Order for a Writ of Garnishment for the

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[21] *Id*. at 240-241.

[22] *Id*. at 240.

[23] *Id*. at 240-241.

[24] *Id*. at 177.

[25] *Id*. at 177 and 243.

[26] *Id*. at 243-245.

[27] *Id*. at 177-178 and 244-245.

satisfaction of the trial court's October 17, 2008 Order.[28] He alleged that Sheriff Sandor B. Bantuas served a Writ of Execution to Atty. Lorea on June 2, 2009 and June 24, 2009. Both times, the latter ignored it and refused to comply with and satisfy the trial court's judgment. It was, therefore, necessary and just that the court issue a Writ of Garnishment in his favor.[29]

The Republic opposed the Motion, arguing that since the Compromise Agreement was not legally binding, "it cannot be the subject of a valid writ of execution or garnishment."[30] Moreover, the government still owns its funds and properties that were in official depositaries; thus, these cannot be garnished or levied.[31]

In its September 22, 2009 Order,[32] the trial court granted Fetalvero's Motion. It held:

> From the arguments of both defendant-movant and the plaintiff, the court is more inclined to agree with the observation of defendant-movant considering that the record reveals that the Office of the Solicitor General was duly furnished copy of the judgment of the court approving the Compromise Agreement dated October 17, 2008. Despite the lapse of almost a year, the Office of the Solicitor General never lift[ed] a finger to question the validity of said Compromise Agreement. The OSG is now precluded from questioning the validity of the compromise agreement. It should be noted that judgment based on compromise agreement is immediately executory. Hence, the plaintiff cannot now question the validity of the said judgment without transgressing the doctrine of immutability of judgment.[33]

The trial court further held that since the Office of the Solicitor General received a copy of the trial court's October 17, 2008 Order, the judgment was valid and binding on the Republic.

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[28] *Id*. at 178.

[29] *Id*. at 211.

[30] *Id*. at 212.

[31] *Id*.

[32] *Id*. at 211-213.

[33] *Id*. at 212.

Further, government funds in official depositaries remain government funds only if there was no appropriation by law. The trial court found that funds were already appropriated under SAA-SR 2009-05-001538 of the Department of Public Works and Highways "for payment of the road-rights-of-way."[34] Hence, Fetalvero's Motion should be granted.[35]

The dispositive portion of the trial court's September 22, 2009 Order read:

> WHEREFORE, finding the motion to be well-founded the same is hereby granted. The Sheriff of this Court may now proceed with the garnishment of plaintiff's funds intended for the payment of road-rights-of-way under SAA-SR 2009-05-001538 of the DPWH Main and/or Regional Office, as prayed for.
>
> SO ORDERED.[36]

The Republic moved for reconsideration, but its Motion was denied by the trial court in its April 23, 2010 Order.[37]

The Republic, through the Regional Executive Director of the Department of Public Works and Highways, Region X, filed before the Court of Appeals a Petition for Certiorari[38] against Fetalvero and Judge Abragan.[39] It again contended that the Compromise Agreement was not binding on the Republic since it was not submitted to the Office of the Solicitor General for review, and the basis for the amount of just compensation was not stated in it.[40] It insisted that "government funds and properties may not be seized under writs of execution or garnishment to satisfy court judgments."[41]

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[34] *Id*. at 213.

[35] *Id*.

[36] *Id*. at 213.

[37] *Id*. at 214.

[38] *Id*. at 187-210.

[39] *Id*. at 175.

[40] *Id*. at 179-181.

[41] *Id*. at 181.

On July 29, 2011, the Court of Appeals rendered a Decision,[42] denying the Petition for lack of merit.[43] It found that the Office of the Solicitor General received a copy of the trial court's October 17, 2008 Order, but did not file any pleading or action to assail it. If the Office of the Solicitor General wanted to question the Compromise Agreement's validity, it should have raised the matter immediately, not when the Order was about to be executed.[44] The Court of Appeals added:

> As adverted to, records show that the OSG was served a copy of the Order dated October 17, 2008 which approved the compromise agreement. Hence, it was binding upon it. To rule otherwise would create havoc and absurdity in our procedural system wherein no judgment based on compromise would ever be final and executory despite the OSG's receipt of the same on the basis merely that the OSG did not previously receive a copy of the said compromise subject of the said decision and/or order.[45]

The Court of Appeals further held that public funds may be seized or garnished if they were "already allocated by law specifically for the satisfaction of the money judgment against the government."[46]

The dispositive portion of the Court of Appeals Decision read:

> WHEREFORE, premises considered, the instant petition for certiorari is **DENIED** for lack of merit. The assailed Orders dated September 22, 2009 and April 23, 2010 are **AFFIRMED *in toto*.**
>
> SO ORDERED.[47] (Emphasis in the original)

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[42] *Id*. at 175-186.

[43] *Id*. at 185.

[44] *Id*. at 183-184.

[45] *Id*. at 185.

[46] *Id*.

[47] *Id*. at 185-186.

On October 6, 2011, the Republic, through the Office of the Solicitor General, filed before this Court a Petition for Review on Certiorari[48] against Fetalvero. It prayed that the July 29, 2011 Decision of the Court of Appeals be reversed and set aside.[49] Respondent submitted his Comment[50] dated February 8, 2012, while petitioner submitted its Reply[51] dated July 17, 2012.

In its January 28, 2013 Resolution,[52] this Court gave due course to the Petition and informed the parties to submit their respective memoranda. Petitioner submitted its Memorandum[53] dated April 29, 2013, while respondent submitted his Memorandum[54] on May 6, 2013.

Petitioner asserts that the Court of Appeals erred in dismissing its Petition "on a purely technical ground."[55] It argues that the Court of Appeals should have disposed the case based on its merit since it involves a substantial amount of public funds. Petitioner reiterates that the Compromise Agreement is void since it was entered into contrary to the reservation in the deputation letter and the Notice of Appearance. The Compromise Agreement was directly submitted to the trial court without the Office of the Solicitor General's prior review and approval.[56]

Petitioner avers that the just compensation is grossly disadvantageous to the government. The actual market value of properties in Mahayahay, Iligan City is ₱500.00 to ₱1,000.00 per square meter in 2003. However, the just compensation for respondent's property in the Compromise Agreement is

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[48] *Id*. at 144-174.

[49] *Id*. at 169.

[50] *Id*. at 278-292.

[51] *Id*. at 308-318.

[52] *Id*. at 323-324.

[53] *Id*. at 329-348.

[54] *Id*. at 350-362.

[55] *Id*. at 334.

[56] *Id*. at 334-340.

₱9,500.00 per square meter. Since the property was expropriated in 1999, petitioner argues that the just compensation should have been lower than the properties' selling price in 2003. Moreover, the Compromise Agreement does not indicate how the parties arrived at the just compensation.[57]

Finally, petitioner contends that despite the approval of the allocation under SAA-SR 2009-05-001538 and the partial payment of the just compensation to respondent, it can still question the Compromise Agreement's validity. Assuming that respondent proves that he has a claim, he cannot seize government funds by virtue of a writ of execution or garnishment. He must first file it before the Commission on Audit under Commonwealth Act No. 327, as amended by Section 26 of Presidential Decree No. 1445.[58]

On the other hand, respondent notes that the Compromise Agreement had been approved by the trial court on October 17, 2008. Thus, it had already attained finality by the time petitioner questioned its validity in June 2009. Respondent also points out that petitioner did not even avail of the remedies under the Rules of Court. It did not file an appeal, a motion for new trial, a petition for relief, or a petition to annul the trial court Orders.[59] Instead, it filed a petition for certiorari to "indirectly annul"[60] the judgments.

Respondent adds that the Court of Appeals correctly denied the Petition for Certiorari, since petitioner failed to show that Judge Abragan, in issuing the assailed Orders, committed grave abuse of discretion:[61]

The issuance of the said orders which granted the motion for issuance of an order of writ of garnishment was not only proper, it was imperative

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[57] *Id*. at 340-343.

[58] *Id*. at 343-345.

[59] *Id*. at 355-359.

[60] *Id*. at 355.

[61] *Id*. at 359-360.

as well because the order/judgment of the court dated October 17, 2008 approving the compromise agreement has long become final and executory, there being no motion for reconsideration or any appellate action taken by the petitioner in respect of the said order despite its receipt of the same on November 6, 2008. It is well established that a compromise agreement may be enforced by a writ of execution.[62]

Lastly, respondent states that he was issued a Release of Funds to Cover Payment of Right-of-Way Claims for Region X under SARO No. BMB-A-10-0018567 on September 23, 2010 in the amount of ₱898,266.30, and a Disbursement Voucher in the same amount as partial payment or satisfaction of the court order in Civil Case No. 7118 on November 22, 2010.[63]

The issues for this Court's resolution are:

First, whether or not the Compromise Agreement is void for not having being submitted to the Office of the Solicitor General for review;

Second, whether or not the Compromise Agreement is void since the amount of just compensation is allegedly grossly disadvantageous to the government; and

Finally, whether or not government funds may be seized under a writ of execution or a writ of garnishment in satisfaction of court judgments.

I

Petitioner claims that the Compromise Agreement is void because: (1) it was not submitted to the Office of the Solicitor General for review; and (2) the amount of just compensation was grossly disproportionate to the property's actual market value, and its computation was not in the Compromise Agreement.

Petitioner's contentions are partly meritorious.

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[62] *Id*. at 360.

[63] *Id*. at 354.

On petitioner's first claim, this Court takes this opportunity to reiterate our ruling in *Republic of the Philippines v. Viaje, et al.*,[64] which clarified the role of a deputized counsel in relation to the Office of the Solicitor General:

> The power of the OSG to deputize legal officers of government departments, bureaus, agencies and offices to assist it in representing the government is well settled. The Administrative Code of 1987 explicitly states that the OSG shall have the power to "deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases." But it is likewise settled that the OSG's deputized counsel is "no more than the 'surrogate' of the Solicitor General in any particular proceeding" and the latter remains the principal counsel entitled to be furnished copies of all court orders, notices, and decisions. . . . The appearance of the deputized counsel did not divest the OSG of control over the case and did not make the deputized special attorney the counsel of record.[65] (Citations omitted)

Here, the Office of the Solicitor General, as the principal counsel, is shown in both the deputation letter addressed to Atty. Lorea and the Notice of Appearance filed before the trial court.

The deputation letter read:

> RE: Civil Case No. 7118
> Regional Trial Court, Br. 03, Iligan City
> REPUBLIC OF THE PHILIPPINES, Rep. by the REGIONAL EXECUTIVE DIRECTOR, REGION X, DEPT. OF PUBLIC WORKS AND HIGHWAYS (Plaintiffs)
> vs. BENJOHN FETALVERO (Defendant) .
> x==========x

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[64] 779 Phil. 405 (2016) [Per *J.* Reyes, Third Division].

[65] *Id.* at 413-414.

S i r :

Pursuant to Section 35(7), E.O. No. 292 and Section 11(e), P.D. No. 1275, you are hereby *deputized to assist the Solicitor General* in the above-captioned case.

Please be informed that your authority is subject to the reservation contained in the Notice of Appearance filed by [the] Solicitor General in this case that only notices of orders, resolutions, and decisions served on him will bind the Government, the entity, agency and/or official represented.

Upon promulgation of judgment, please submit immediately your report and recommendation to our Office for evaluation.[66] (Emphasis supplied)

Meanwhile, the Notice of Appearance stated:

NOTICE OF APPEARANCE

The Branch Clerk of Court
RTC, Iligan City

G R E E T I N G S:

Please enter the appearance of the Office of the Solicitor General as counsel for the Republic of the Philippines in the above-entitled case, and cause all notices of hearings, orders, resolutions, decisions, and other processes to be served upon the said Office at 134 Amorsolo St., Legaspi Village, Makati City

Atty. Earnest Anthony L. Lorea, Chief, Legal Staff, Department of Public Works and Highways (DPWH), Region 10, Bulua, Cagayan de Oro City has been authorized to appear in this case and, therefore, should also be furnished notices of hearings, orders[,] resolutions, decisions, and other processes. *However, as the Solicitor General retains supervision and control of the representation in this case and has to approve withdrawal of the case, non-appeal or other actions which appear to compromise the interest of the Government, only notices of orders, resolutions, and decisions served on him will bind the party represented.*

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[66] *Rollo,* p. 238.

Adverse parties are likewise requested to *furnish both the Solicitor General* and the Prosecutor *with copies of their pleadings and motions.*[67] (Emphasis supplied)

In *South Pacific Sugar Corporation, et al. v. Court of Appeals, et al.,*[68] this Court explained that:

[The] reservation to "approve the withdrawal of the case, the non-appeal, or other actions which appear to compromise the interest of the government" was *meant to protect the interest of the government in case the deputized . . . counsel acted in any manner prejudicial to government.*[69] (Emphasis supplied, citation omitted)

When Atty. Lorea entered into mediation, he only did so on behalf of the principal counsel, the Solicitor General. Mediation necessarily involves bargaining of the parties' interests, and a compromise agreement is one (1) of its consequences. Under the reservation in the Notice of Appearance, Atty. Lorea must submit the resulting Compromise Agreement to then Solicitor General Agnes VST Devanadera[70] for review and approval, especially since the amount respondent claims is significantly larger than what he was allegedly only entitled to get. Without the Solicitor General's positive action on the Compromise Agreement, it cannot be given any effect and cannot bind the Solicitor General's client, the government.

Nonetheless, despite the lack of the Solicitor General's approval, this Court holds that the government is still bound by the Compromise Agreement due to laches.

The Solicitor General is assumed to have known of the Compromise Agreement since, as principal counsel, she was furnished a copy of the trial court's June 27, 2008 Order, which referred the case to mediation. Even if she did not know that Atty. Lorea signed a Compromise Agreement, she was later

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[67] *Id*. at 242.

[68] 657 Phil. 563 (2011) [Per *J*. Carpio, Second Division].

[69] *Id*. at 573.

[70] *Rollo,* p. 242.

informed of it through the copy of the trial court's October 17, 2008 Order, which approved the Compromise Agreement. The Solicitor General received the October 17, 2008 Order on November 6, 2008; yet, she filed no appeal or motion to contest the Order or the Compromise Agreement's validity.

Thus, based on the deputation letter, which stated that "only notices of orders, resolutions, and decisions served on [the Office of the Solicitor General] will bind the [g]overnment, the entity, agency[,] and/or official represented[,]"[71] and the Notice of Appearance, which stated that "only notices of orders, resolutions, and decisions served on [the Office of the Solicitor General] will bind the party represented[,]"[72] the Solicitor General's receipt of the October 17, 2008 Order bound petitioner to the trial court's judgment.

In *Viaje, et al.,* only the Office of the Solicitor General was furnished copies of court notices despite its request that the trial court also furnish its deputized counsel with court notices.[73] This Court held:

> It would have been more prudent for the RTC to have furnished the deputized counsel of its notices. All the same, doing so does not necessarily clear the OSG from its obligation to oversee the efficient handling of the case. *And even if the deputized counsel was served with copies of the courts notices, orders and decisions, these will not be binding until they are actually received by the OSG*. More so in this case where the OSG's Notice of Appearance and its Letter deputizing the LRA even contained the *caveat that it is only notices of orders, resolutions and decisions served on the OSG that will bind the Republic, the entity, agency and/or official represented.* In fact, *the proper basis for computing a reglementary period and for determining whether a decision had attained finality is service on the OSG.* As was stated in *National Power Corporation v. National Labor Relations Commission:*

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[71] *Id*. at 238.

[72] *Id*. at 242.

[73] *Republic of the Philippines v. Viaje, et al.,* 779 Phil. 405, 414 (2016) [Per J. Reyes, Third Division].

> The underlying justification for compelling service of pleadings, orders, notices and decisions on the OSG as principal counsel is one and the same. As the lawyer for the government or the government corporation involved, the OSG is entitled to the service of said pleadings and decisions, whether the case is before the courts or before a quasi-judicial agency such as respondent commission. Needless to say, a uniform rule for all cases handled by the OSG simplifies procedure, prevents confusion and thus facilitates the orderly administration of justice.[74] (Emphasis supplied, citations omitted)

In *Republic of the Philippines v. Intermediate Appellate Court,*[75] the government failed to oppose the petition for reconstitution. This is despite receiving copies of the petition and its annexes through the Registrar of Deeds, Director of Lands, Solicitor General, and the Provincial Fiscal, and even after judgment on the compromise agreement.[76] This Court held:

> Thereafter, when judgment was rendered based on the compromise agreement without awaiting the report and recommendation of the Land Registration Administration and the verification of the Registrar of Deeds concerned, its failure to file a motion to set aside the judgment of the court after due notice likewise proves that no interest of the government was prejudiced by such judgment.[77]

The Solicitor General could have contested the June 27, 2008 and October 17, 2008 Orders, but she did not. There was no explanation of her inaction in any of the pleadings. By the time petitioner filed a Petition for Certiorari, estoppel by laches has already set in.

In addition, petitioner only resorted to a petition or certiorari when it failed to appeal the case within the reglementary period. In *Nippon Paint Employees Union-Olalia v. Court of Appeals:*[78]

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[74] *Id*. at 414-415.

[75] 273 Phil. 662 (1991) [Per *J.* Medialdea, First Division].

[76] *Id*. at 669-670.

[77] *Id*. at 670.

[78] 485 Phil. 675 (2004) [Per *J.* Puno, Second Division].

It is elementary in remedial law that the use of an erroneous mode of appeal is cause for dismissal of the petition for *certiorari* and it has been repeatedly stressed that a petition for *certiorari* is not a substitute for a lost appeal. This is due to the nature of a Rule 65 petition for *certiorari* which lies only where there is "no appeal," and "no plain, speedy and adequate remedy in the ordinary course of law." As previously ruled by this Court:

> . . . We have time and again reminded members of the bench and bar that a special civil action for *certiorari* under Rule 65 lies only when "there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law." *Certiorari* can not be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy, *certiorari* not being a substitute for lost appeal. The remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive.[79] (Emphasis in the original, citations omitted)

Petitioner's second claim is a question of fact improper in a petition for review under Rule 45. In *DST Movers Corporation v. People's General Insurance Corporation:*[80]

> A Rule 45 petition pertains to questions of law and not to factual issues. Rule 45, Section 1 of the 1997 Rules of Civil Procedure is unequivocal:
>
> > 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.
>
> This court's Decision in *Cheesman v. Intermediate Appellate Court* distinguished questions of law from questions of fact:
>
> > As distinguished from a question of law — which exists "when the doubt or difference arises as to what the law is on a certain

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[79] *Id*. at 681.

[80] 778 Phil. 235 (2016) [Per *J*. Leonen, Second Division].

> state of facts" — "there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts;" or when the "query necessarily invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole and the probabilities of the situation."

Seeking recourse from this court through a petition for review on certiorari under Rule 45 bears significantly on the manner by which this court shall treat findings of fact and evidentiary matters. As a general rule, it becomes improper for this court to consider factual issues: the findings of fact of the trial court, as affirmed on appeal by the Court of Appeals, are conclusive on this court. "The reason behind the rule is that [this] Court is not a trier of facts and it is not its duty to review, evaluate, and weigh the probative value of the evidence adduced before the lower courts."[81] (Citations omitted)

Moreover, this Court held in *Gadrinab v. Salamanca, et al.*:[82]

> A judgment on compromise agreement is a judgment on the merits. It has the effect of *res judicata,* and is immediately final and executory unless set aside because of falsity or vices of consent. The doctrine of immutability of judgments bars courts from modifying decisions that have already attained finality, even if the purpose of the modification is to correct errors of fact or law.[83] (Emphasis in the original)

II

The general rule is that government funds cannot be seized by virtue of writs of execution or garnishment.[84] This doctrine has been explained in *Commissioner of Public Highways v. San Diego:*[85]

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

[82] 736 Phil. 279 (2014) [Per *J*. Leonen, Third Division].

[83] *Id*. at 283.

[84] *Commissioner of Public Highways v. San Diego,* G.R. No. L-30098, February 18, 1970, 31 SCRA 616, 625 [Per *J*. Teehankee, *En Banc*].

[85] *Id*.

The universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimant's action "only up to the completion of proceedings anterior to the stage of execution" and that the power of the Courts ends when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on obvious considerations of public policy. Disbursements of public funds must be covered by the corresponding appropriation as required by law. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law.[86]

Simply put, "no money can be taken out of the treasury without an appropriation[.]"[87] Here, the trial court already found that:

[T]here is an appropriation intended by law for payment of road-rights-of-way. Defendant [respondent here] even called the attention of the court of the existence of SAA-SR 2009-05-001538 of the DPWH Main and/or Regional Office appertaining to the fund intended for payment of the road-rights-of-way.[88]

Even petitioner admitted in its Memorandum "the approval of allocation for payment of road right of way projects within Region 10 under SAA-SR 2009-001538[.]"[89] Since there is an existing appropriation for the payment of just compensation, and this Court already settled that petitioner is bound by the Compromise Agreement, respondent is legally entitled to his money claim. However, he still has to go through the appropriate procedure for making a claim against the Government.

In *Atty. Roxas v. Republic Real Estate Corporation,*[90] this Court elaborated on the proper process of raising money claims

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[86] *Id*.

[87] *Gonzales v. Hon. Raquiza,* 259 Phil. 736, 743 (1989) [Per *C.J*. Fernan, Third Division].

[88] *Rollo,* p. 80.

[89] *Id*. at 344.

[90] 786 Phil. 163 (2016) [Per *J*. Leonen, Second Division].

against the government. In that case, the trial court issued a writ of execution over the government funds for payment of land reclaimed by Republic Real Estate Corporation. This Court held:

> The case is premature. The money claim against the Republic should have been first brought before the Commission on Audit.
>
> The Writ of Execution and Sheriff De Jesus' Notice [of Execution] violate this Court's Administrative Circular No. 10-2000 and Commission on Audit Circular No. 2001-002, which govern the issuance of writs of execution to satisfy money judgments against government.
>
> Administrative Circular No. 10-2000 dated October 25, 2000 orders all judges of lower courts to observe utmost caution, prudence, and judiciousness in the issuance of writs of execution to satisfy money judgments against government agencies. This Court has emphasized that:
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> . . . . . .
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> > . . . it is settled jurisprudence that upon determination of State liability, the prosecution, enforcement or satisfaction thereof must still be pursued *in accordance with the rules and procedures laid down in P[residential] D[ecree] No. 1445,* otherwise known as the Government Auditing Code of the Philippines (Department of Agriculture v. NLRC, 227 SCRA 693, 701-02 [1993] citing Republic vs. Villasor, 54 SCRA 84 [1973]). *All money claims against the Government must first be filed with the Commission on Audit which must act upon it within sixty days.* Rejection of the claim will authorize the claimant to elevate the matter to the Supreme Court on *certiorari* and in effect sue the State thereby (P[residential] D[ecree] [No.] 1445, Sections 49-50).
>
> For its part, Commission on Audit Circular No. 2001-002 dated July 31, 2001 requires the following to observe this Court's Administrative Circular No. 10-2000: department heads; bureau, agency, and office chiefs; managing heads of government-owned and/or controlled corporations; local chief executives; assistant commissioners, directors, officers-in-charge, and auditors of the Commission on Audit; and all others concerned.
>
> Chapter 4, Section 11 of Executive Order No. 292 gives the Commission on Audit the power and mandate to settle all government

accounts. Thus, the finding that government is liable in a suit to which it consented does not translate to enforcement of the judgment by execution.

As a rule, public funds may not be disbursed absent an appropriation of law or other specific statutory authority. Commonwealth Act No. 327, as amended by Presidential Decree No. 1445, requires that all money claims against government must first be filed before the Commission on Audit, which, in turn, must act upon them within 60 days.

Only when the Commission on Audit rejects the claim can the claimant elevate the matter to this Court on certiorari and, in effect, sue the state. *Carabao, Inc. v. Agricultural Productivity Commission* has settled that "claimants have to prosecute their money claims against the Government under Commonwealth Act 327 . . . and that the conditions provided in Commonwealth Act 327 for filing money claims against the Government must be strictly observed."

In *Star Special Watchman and Detective Agency, Inc. v. Puerto Princesa City:*

> Under Commonwealth Act No. 327, as amended by Section 26 of P.D. No. 1445, it is the C[ommission] o[n] A[udit] which has primary jurisdiction to examine, audit and settle "all debts and claims of any sort" due from or owing the Government or any of its subdivisions, agencies and instrumentalities, including government-owned or controlled corporations and their subsidiaries[.]

[Republic Real Estate Corporation's] procedural shortcut must be rejected. Any allowance or disallowance of its money claims is for the Commission on Audit to decide, subject only to [Republic Real Estate Corporation's] remedy of appeal via a petition for *certiorari* before this Court.[91] (Emphasis in the original, citations omitted)

Here, as in *Atty. Roxas,* respondent failed to show that he first raised his claim before the Commission on Audit. Without this necessary procedural step, respondent's money claim cannot be entertained by the courts through a writ of execution.

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[91] *Id.* at 188-192.

III

Under Article III, Section 9 of the 1987 Constitution, "[p]rivate property shall not be taken for public use without just compensation."[92]

This Court notes that for almost 20 years now, petitioner had been enjoying the use of respondent's property without paying the full amount of just compensation under the Compromise Agreement. Respondent had been deprived of his property for almost two (2) decades. In keeping with substantial justice, this Court imposes the payment of legal interest on the remaining just compensation due to respondent. Consistent with this Court's ruling in *Nacar v. Gallery Frames,*[93] this Court imposes interest at the rate of twelve percent (12%) per annum from the time of taking until June 30, 2013, and six percent (6%) per annum from July 1, 2013 until fully paid.[94]

Thus, respondent's money claim under the Compromise Agreement should be adjusted to reflect the interest rates imposed by this Court.

WHEREFORE, premises considered, the Petition is **PARTLY GRANTED.** The Court of Appeals July 29, 2011 Decision in CA-G.R. SP No. 03710-MIN is **REVERSED** and **SET ASIDE,** insofar as it affirmed the September 22, 2009 and April 23, 2010 Orders of the Regional Trial Court in granting respondent Benjohn Fetalvero's Motion for the Issuance of an Order for a Writ of Garnishment. This is without prejudice to his filing of adjusted money claim before the Commission on Audit.

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[92] See *Land Bank of the Philippines v. Manzano, et al.,* G.R. No. 188243, January 24, 2018 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/january2018/188243.pdf> 21 [Per *J.* Leonen, Third Division].

[93] 716 Phil. 267 (2013) [Per *J.* Peralta, *En Banc*].

[94] See *Land Bank of the Philippines v. Manzano,* G.R. No. 188243, January 24, 2018 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/january2018/188243.pdf> 29 [Per *J.* Leonen, Third Division].

The remaining just compensation due to Benjohn Fetalvero under the Compromise Agreement is subject to interest at the rate of twelve percent (12%) per annum from the time of taking until June 30, 2013, and six percent (6%) per annum from July 1, 2013 until the allowance of the money claim by the Commission on Audit.

SO ORDERED.

Peralta (*Chairperson*), *Reyes,A. Jr., Hernando,* and *Carandang,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 220913. February 4, 2019]

ALLEN C. PADUA and EMELITA F. PIMENTEL, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES, FAMILY CHOICE GRAINS PROCESSING CENTER, INC., and GOLDEN SEASON GRAINS CENTER, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; FROM THE MOMENT AN ACCUSED IS PLACED UNDER ARREST, OR IS DETAINED OR RESTRAINED BY THE OFFICERS OF THE LAW, HE CAN CLAIM THE GUARANTEE OF HIS PROVISIONAL LIBERTY UNDER THE BILL OF RIGHTS, AND HE RETAINS HIS RIGHT TO BAIL UNLESS HE IS CHARGED WITH A

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[*] Designated additional Member per Special Order No. 2624 dated November 28, 2018.

CAPITAL OFFENSE, OR WITH AN OFFENSE PUNISHABLE WITH *RECLUSION PERPETUA* OR LIFE IMPRISONMENT, AND THE EVIDENCE OF HIS GUILT IS STRONG.— The right to bail is expressly afforded by Section 13, Article III (Bill of Rights) of the Constitution x x x. This constitutional provision is repeated in Section 7, Rule 114 of the Rules of Court x x x. The general rule, therefore, is that any person, before being convicted of any criminal offense, shall be bailable, unless he is charged with a capital offense, or with an offense punishable with *reclusion perpetua* or life imprisonment, and the evidence of his guilt is strong. Thus, from the moment an accused is placed under arrest, or is detained or restrained by the officers of the law, he can claim the guarantee of his provisional liberty under the Bill of Rights, and he retains his right to bail unless he is charged with a capital offense, or with an offense punishable with *reclusion perpetua* or life imprisonment, and the evidence of his guilt is strong.

2. **CRIMINAL LAW; REVISED PENAL CODE (RPC); ESTAFA UNDER PARAGRAPH 2(a), ARTICLE 315 OF THE RPC, AS AMENDED BY R.A. 10951; PROPER IMPOSABLE PENALTY.—** Before the passage of Republic Act No. (*R.A.*) 10951, amending the penalty for estafa, Article 215 of the RPC imposes the penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period if the amount is over ₱12,000.00 but does not exceed ₱22,000.00. If the amount swindled exceeds ₱22,000.00, the penalty shall be imposed in its maximum period, adding one year for each additional ₱10,000.00, but the total penalty which may be imposed shall not exceed 20 years. x x x. Here, applying paragraph 2(a), Article 315 of the RPC, as amended by R.A. 10951 - in Criminal Case No. 7014, considering the amount allegedly defrauded by petitioners amounted to ₱2,600,000 which exceeded two million four hundred thousand pesos (₱2,400,000) but not more than ₱4,400,000.00, the imposable penalty will be *prision correccional* in its maximum period to *prision mayor* in its minimum period. In Criminal Case Nos. 7012, 7013 and 7016, where the amounts allegedly defrauded all exceeded ₱4,400,000.00, the imposable penalty shall be in its maximum period, adding one year for each additional Two million pesos (₱2,000,000.00). ***However, the law also provides that the total penalty which may be imposed shall not exceed twenty years.***

In such cases, and in connection with the accessory penalties which may be imposed, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be. Clearly, in the instant case, petitioners are entitled to bail as a matter of right as they have not been charged with a capital offense. Estafa, under Art. 315 of the RPC as amended by R.A. 10951, which petitioners have been charged with, has an imposable penalty of *reclusion temporal* in its maximum period, which is still bailable.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; CUSTODY OF THE LAW IS REQUIRED BEFORE THE COURT CAN ACT UPON THE APPLICATION FOR BAIL, BUT IS NOT REQUIRED FOR THE ADJUDICATION OF OTHER RELIEFS SOUGHT BY THE DEFENDANT WHERE THE MERE APPLICATION THEREFOR CONSTITUTES A WAIVER OF THE DEFENSE OF LACK OF JURISDICTION OVER THE PERSON OF THE ACCUSED.— In *Miranda, et al. v. Tuliao*, the Court pronounced that "custody of the law is required before the court can act upon the application for bail, but is not required for the adjudication of other reliefs sought by the defendant where the mere application therefor constitutes a waiver of the defense of lack of jurisdiction over the person of the accused." Indeed, a person applying for admission to bail must be in the custody of the law or otherwise deprived of his liberty. A person who has not submitted himself to the jurisdiction of the court has no right to invoke the processes of that court. However, applying also the same pronouncement in *Tuliao*, the Court also held therein that, "in adjudication of other reliefs sought by accused, it requires neither jurisdiction over the person of the accused, nor custody of law over the body of the person." Thus, except in applications for bail, it is not necessary for the court to first acquire jurisdiction over the person of the accused to dismiss the case or grant other relief. In the instant case, there is no dispute that petitioners were at large when they filed, through counsel, their Omnibus Motion *Ex-Abundante Ad Cautelam* wherein they asked the court to quash the warrant of arrest and fix the amount of the bail bond for their provisional release pending trial. However, *albeit*, at large, it must be clarified that petitioners' Omnibus Motion *Ex-Abundante Ad Cautelam* (to Quash Warrant of Arrest and to Fix Bail) is **not** an application

for bail. This is where the instant case begs to differ because what petitioners filed was an Omnibus Motion *Ex-Abundante Ad Cautelam* (to Quash Warrant of Arrest and to Fix Bail). They were neither applying for bail, nor were they posting bail.

4. ID.; ID.; ID.; IN CRIMINAL CASES, JURISDICTION OVER THE PERSON OF THE ACCUSED IS DEEMED WAIVED BY THE ACCUSED WHEN HE FILES ANY PLEADING SEEKING AN AFFIRMATIVE RELIEF, EXCEPT WHEN HE INVOKES THE SPECIAL JURISDICTION OF THE COURT BY IMPUGNING SUCH JURISDICTION OVER HIS PERSON; NEVERTHELESS, IF A PERSON INVOKING THE SPECIAL JURISDICTION OF THE COURT APPLIES FOR BAIL, HE MUST FIRST SUBMIT HIMSELF TO THE CUSTODY OF THE LAW.— Indeed, in criminal cases, jurisdiction over the person of the accused is deemed waived by the accused when he files any pleading seeking an affirmative relief, except in cases when he invokes the special jurisdiction of the court by impugning such jurisdiction over his person. However, in narrow cases involving special appearances, an accused can invoke the processes of the court even though there is neither jurisdiction over the person nor custody of the law. Nevertheless, if a person invoking the special jurisdiction of the court applies for bail, he must first submit himself to the custody of the law.

5. ID.; ID.; ID.; BAIL IS A MATTER OF RIGHT WHEN THE OFFENSE CHARGED IS NOT PUNISHABLE BY *RECLUSION PERPETUA* OR LIFE IMPRISONMENT, OR DEATH; WHEN THE GRANT OF BAIL IS DISCRETIONARY, THE GRANT OR DENIAL OF AN APPLICATION FOR BAIL IS DEPENDENT ON WHETHER THE EVIDENCE OF GUILT IS STRONG WHICH THE LOWER COURT SHOULD DETERMINE IN A HEARING CALLED FOR THE PURPOSE; EXPOUNDED.— The constitutional mandate is that all persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. However, bail may be a matter of right or judicial discretion. The accused has the right to bail if the offense charged is "not punishable by death,

reclusion perpetua or life imprisonment" before conviction. However, if the accused is charged with an offense and the penalty of which is death, *reclusion perpetua*, or life imprisonment — "regardless of the stage of the criminal prosecution" — and when evidence of one's guilt is not strong, then the accused's prayer for bail is subject to the discretion of the trial court. Clearly, bail is a constitutional demandable right which only ceases to be so recognized when the evidence of guilt of the person charged with a crime that carries the penalty of *reclusion perpetua*, life imprisonment, or death is found to be strong. Stated differently, bail is a matter of right when the offense charged is not punishable by *reclusion perpetua* or life imprisonment, or death. When the grant of bail is discretionary, the grant or denial of an application for bail is dependent on whether the evidence of guilt is strong which the lower court should determine in a hearing called for the purpose. The determination of whether the evidence of guilt is strong, in this regard, is a matter of judicial discretion. Judicial discretion in granting bail may indeed be exercised only after the evidence of guilt is submitted to the court during the bail hearing. It is precisely for this reason why an accused must be in the custody of the law during an application for bail because where bail is a matter of discretion, judicial discretion may only be exercised during bail hearing. However, where bail is not a matter of discretion, as in fact it is a matter of right, no exercise of discretion is needed because the accused's right to bail is a matter of right, by operation of law. An accused must be granted bail if it is a matter of right.

6. ID.; ID.; ID.; IT IS NOT REQUIRED FOR AN ACCUSED WHO IS CHARGED WITH ESTAFA, WHICH IS A BAILABLE OFFENSE, TO APPLY FOR BAIL AS HE IS ENTITLED TO BAIL BY OPERATION OF LAW.— [A]n accused who is charged with an offense not punishable by *reclusion perpetua* or life imprisonment, as in this case, they must be admitted to bail as they are entitled to it as a matter of right. Here, considering that estafa is a bailable offense, petitioners no longer need to apply for bail as they are entitled to bail, by operation of law. Where bail is a matter of right, it is ministerial on the part of the trial judge to fix bail when no bail is recommended. To do otherwise, if We deny bail *albeit* it is a matter of right, We will effectively render nugatory the

provisions of the law giving distinction where bail is a matter of right, or of discretion.

7. ID.; ID.; ID.; THE PRACTICE OF ADMISSION TO BAIL IS NOT A DEVICE FOR KEEPING PERSONS IN JAIL UPON MERE ACCUSATION UNTIL IT IS FOUND CONVENIENT TO GIVE THEM A TRIAL, BUT RATHER TO ENABLE THEM TO STAY OUT OF JAIL UNTIL A TRIAL, WITH ALL THE SAFEGUARDS, HAS FOUND AND ADJUDGED THEM GUILTY.— It must be emphasized anew that bail exists to ensure society's interest in having the accused answer to a criminal prosecution without unduly restricting his or her liberty and without ignoring the accused's right to be presumed innocent. It does not perform the function of preventing or licensing the commission of a crime. The notion that bail is required to punish a person accused of crime is, therefore, fundamentally misplaced. Indeed, the practice of admission to bail is not a device for keeping persons in jail upon mere accusation until it is found convenient to give them a trial. The spirit of the procedure is rather to enable them to stay out of jail until a trial, with all the safeguards, has found and adjudged them guilty. Unless permitted this conditional privilege, the individuals wrongly accused could be punished by the period or imprisonment they undergo while awaiting trial, and even handicap them in consulting counsel, searching for evidence and witnesses, and preparing a defense. Hence, bail acts as a reconciling mechanism to accommodate both the accused's interest in pretrial liberty and society's interest in assuring his presence at trial.

8. ID.; ID.; ID.; WHERE BAIL IS A MATTER OF RIGHT, PRIOR ABSCONDING AND FORFEITURE IS NOT EXCEPTED FROM SUCH RIGHT, BAIL MUST BE ALLOWED IRRESPECTIVE OF SUCH CIRCUMSTANCE.— Admission to bail always involves the risk that the accused will take flight. This is the reason precisely why the probability or the improbability of flight is an important factor to be taken into consideration in granting or denying bail, even in capital cases. However, where bail is a matter of right, prior absconding and forfeiture is not excepted from such right, bail must be allowed irrespective of such circumstance. The existence of a high degree of probability that the accused will abscond confers

upon the court no greater discretion than to increase the bond to such an amount as would reasonably tend to assure the presence of the defendant when it is wanted, such amount to be subject, of course, to the constitutional provision that "excessive bail shall not be required." The recourse of the judge is to fix a higher amount of bail and not to deny the fixing of bail.

9. ID.; ID.; ID.; WHEN BAIL IS A MATTER OF RIGHT, THE FIXING OF BAIL IS MINISTERIAL ON THE PART OF THE TRIAL JUDGE EVEN WITHOUT THE APPEARANCE OF THE ACCUSED; HOWEVER, AFTER THE AMOUNT OF BAIL HAS BEEN FIXED, ACCUSED MUST MAKE HIS PERSONAL APPEARANCE IN THE POSTING OF BAIL, AS BAIL, WHETHER A MATTER OF RIGHT OR OF DISCRETION, CANNOT BE POSTED BEFORE CUSTODY OF THE ACCUSED HAS BEEN ACQUIRED BY THE JUDICIAL AUTHORITIES EITHER BY HIS ARREST OR VOLUNTARY SURRENDER, OR PERSONAL APPEARANCE.— [P]etitioners filed an Omnibus Motion *Ex-Abundante Ad Cautelam* (to Quash Warrant of Arrest and to Fix Bail) wherein it is not required that petitioners be in the custody of the law, because the same is not an application for bail where custody of the law is required. Moreover, x x x when bail is a matter of right, the fixing of bail is ministerial on the part of the trial judge even without the appearance of the accused. They must be admitted to bail as they are entitled to it as a matter of right. ***However, it must be further clarified that after the amount of bail has been fixed, petitioners, when posting the required bail, must be in the custody of the law. They must make their personal appearance in the posting of bail. It must be emphasized that bail, whether a matter of right or of discretion, cannot be posted before custody of the accused has been acquired by the judicial authorities either by his arrest or voluntary surrender, or personal appearance.*** This is so because if We allow the granting of bail to persons not in the custody of the law, it is foreseeable that many persons who can afford the bail will remain at large, and could elude being held to answer for the commission of the offense if ever he is proven guilty. Furthermore, the continued absence of the accused can be taken against him since flight is indicative of guilt.

APPEARANCES OF COUNSEL

Jeronimo B. Cumigad for petitioners.
The Law Firm of A.B. Salumbides for private respondents.
Office of the Solicitor General for public respondent.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated July 22, 2015 and Resolution[2] dated October 12, 2015 of the Court of Appeals in CA-G.R. SP No. 140567.

The facts are as follows:

Juanito A. Tio (*Tio*), in his capacity as representative of Family Choice Grains Processing Center of Cabatuan, Isabela filed a complaint for estafa against now petitioners Allen Padua (*Padua*), Emelita Pimentel (*Pimentel*) and Dante Frialde (*Frialde*),[3] as officials of Nviro Filipino Corporation (*Nviro)*.[4]

In the complaint, Tio accused petitioners of falsely claiming that they are in the business of power plant construction when their actual and authorized line of business only involves manufacturing and selling fertilizer. Tio claimed that petitioners obtained One Hundred Thirty Thousand Euros (€130,000.00) from Family Choice allegedly for "expat fees," yet failed to remit the same to their supplier. Tio also alleged that petitioners

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[1] Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Nina G. Antonio-Valenzuela and Melchor Q.C. Sadang, concurring; *rollo*, pp. 9-21.

[2] *Id.* at 23-24.

[3] Allegedly deceased as per Omnibus Motion *Ex-Abundante Ad Cautelam* dated August 26, 2014, thus, the petitioners here are only Allen Padua and Emelita Pimentel.

[4] *Rollo*, pp. 79-92.

failed to make good of their promises to deliver the appropriate equipments and even demanded an additional ₱23,618,401.00 despite being paid nearly ninety percent (90%) of the agreed construction price. As a result of petitioners' swindling scheme, Tio claimed that Family Choice suffered actual damages amounting to ₱16,388,253.90 as of May 22, 2010.

Petitioners, on the other hand, denied the allegations against them. They claimed that said allegations were absurd, defamatory, libelous and wanting of any credible evidence. They alleged that the filing of the criminal cases was untimely and premature, and in violation of the provisions of their Memorandum of Agreement. They asserted that they never claimed to be in the business of power plant construction, and that they are only the accredited agent/developer of K.E.M A/S Energy and Environmental Technology Company of Denmark. While they admitted to have delivered a second-hand/incompatible equipment induction motor, they explained that the same was not due to the fault of Nviro but of the local supplier. Nviro asserted that the construction project was done in good faith and that they tried to complete the project in accordance with the terms and conditions of the construction contract.

In a Resolution[5] dated July 25, 2010, Assistant Provincial Prosecutor Ferdimar A. Garcia found all the elements of the crime of estafa under paragraph 2(a), Article 315 of the Revised Penal Code (*RPC*) to be present, thus, the filing of four (4) separate Informations against petitioners for estafa under Article 315 were recommended.

Subsequently, four (4) Informations dated July 30, 2010 docketed as Criminal Cases Nos. 7012, 7013, 7014 and 7016, respectively, all for estafa under paragraph 2(a), Article 315 of the RPC were filed against petitioners Padua, Pimentel and Frialde before the Regional Trial Court (*RTC*) of Cauayan City, Isabela, to wit:

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[5] *Id.* at 115-146.

Criminal Case No. 7012

That from May 2007 up to the 22nd day of May 2010, in the Municipality of Cabatuan[,] [P]rovince of Isabela, Philippines, and within the jurisdiction of the Honorable Court, the said accused[,] by acting as key officers of NVIRO FILIPINO CORPORATION, namely: ALLEN PADUA, EMELITA PIMENTEL and DANTE FRIALDE, confederating, conspiring and mutually helping one another, by means of false pretense[,] deceit and with intent to defraud[,] willfully[,] unlawfully and feloniously entered [into] contract with FAMILY CHOICE GRAINS PROCESSING CENTER[,] represented by JUANITO A. TIO, for the construction of 2.0 MW Rice Hull-Fired Cogen Bio Mass Power Plant, to be known as Family Choice Cogen Biomass Power Corporation, and by virtue of the said agreement[,] the herein accused collected and received the amount of One Hundred Thirty Thousand Euros (Euro 130,000.00) or equivalent [to] Eight Million Eight Hundred Forty Thousand Pesos (Php8,840,000.00) as "Expat Fees" to be remitted or intended for payment to K.E.M A/S Energy and Environmental Technology Com (Technology Supplier) knowing fully that at the time they (sic) collected under false pretense and deceit when they made various representation as duly authorized agent of KEM with full authority to disburse the said amount, when in truth and in fact the herein accused as key officers of NVIRO [are] not authorized or accredited agent. That for fear that some of the components of the intended power plant would not be install[ed] in the power plant under construction[,] Family Choice paid the accused the amount of One Hundred. Thirty Thousand Euros (Euro 130,000.00) or equivalent [to] Eight Million Eight Hundred Forty Thousand Pesos (Php8,840,000.00) as "Expat Fees," the said amount was not remitted or was not credited in the account of KEM which is suppose[d] to collect the said "Expat Fees" to the damage and prejudice of complainant FAMILY CHOICE in the amount of One Hundred Thirty Thousand Euros (Euro 130,000.00) or equivalent [to] Eight Million Eight Hundred Forty Thousand Pesos (Php8,840,000.00).

CONTRARY TO LAW.[6]

Criminal Case No. 7013

That from January 2006 up to the 22nd day of May 2010, in the Municipality of Cabatuan[,] [P]rovince of Isabela, Philippines, and

[6] *Id.* at 147.

within the jurisdiction of the Honorable Court, the said accused[,] by acting as key officers of NVIRO FILIPINO CORPORATION, namely: ALLEN PADUA, EMELITA PIMENTEL and DANTE FRIALDE, confederating, conspiring and mutually helping one another, by means of false pretense[,] deceit and with intent to defraud[,] willfully, unlawfully and feloniously entered [into] contract with FAMILY CHOICE GRAINS PROCESSING CENTER[,] represented by JUANITO A. TIO, for the construction of 2.0 MW Rice Hull-Fired Cogen BioMass Power Plant, to be known as Family Choice Cogen Biomass Power Corporation, knowing fully that at the time they entered into contract with Family Choice that it has no authority under its Articles of Incorporation to enter and or venture in the business of construction of power plant. That by falsely pretending themselves to have the qualification, credit and business and that they have the technical and industrial expertise to construct the said project[,] complainant was induced to enter and execute a contract with the herein accused when in truth and in [fact] they have no capacity to construct the power plant covered by a Feasibility Study presented to Family Choice. That from the time of the commencement of the construction of the power plant[,] Family Choice has already incurred the amount of Six Million Six Hundred Forty-Eight Thousand Two Hundred Fifty-Three [Pesos] and Ninety Centavos (Php6,648,253.90), this is (sic) in spite of the numerous demands for the completion and turn[-]over [of] the Power Plant[,] considering that the project [is] on a "turn key" basis, to the damage and prejudice of complainant Family Choice in the amount of to (sic) Six Million Six Hundred Forty-Eight Thousand Two Hundred Fifty-Three [Pesos] and Ninety Centavos (Php6,648,253.90).

CONTRARY TO LAW.[7]

Criminal Case No. 7014

That from July 2009 and thereafter, in the Municipality of Cabatuan[,] [P]rovince of Isabela, Philippines, and within the jurisdiction of the Honorable Court, the said accused[,] by acting as key officers of NVIRO FILIPINO CORPORATION, namely: ALLEN PADUA, EMELITA PIMENTEL and DANTE FRIALDE, confederating, conspiring and mutually helping one another, by means of false pretense[,] deceit and with intent to defraud[,] willfully, unlawfully and feloniously[,] after receiving payment[s,] agreed and promised

[7] *Id.* at 149.

to install a complete set of condenser with its necessary pumps and pipes required in the operation of 2.0 MW Rice Hull-Fired Cogen Bio Mass Power Plant, which is the subject of an on-going construction project being undertaken by NVIRO FILIPINO CORPORATION for FAMILY GRAINS PROCESSING CENTER[,] represented by JUANITO A. TIO. That by falsely pretending themselves to have the qualification, credit and business and that they have the technical and industrial expertise to deliver and install the said complete set of condenser with pumps and pipes necessary for the completion of the project[,] complainant was induced to enter and execute a contract with the herein accused when in truth and in fact[,] they have no capacity to deliver as they failed to deliver and install the condenser amounting to Two Million Six Hundred [Thousand] Pesos (Php2,600,000.00)[,] the price quoted by the herein accused, to the damage and prejudice of the complainant FAMILY Choice in the amount of Two Million Six Hundred Thousand Pesos (Php2,600,000.00).

CONTRARY TO LAW.[8]

Criminal Case No. 7016

That from January 2006 up to the 22nd day of May 2010, in the Municipality of Luna, [P]rovince of Isabela, Philippines, and within the jurisdiction of the Honorable Court, the said accused[,] by acting as key officers of NVIRO FILIPINO CORPORATION, namely: ALLEN PADUA, EMELITA PIMENTEL and DANTE FRIALDE, confederating, conspiring and mutually helping one another, by means of false pretense[,] deceit and with intent to defraud[,] willfully, unlawfully and feloniously entered [into] contract with GOLDEN SEASON GRAINS CENTER[,] represented by [LEANA T. TAN], for the construction of 2.0 MW Rice Hull-Fired Cogen Bio Mass Power Plant, to be known as GOLDEN SEASON Cogen Biomass Power Corporation, knowing fully that at the time they entered into the contract with Golden Season that it has no authority under its Articles of Incorporation to enter and or venture in the business of construction of power plant. That by falsely pretending themselves to have the qualification, credit and business and that they have the technical and industrial expertise to construct the said project[,] complainant was induced to enter and execute a contract with the herein accused when in truth and in [fact][,] they have no capacity

[8] *Id.* at 151.

to construct the power plant covered by a Feasibility Study presented to Golden Season. That from the time of the commencement of the construction of the power plant[,] Golden Season has already incurred the amount of Six Million Six Hundred Forty-Eight Thousand Two Hundred Fifty[-]Three [Pesos] and Ninety Centavos (Php6,648,253.90), this is (sic) in spite of the numerous demands for the completion and turn[-]over [of] the Power Plant considering that the project [is] on a "turn key" basis, to the damage and prejudice of complainant Golden Season in the amount of Six Million Six Hundred Forty-Eight Thousand Two Hundred Fifty-Three [Pesos] and Ninety Centavos (Php6,648,253.90).

CONTRARY TO LAW.[9]

Consequently, a Warrant of Arrest[10] dated August 6, 2010 was issued by Branch 20, RTC of Cauayan City, Isabela, in said Criminal Cases Nos. 7012, 7013, 7014 and 7016.

Four years after, or on July 21, 2014, petitioners Padua and Pimentel filed an Omnibus Motion *Ex-Abundante Ad Cautelam* (to Quash Warrant of Arrest and to Fix Bail)[11] wherein they alleged that their co-accused Frialde had died. They also alleged that it was only recently that they were able to find a lawyer who explained to them that they are entitled to bail under the law and under existing jurisprudence.

Petitioners asserted that the Informations only charged them with estafa under paragraph 2(a), Article 315 of the RPC. They claimed that the Informations failed to allege that the crimes charged against them had been amended by Presidential Decree No. 1689,[12] hence, the penalty for estafa under paragraph 2(a), Article 315 of the RPC shall be in the range of *reclusion temporal*, as maximum. They averred that the Informations, likewise, failed to allege any aggravating circumstance which is necessary for

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[9] *Id.* at 153.

[10] *Id.* at 155.

[11] *Id.* at 156-166.

[12] "*Increasing the Penalty for Certain Forms of Swindling or Estafa*," Presidential Decree No. 1689, April 6, 1980.

the purpose of imposing the penalty of *reclusion perpetua*. Thus, petitioners averred that the imposable penalty cannot exceed twenty (20) years of imprisonment which is the maximum of *reclusion temporal*, therefore, the charges in the Informations are bailable, and that they are entitled to bail for their provisional liberty.

On August 4, 2014, the trial court denied petitioners' omnibus motion, the pertinent portion of which reads:

> Records show[,] however[,] that the accused continue to be at large, thus, the Court has no jurisdiction over their persons as they have not surrendered nor have been arrested[,] as such[,] the accused have no legal standing in Court and they are not entitled to seek relief from the Court.
>
> WHEREFORE, in view of the foregoing, the Court hereby resolves to deny their motion due to lack of merit.
>
> SO ORDERED.[13]

Petitioners filed a Joint Motion for Reconsideration[14] dated August 26, 2014. The trial court then directed the Office of the Provincial Prosecutor of Isabela in Ilagan City, Isabela and/or Cauayan City, Isabela, to file its Comment on/or Opposition to the Joint Motion for Reconsideration. Petitioners filed an Urgent *Ex-Parte* Motion for Early Resolution dated March 9, 2015.

In an Order[15] dated March 19, 2015, the trial court denied the Joint motion for reconsideration, and we quote in full, to wit:

> This resolves the Motion for Reconsideration of the Order dated August 4, 2014 filed by accused Allen Padua and Emelita Pimentel through counsel, Atty. Miguel D. Larida, denying the omnibus motion *ex-abundante ad cautelam* (to quash the warrant of arrest and to fix bail) on the ground that the Court has no jurisdiction over their persons

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[13] *Rollo*, p. 178.

[14] *Id.* at 179-188.

[15] *Id.* at 192.

as they have not surrendered nor have been arrested. As such[,] the accused have no legal standing in Court and they are not entitled to seek relief from the Court. A copy thereof was furnished to the Office of the Provincial Prosecutor, Ilagan City, Isabela.

In its motion, it was argued that the accused is entitled to bail as the penalty for the crime charged is not punishable by *reclusion perpetua*. The Court notes that while this may be true the proper remedy of the accused should have been to file a verified petition to fix bail and not a mere motion. Moreover, records show that the Information was filed on August 2, 2010 and a Hold Departure Order was issued on August 25, 2010. To date, all the accused continue to be at large. The grounds relied upon by the accused have already been passed upon by Court *a quo*. This Court finds no new, substantial arguments to warrant a reversal or modification thereof.

WHEREFORE, in view of the foregoing, the Court hereby resolves to deny the motion for reconsideration due to lack of merit.

SO ORDERED.

Thus, before the Court of Appeals, petitioners filed a Petition[16] for *certiorari* alleging grave abuse of discretion amounting to lack of jurisdiction when the court *a quo* denied their Omnibus Motion *Ex-Abundante Ad Cautelam* and Motion for Reconsideration.

In its assailed Decision[17] dated July 22, 2015, the Court of Appeals denied the petition for *certiorari*, and affirmed the ruling of the court *a quo*, to wit:

As aptly found by public respondent in the first assailed Order dated 04 August 2014, petitioners are still at large, and have not surrendered nor been arrested. Thus, before public respondent can act upon petitioners' application to fix bail and grant the same, they must submit themselves first to the custody of the law signifying restraint on their person or custody over their body, which is accomplished either by arrest or their voluntary surrender.

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[16] *Id.* at 193-219.

[17] *Id.* at 9-21.

A person applying for admission to bail must be in the custody of the law or otherwise deprived of his liberty. (T)he purpose of bail is to secure one's release, and it would be incongruous to grant bail to one who is free. Here, despite the issuance of the Warrant of Arrest on 06 August 2010, the same remained unserved as petitioners appear to have gone into hiding without surrendering and submitting themselves to the custody of the law. They waited it out and filed, almost four (4) years after the issuance of the Warrant of Arrest, an Omnibus Motion *Ex-Abundante Ad Cautelam* (to Quash Warrant of Arrest and to Fix Bail) dated 14 July 2014.

Considering the foregoing disquisition, We find no necessity to pass upon the [other] matters raised by petitioners.

WHEREFORE, premises considered, the Petition is DENIED. Costs against petitioners.

SO ORDERED.[18]

Hence, this appeal, raising the lone issue of whether the Court of Appeals erred in affirming the Orders of the court *a quo* finding petitioners as not being entitled to bail despite being charged with bailable offenses.[19]

Petitioners maintain that being charged with estafa which is an offense punishable by *reclusion temporal*, they should be granted bail as a matter of right. They also asserted that they already submitted themselves to the jurisdiction of the court when they filed their Omnibus Motion *Ex-Abundante Ad Cautelam* (to Quash Warrant of Arrest and to Fix Bail) and, thus, there is no need to make personal appearance.[20]

Respondents, however, asserted that while petitioners were indeed charged with estafa under par. 2(a), Art. 315 of the RPC which is bailable, bail cannot still be granted to them who are at large. They claimed that under the law, accused must be in the custody of the law regardless of whether bail is a matter of right or discretion.

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

[19] *Id.* at 44.

[20] *Id.* at 50-51.

The petition has merit.

The right to bail is expressly afforded by Section 13, Article III (Bill of Rights) of the Constitution, to wit:

> Sec. 13. All persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the Writ of Habeas Corpus is suspended. Excessive bail shall not be required.

This constitutional provision is repeated in Section 7, Rule 114 of the Rules of Court, as follows:

> Section 7. *Capital offense or an offense punishable by reclusion perpetua or life imprisonment, not bailable.* — No person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution.

The general rule, therefore, is that any person, before being convicted of any criminal offense, shall be bailable, unless he is charged with a capital offense, or with an offense punishable with *reclusion perpetua* or life imprisonment, and the evidence of his guilt is strong. Thus, from the moment an accused is placed under arrest, or is detained or restrained by the officers of the law, he can claim the guarantee of his provisional liberty under the Bill of Rights, and he retains his right to bail unless he is charged with a capital offense, or with an offense punishable with *reclusion perpetua* or life imprisonment, and the evidence of his guilt is strong.[21]

In the instant case, in four (4) Informations, petitioners were charged with estafa under paragraph 2(a),[22] Article 315 of the

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[21] *Id.* at 50.

[22] Article 315. *Swindling (estafa).* Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000

RPC. For Criminal **Case No. 7012**, the alleged amount defrauded was One Hundred Thirty Thousand Euros (€130,000.00) or equivalent to Eight Million Eight Hundred Forty Thousand Pesos (₱8,840,000.00); for **Criminal Case No. 7013**, the alleged amount defrauded was Six Million Six Hundred Forty-Eight Thousand Two Hundred Fifty-Three Pesos and Ninety Centavos (₱6,648,253.90); for **Criminal Case No. 7014**, the alleged amount defrauded was Two Million Six Hundred Thousand Pesos (₱2,600,000.00); and for **Criminal Case No. 7016**, the alleged amount defrauded was Six Million Six Hundred Forty-Eight Thousand Two Hundred Fifty-Three Pesos and Ninety Centavos (₱6,648,253.90).

Before the passage of Republic Act No. (*R.A.*) 10951,[23] amending the penalty for estafa, Article 215 of the RPC imposes

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pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

2nd. The penalty of *prision correccional* in its minimum and medium periods, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;

3rd. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period if such amount is over 200 pesos but does not exceed 6,000 pesos; and

4th. By *arresto mayor* in its maximum period, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means:

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2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) **By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.**

[23] *An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based, and the Fines Imposed under the Revised Penal Code,* August 29, 2017.

the penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period if the amount is over ₱12,000.00 but does not exceed ₱22,000.00. If the amount swindled exceeds ₱22,000.00, the penalty shall be imposed in its maximum period, adding one year for each additional ₱10,000.00, but the total penalty which may be imposed shall not exceed 20 years.

With the amendment of Article 315 of the RPC, in view of the recent enactment of R.A. 10951,[24] the imposable penalty now for estafa is as follows:

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

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

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

"2nd. The penalty of *prision correccional* in its minimum and medium periods, if the amount of the fraud is over One million two hundred thousand pesos (₱1,200,000) but does not exceed Two million four hundred thousand pesos (₱2,400,000).

"3rd. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, if such amount

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[24] *Id.*

is over Forty thousand pesos (₱40,000) but does not exceed One million two hundred thousand pesos (₱1,200,000).

"4th. By *arresto mayor* in its medium and maximum periods, if such amount does not exceed Forty thousand pesos (₱40.000) x x x." (Emphasis ours)

Here, applying paragraph 2(a),[25] Article 315 of the RPC, as amended by R.A. 10951 — in Criminal Case No. 7014, considering the amount allegedly defrauded by petitioners amounted to ₱2,600,000 which exceeded two million four hundred thousand pesos (₱2,400,000) but not more than ₱4,400,000.00, the imposable penalty will be *prision correccional* in its maximum period to *prision mayor* in its minimum period. In Criminal

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[25] Article 315. *Swindling (estafa).* Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

*2nd.*The penalty of *prision correccional* in its minimum and medium periods, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;

3rd. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period if such amount is over 200 pesos but does not exceed 6,000 pesos; and

4th. By *arresto mayor* in its maximum period, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means:

x x x x x x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) **By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.**

Case Nos. 7012, 7013 and 7016, where the amounts allegedly defrauded all exceeded ₱4,400,000.00, the imposable penalty shall be in its maximum period, adding one year for each additional Two million pesos (₱2,000,000.00). ***However, the law also provides that the total penalty which may be imposed shall not exceed twenty years.*** In such cases, and in connection with the accessory penalties which may be imposed, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

Clearly, in the instant case, petitioners are entitled to bail as a matter of right as they have not been charged with a capital offense. Estafa, under Art. 315 of the RPC as amended by R.A. 10951, which petitioners have been charged with, has an imposable penalty of *reclusion temporal* in its maximum period, which is still bailable.

Respondents, however, posit that the right to bail, whether as a matter of right or discretion, is subject to the limitation that the person applying for admission to bail should be in the custody of the law, or otherwise deprived of his liberty. As bail is intended to obtain or secure one's provisional liberty, they claimed that it cannot be posted before custody over the accused has been acquired by the judicial authorities, either by his lawful arrest or voluntary surrender. Considering that petitioners have neither been arrested, nor have they surrendered, as in fact they remain to be at large, respondents claimed that they cannot be entitled to bail.

In *Miranda, et al. v. Tuliao*,[26] the Court pronounced that "custody of the law is required before the court can act upon the application for bail, but is not required for the adjudication of other reliefs sought by the defendant where the mere application therefor constitutes a waiver of the defense of lack of jurisdiction over the person of the accused."

Indeed, a person applying for admission to bail must be in the custody of the law or otherwise deprived of his liberty. A

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[26] 520 Phil. 907, 919 (2006).

person who has not submitted himself to the jurisdiction of the court has no right to invoke the processes of that court.[27] However, applying also the same pronouncement in *Tuliao*, the Court also held therein that, "in adjudication of other reliefs sought by accused, it requires neither jurisdiction over the person of the accused, nor custody of law over the body of the person." Thus, except in applications for bail, it is not necessary for the court to first acquire jurisdiction over the person of the accused to dismiss the case or grant other relief.

In the instant case, there is no dispute that petitioners were at large when they filed, through counsel, their Omnibus Motion *Ex-Abundante Ad Cautelam* wherein they asked the court to quash the warrant of arrest and fix the amount of the bail bond for their provisional release pending trial. However, *albeit*, at large, it must be clarified that petitioners' Omnibus Motion *Ex-Abundante Ad Cautelam* (to Quash Warrant of Arrest and to Fix Bail) is **not** an application for bail. This is where the instant case begs to differ because what petitioners filed was an Omnibus Motion *Ex-Abundante Ad Cautelam* (to Quash Warrant of Arrest and to Fix Bail). They were neither applying for bail, nor were they posting bail.

The subject Omnibus Motion *Ex-Abundante Ad Cautelam* (to Quash Warrant of Arrest and to Fix Bail) is distinct and separate from an application for bail where custody of law is required. A motion to quash is a consequence of the fact that it is the very legality of the court process forcing the submission of the person of the accused that it is the very issue.[28] Its prayer is precisely for the avoidance of the jurisdiction of the court which is also as an exception to the rule that filing pleadings seeking affirmative relief constitutes voluntary appearance, and the consequent submission of one's person to the jurisdiction of the court.[29]

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[27] *Pico v. Judge Combong, Jr.*, 289 Phil. 899, 902 (1992).

[28] *Miranda, et al. v. Tuliao*, *supra* note 26.

[29] *Id.* at 922.

Thus, in filing the subject Omnibus Motion *Ex-Abundante Ad Cautelam* (to Quash Warrant of Arrest and to Fix Bail), petitioners are questioning the court's jurisdiction with precaution and praying that the court fix the amount of bail because they believed that their right to bail is a matter of right, by operation of law. They are not applying for bail, therefore, custody of the law, or personal appearance is not required. To emphasize, custody of the law is required before the court can act upon the application for bail but it is not required for the adjudication of other reliefs sought by the accused, as in the instant omnibus motion to quash warrant of arrest and to fix bail.[30]

Indeed, in criminal cases, jurisdiction over the person of the accused is deemed waived by the accused when he files any pleading seeking an affirmative relief, except in cases when he invokes the special jurisdiction of the court by impugning such jurisdiction over his person. However, in narrow cases involving special appearances, an accused can invoke the processes of the court even though there is neither jurisdiction over the person nor custody of the law. Nevertheless, if a person invoking the special jurisdiction of the court applies for bail, he must first submit himself to the custody of the law.[31]

Furthermore, while we stand by the above pronouncements in *Tuliao*, there is a need to elucidate that insofar as the requirement that accused must be in the custody of the law for purposes of entitlement to bail, We must also distinguish, because bail is either a matter of right or of discretion.

The constitutional mandate is that all persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law.[32] However, bail may be a matter of right

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[30] *Id.* at 919.

[31] *Id.*

[32] Section 13. All persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction,

or judicial discretion. The accused has the right to bail if the offense charged is "not punishable by death, *reclusion perpetua* or life imprisonment" before conviction. However, if the accused is charged with an offense and the penalty of which is death, *reclusion perpetua*, or life imprisonment — "regardless of the stage of the criminal prosecution" — and when evidence of one's guilt is not strong, then the accused's prayer for bail is subject to the discretion of the trial court.[33]

Clearly, bail is a constitutional demandable right which only ceases to be so recognized when the evidence of guilt of the person charged with a crime that carries the penalty of *reclusion perpetua*, life imprisonment, or death is found to be strong.[34] Stated differently, bail is a matter of right when the offense charged is not punishable by *reclusion perpetua* or life imprisonment, or death.[35]

When the grant of bail is discretionary, the grant or denial of an application for bail is dependent on whether the evidence of guilt is strong which the lower court should determine in a hearing called for the purpose. The determination of whether the evidence of guilt is strong, in this regard, is a matter of judicial discretion. Judicial discretion in granting bail may indeed be exercised only after the evidence of guilt is submitted to the court during the bail hearing.[36] It is precisely for this reason why an accused must be in the custody of the law during an application for bail because where bail is a matter of discretion, judicial discretion may only be exercised during bail hearing.

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be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of *habeas corpus* is suspended. Excessive bail shall not be required. Article III Bill of Rights, 1987 Constitution of the Philippines.

[33] *People v. Escobar*, G.R. No. 214300, July 26, 2017, 833 SCRA 180, 196.

[34] *Enrile v. Sandiganbayan (Third Division), et al.*, 789 Phil. 679, 700 (2016), Separate Concurring Opinion of Justice Arturo D. Brion.

[35] *Leviste v. Court of Appeals, et al.*, 629 Phil. 587, 601 (2010).

[36] *People v. Presiding Judge of the RTC of Muntinlupa City*, 475 Phil. 234, 244 (2004).

However, where bail is not a matter of discretion, as in fact it is a matter of right, no exercise of discretion is needed because the accused's right to bail is a matter of right, by operation of law. An accused must be granted bail if it is a matter of right.

Thus, an accused who is charged with an offense not punishable by *reclusion perpetua* or life imprisonment, as in this case, they must be admitted to bail as they are entitled to it as a matter of right. Here, considering that estafa is a bailable offense, petitioners no longer need to apply for bail as they are entitled to bail, by operation of law. Where bail is a matter of right, it is ministerial on the part of the trial judge to fix bail when no bail is recommended. To do otherwise, if We deny bail *albeit* it is a matter of right, We will effectively render nugatory the provisions of the law giving distinction where bail is a matter of right, or of discretion.

It must be emphasized anew that bail exists to ensure society's interest in having the accused answer to a criminal prosecution without unduly restricting his or her liberty and without ignoring the accused's right to be presumed innocent. It does not perform the function of preventing or licensing the commission of a crime. The notion that bail is required to punish a person accused of crime is, therefore, fundamentally misplaced. Indeed, the practice of admission to bail is not a device for keeping persons in jail upon mere accusation until it is found convenient to give them a trial. The spirit of the procedure is rather to enable them to stay out of jail until a trial, with all the safeguards, has found and adjudged them guilty. Unless permitted this conditional privilege, the individuals wrongly accused could be punished by the period or imprisonment they undergo while awaiting trial, and even handicap them in consulting counsel, searching for evidence and witnesses, and preparing a defense. Hence, bail acts as a reconciling mechanism to accommodate both the accused's interest in pretrial liberty and society's interest in assuring his presence at trial.[37]

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[37] *Enrile v. Sandiganbayan (Third Division), et al.*, *supra* note 34.

Admission to bail always involves the risk that the accused will take flight. This is the reason precisely why the probability or the improbability of flight is an important factor to be taken into consideration in granting or denying bail, even in capital cases. However, where bail is a matter of right, prior absconding and forfeiture is not excepted from such right, bail must be allowed irrespective of such circumstance. The existence of a high degree of probability that the accused will abscond confers upon the court no greater discretion than to increase the bond to such an amount as would reasonably tend to assure the presence of the defendant when it is wanted, such amount to be subject, of course, to the constitutional provision that "excessive bail shall not be required."[38] The recourse of the judge is to fix a higher amount of bail and not to deny the fixing of bail.[39]

To recapitulate, in the instant case, petitioners filed an Omnibus Motion *Ex-Abundante Ad Cautelam* (to Quash Warrant of Arrest and to Fix Bail) wherein it is not required that petitioners be in the custody of the law, because the same is not an application for bail where custody of the law is required. Moreover, to reiterate, when bail is a matter of right, the fixing of bail is ministerial on the part of the trial judge even without the appearance of the accused. They must be admitted to bail as they are entitled to it as a matter of right. ***However, it must be further clarified that after the amount of bail has been fixed, petitioners, when posting the required bail, must be in the custody of the law. They must make their personal appearance in the posting of bail. It must be emphasized that bail, whether a matter of right or of discretion, cannot be posted before custody of the accused has been acquired by the judicial authorities either by his arrest or voluntary surrender, or personal appearance.*** This is so because if We allow the granting of bail to persons not in the custody of the law, it is foreseeable that many persons who can afford the bail will remain at large, and could elude being held to answer for the commission of

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[38] See *Sy Guan v. Amparo*, 79 Phil. 670, 671 (1947); and *San Miguel v. Judge Maceda*, 549 Phil. 12, 19 (2007).

[39] See *San Miguel v. Maceda*, *supra*, at 23.

the offense if ever he is proven guilty.[40] Furthermore, the continued absence of the accused can be taken against him since flight is indicative of guilt.[41]

WHEREFORE, the petition is **GRANTED**. The Decision dated July 22, 2015 and the Resolution dated October 12, 2015 of the Court of Appeals in CA-G.R. SP No. 140567 are **REVERSED**. The court *a quo* is **ORDERED** to **RESOLVE** the Motion to Quash with reasonable dispatch and to **FIX** an amount of bail following the guidelines in Section 9, Rule 114 of the Rules on Criminal Procedure, as amended.

SO ORDERED.

Leonen, Reyes, A. Jr., Hernando, and *Carandang,*[*] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 232687. February 4, 2019]

SLORD DEVELOPMENT CORPORATION, *petitioner, vs.* **BENERANDO M. NOYA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; IN A RULE 45 REVIEW IN LABOR CASES, THE COURT EXAMINES THE DECISION OF THE COURT OF APPEALS FROM THE PRISM OF WHETHER THE

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[40] *Miranda, et al. v. Tuliao*, *supra* note 26, at 923.

[41] *Id.*

[*] Designated as additional member per Special Order No. 2624 dated November 28, 2018.

LATTER HAD CORRECTLY DETERMINED THE PRESENCE OR ABSENCE OF GRAVE ABUSE OF DISCRETION IN THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC).— [I]t bears stressing that only questions of law may be raised in and resolved by this Court on petitions brought under Rule 45 of the Rules of Civil Procedure. When supported by substantial evidence, the Court cannot inquire into the veracity of the CA's factual findings, which are final, binding, and conclusive upon this Court. However, when the CA's factual findings are contrary to those of the administrative body exercising quasi-judicial functions from which the action originated, the Court may examine the facts only for the purpose of resolving allegations and determining the existence of grave abuse of discretion. This is consistent with the ruling that in a Rule 45 review in labor cases, the Court examines the CA's Decision from the prism of whether the latter had correctly determined the presence or absence of grave abuse of discretion in the NLRC's Decision.

2. **ID.; ID.; ID.; IF THE NLRC'S RULING HAS BASIS IN THE EVIDENCE AND THE APPLICABLE LAW AND JURISPRUDENCE, THEN NO GRAVE ABUSE OF DISCRETION EXISTS AND THE COURT OF APPEALS SHOULD SO DECLARE AND, ACCORDINGLY, DISMISS THE PETITION.—** In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition. Under the parameter above-described and after a thorough evaluation of the evidence, the Court finds that the CA erroneously ascribed grave abuse of discretion on the part of the NLRC, whose Decision was supported by substantial evidence and consistent with law and jurisprudence.

3. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; DISMISSAL FROM EMPLOYMENT DUE TO THE ENFORCEMENT OF THE UNION SECURITY CLAUSE**

IN THE COLLECTIVE BARGAINING AGREEMENT IS A JUST CAUSE FOR TERMINATION OF EMPLOYMENT.— Case law states that in order to effect a valid dismissal of an employee, both substantial and procedural due process must be observed by the employer. An employee's right not to be dismissed without just or authorized cause, as provided by law, is covered by his right to substantial due process. On the other hand, compliance with procedure provided in the Labor Code constitutes the procedural due process right of an employee. While not explicitly mentioned in the Labor Code, case law recognizes that dismissal from employment due to the enforcement of the union security clause in the CBA is another just cause for termination of employment. Similar to the enumerated just causes in the Labor Code, the violation of a union security clause amounts to a commission of a wrongful act or omission out of one's own volition; hence, it can be said that the dismissal process was initiated not by the employer but by the employee's indiscretion. Further, a stipulation in the CBA authorizing the dismissal of employees is of equal import as the statutory provisions on dismissal under the Labor Code, since a CBA is the law between the company and the union and compliance therewith is mandated by the express policy to give protection to labor; thus, there is parallel treatment between just causes and violation of the union security clause.

4. ID.; ID.; COLLECTIVE BARGAINING AGREEMENT; FORMS OF UNION SECURITY CLAUSE; "CLOSED SHOP," "UNION SHOP," AND "MAINTENANCE OF MEMBERSHIP SHOP," DISTINGUISHED.— Pertinent is Article 259 (formerly 248), paragraph (e) of the Labor Code, which states that "[n]othing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement. x x x" The stipulation in a CBA based on this provision of the Labor Code is commonly known as the "union security clause." "Union security is a generic term which is applied to and comprehends 'closed shop,' 'union shop,' 'maintenance of membership' or any other form of agreement which imposes upon employees the obligation to acquire or retain union

membership as a condition affecting employment. There is union shop when all new regular employees are required to join the union within a certain period for their continued employment. There is maintenance of membership shop when employees, who are union members as of the effective date of the agreement, or who thereafter become members, must maintain union membership as a condition for continued employment until they are promoted or transferred out of the bargaining unit, or the agreement is terminated. A closed shop, on the other hand, may be defined as an enterprise in which, by agreement between the employer and his employees or their representatives, no person may be employed in any or certain agreed departments of the enterprise unless he or she is, becomes, and, for the duration of the agreement, remains a member in good standing of a union entirely comprised of or of which the employees in interest are a part." This is consistent with the State policy to promote unionism to enable workers to negotiate with management on an even playing field and with more persuasiveness than if they were to individually and separately bargain with the employer. Thus, the law has allowed stipulations for "union shop" and "closed shop" as means of encouraging workers to join and support the union of their choice in the protection of their rights and interest vis-à-vis the employer.

5. ID.; ID.; TERMINATION OF EMPLOYMENT; TERMINATION OF EMPLOYMENT THROUGH THE ENFORCEMENT OF THE UNION SECURITY CLAUSE, REQUISITES TO BE VALID; PRESENT.— To validly terminate the employment of an employee through the enforcement of the union security clause, the following requisites must concur: (1) the union security clause is applicable; (2) the union is requesting for the enforcement of the union security provision in the CBA; and (3) there is sufficient evidence to support the decision of the union to expel the employee from the union. In this case, the Court finds the confluence of the foregoing requisites, warranting the termination of respondent's employment.

6. ID.; ID.; COLLECTIVE BARGAINING AGREEMENT; UNION SECURITY CLAUSE; CLOSED SHOP AGREEMENT; THE ORGANIZATION BY UNION MEMBERS OF A RIVAL UNION OUTSIDE THE FREEDOM PERIOD, WITHOUT FIRST TERMINATING

THEIR MEMBERSHIP IN THE UNION AND WITHOUT THE KNOWLEDGE OF THE OFFICERS OF THE LATTER UNION, IS CONSIDERED AN ACT OF DISLOYALTY, FOR WHICH THE UNION MEMBERS MAY BE SANCTIONED.— It is undisputed that the CBA contains a closed shop agreement stipulating that petitioner's employees must join NLM-Katipunan and remain to be a member in good standing; otherwise, through a written demand, NLM-Katipunan can insist the dismissal of an employee. Notably, the Court has consistently upheld the validity of a closed shop agreement as a form of union security clause. x x x. Records show that NLM-Katipunan requested the enforcement of the union security clause by demanding the dismissal of respondent from employment. In a letter dated March 16, 2014, NLM-Katipunan asked petitioner to dismiss respondent from employment for having committed an act of disloyalty in violation of the CBA's union security clause. NLM-Katipunan explained that respondent solicited support from employees and thereafter, formed and organized a new union outside the freedom period, or from February 14, 2014 to April 14, 2014. x x x. x x x [I]n *Tanduay Distillery Labor Union v. NLRC*, the Court ruled that the organization by union members of a rival union outside the freedom period, without first terminating their membership in the union and without the knowledge of the officers of the latter union, is considered an act of disloyalty, for which the union members may be sanctioned. As an act of loyalty, a union may require its members not to affiliate with any other labor union and to consider its infringement as a reasonable cause for separation, pursuant to the union security clause in its CBA. Having ratified the CBA and being members of the union, union members owe fealty and are required under the union security clause to maintain their membership in good standing during the term thereof. This requirement ceases to be binding only during the sixty (60)-day freedom period immediately preceding the expiration of the CBA, which enjoys the principle of sanctity or inviolability of contracts guaranteed by the Constitution. Thus, based on the above-discussed circumstances, the NLRC did not gravely abuse its discretion in ruling that there existed just cause to validly terminate respondent's employment.

7. ID.; ID.; TERMINATION OF EMPLOYMENT; PROCEDURAL DUE PROCESS; TWIN REQUIREMENTS OF NOTICE

AND HEARING; NOT COMPLIED WITH; IN CASES INVOLVING DISMISSALS FOR JUST CAUSE BUT WITHOUT OBSERVANCE OF THE TWIN REQUIREMENTS OF NOTICE AND HEARING, THE VALIDITY OF THE DISMISSAL SHALL BE UPHELD, BUT THE EMPLOYER SHALL BE ORDERED TO PAY NOMINAL DAMAGES IN THE AMOUNT OF ₱30,000.00.— x x x [P]etitioner, however, failed to observe the proper procedure in terminating respondent's employment, warranting the payment of nominal damages. In *Distribution & Control Products, Inc. v. Santos*, the Court has explained that procedural due process consists of the twin requirements of notice and hearing. The employer must furnish the employee with two (2) written notices before the termination of employment can be effected: (1) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him. The requirement of a hearing is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted. Here, records fail to show that petitioner accorded respondent ample opportunity to defend himself through written notices and subsequent hearing. Thus, as held by the NLRC, as affirmed by the CA, respondent's right to procedural due process was violated, entitling him to the payment of nominal damages, which the Court deems proper to increase from ₱10,000.00 to ₱30,000.00 in line with existing jurisprudence. It is settled that in cases involving dismissals for just cause but without observance of the twin requirements of notice and hearing, the validity of the dismissal shall be upheld, but the employer shall be ordered to pay nominal damages in the amount of ₱30,000.00.

APPEARANCES OF COUNSEL

Eufemio Law Offices for petitioner.
Cabio Law Office & 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 January 25, 2017 and the Resolution[3] dated July 7, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 138705, which reversed and set aside the Decision[4] dated September 30, 2014 and the Resolution[5] dated November 14, 2014 of the National Labor Relations Commission (NLRC) in NLRC LAC Case No. 09-002333-14. The NLRC declared that while respondent Benerando M. Noya (respondent) committed an act of disloyalty that caused his expulsion from the union and legal dismissal from work pursuant to the closed shop provision of the Collective Bargaining Agreement (CBA), petitioner Slord Development Corporation (petitioner) failed to properly observe the procedure in dismissing respondent, and thereby, ordered petitioner to pay respondent ₱10,000.00 as nominal damages.

The Facts

Respondent was employed on September 9, 2008 as a welder by petitioner, a domestic corporation engaged in the business of manufacturing and processing of sardines and other canned goods.[6] Respondent's employment was covered by a CBA[7]

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[1] *Rollo*, pp. 10-48.

[2] *Id.* at 49-61. Penned by Associate Justice Pedro B. Corales with Associate Justices Sesinando E. Villon and Rodil V. Zalameda, concurring.

[3] *Id*. at 62-64.

[4] *Id*. at 180-187. Penned by Presiding Commissioner Alex A. Lopez with Commissioners Gregorio O. Bilog, III and Pablo C. Espiritu, Jr., concurring.

[5] *Id*. at 174-175. Penned by Presiding Commissioner Alex A. Lopez with Commissioner Pablo C. Espiritu, Jr., concurring.

[6] See *id*. at 50 and 181.

[7] Dated October 30, 2009. *Id*. at 217-231.

effective April 14, 2009 to April 15, 2014 between petitioner and Nagkakaisang Lakas ng Manggagawa-Katipunan (NLM-Katipunan), the company's sole and exclusive bargaining agent for all the regular rank-and-file employees.[8] Among its provisions was a union security clause, which reads:

ARTICLE II

UNION SECURITY

x x x x x x x x x

Section 3. Dismissal. – Any new employee covered by the bargaining unit, who attains regular status in the COMPANY but fails to join the UNION mentioned in Section 2 hereof, and any union member who is expelled from the UNION or fails to maintain their membership in the UNION, like:

1) non-payment of union dues;

2) resignation or abandonment from the UNION;

3) refusal to sign check-off authorization in favor of the UNION;

4) organizing or joining another labor UNION or any other labor group;

5) violation of UNION'S Constitution and By-Laws;

6) any criminal act or violent conduct of activity against the UNION and its members;

7) participation in any unfair labor practice or violation of this agreement; and

8) refusal to abide with any resolution passed by the Board of Directors of the General Membership of the UNION and by NLM-KATIPUNAN, shall upon written demand to the COMPANY by the UNION, be dismissed from employment by the COMPANY.

x x x x x x x x x[9]

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[8] See *id*. at 217.

[9] *Id*. at 218.

Petitioner claimed that sometime in December 2013, respondent asked several employees to affix their signatures on a blank sheet of yellow paper for the purpose of forming a new union, prompting the president of NLM-Katipunan to file expulsion proceedings against him for disloyalty.[10] Subsequently, or on February 9, 2014, respondent organized[11] a new union named the Bantay Manggagawa sa SLORD Development Corporation (BMSDC), which he registered with the Department of Labor and Employment (DOLE) on February 20, 2014.[12]

In the ensuing investigation, respondent failed to appear and participate at the scheduled hearings before the union. Thus, NLM-Katipunan resolved,[13] with the ratification of its members, to expel respondent on the ground of disloyalty. Accordingly, a notice of expulsion[14] dated February 27, 2014 was issued by NLM-Katipunan to respondent. Subsequently, a letter[15] dated March 16, 2014 was sent by NLM-Katipunan to petitioner, demanding his termination from employment pursuant to the union security clause of the CBA. After notifying respondent of the union's decision to expel him and showing him all the documents attached to the union's demand for his dismissal, respondent's employment was terminated on March 19, 2014.[16]

Consequently, respondent filed a complaint[17] for illegal dismissal, unfair labor practice, and illegal deduction against

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[10] See *Sinumpaang Salaysay* of the President of NLM-Katipunan Lolita Abong dated January 26, 2014; CA *rollo*, pp. 184-185.

[11] See Application for Registration dated February 27, 2014; *id*. at 83-84.

[12] See *rollo*, p. 52.

[13] See Resolution Blg. 02-19-14 dated February 19, 2014; CA *rollo*, pp. 205-208.

[14] See letter re: Notice of Expulsion as Member of [NLM-Katipunan]; *id*. at 209.

[15] See letter re: Certification and Demand for the Dismissal of Employment of [Respondent]; *id*. at 181-182.

[16] *Id*. at 211.

[17] See Complaint (CA *rollo*, p. 238 and its dorsal portion) and Complaint/Request for Assistance (*id*. at 239) dated April 30, 2014.

petitioner before the National Labor Relations Commission (NLRC), asserting that he did not violate any CBA provision since he validly organized BMSDC during the freedom period.[18]

The Labor Arbiter's (LA) Ruling

In a Decision[19] dated August 27, 2014, the LA dismissed the case for lack of merit,[20] ruling that respondent's dismissal was neither illegal nor an unfair labor practice. Among others, the LA held that petitioner was duty-bound to terminate respondent's employment after having been expelled by NLM-Katipunan for organizing a rival union. Notably, NLM-Katipunan has a valid closed shop agreement in the CBA that required the members to remain with the union as a condition for continued employment.[21]

Aggrieved, respondent appealed[22] to the NLRC.

The NLRC Ruling

In a Decision[23] dated September 30, 2014, the NLRC affirmed the LA Decision with modification, ordering petitioner to pay respondent ₱10,000.00 as nominal damages.[24] In so ruling, the NLRC held that while respondent had committed an act of disloyalty that caused his expulsion from NLM-Katipunan and subsequent dismissal from work pursuant to the closed shop agreement provision of the CBA, petitioner failed to provide respondent ample opportunity to defend himself through written notices and subsequent hearing.[25]

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[18] See *rollo*, p. 53.

[19] *Id*. at 200-209. Penned by Labor Arbiter Alberto S. Abalayan.

[20] *Id*. at 209.

[21] *Id*. at 207-208.

[22] See Memorandum of Appeal dated September 4, 2014; *id*. at 188-199.

[23] *Id*. at 180-187.

[24] *Id*. at 187.

[25] See *id*. at 184-186.

Dissatisfied, respondent moved for reconsideration[26] but the same was denied in a Resolution[27] dated November 14, 2014. Hence, respondent elevated the matter to the CA via a petition for *certiorari*,[28] docketed as CA-G.R. SP No. 138705.

The CA Ruling

In a Decision[29] dated January 25, 2017, the CA granted respondent's petition, finding his dismissal to be illegal.[30] Accordingly, it ordered petitioner to immediately reinstate respondent and pay his full backwages and other allowances, computed from the time he was illegally dismissed up to the time of actual reinstatement, plus attorney's fees equivalent to ten percent (10%) of the total monetary award.[31] It found no just cause in terminating respondent's employment for lack of sufficient evidence to support the union's decision to expel him, explaining that the act of soliciting signatures on a blank yellow paper was not prohibited under the Labor Code nor could it be automatically considered as an act of disloyalty. Finally, it also found respondent to have been deprived of procedural due process.[32]

Petitioner moved for reconsideration[33] but the same was denied in a Resolution[34] dated July 7, 2017; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA was correct in ruling that respondent was illegally dismissed.

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[26] See motion for reconsideration dated October 20, 2014; *id*. at 176-179.

[27] *Id*. at 174-175.

[28] Dated December 18, 2014. *Id*. at 119-127.

[29] *Id*. at 49-61.

[30] See *id*. at 59-60.

[31] *Id*. at 60.

[32] See *id*. at 57-59.

[33] See motion for reconsideration dated February 17, 2017; *id*. at 65-81.

[34] *Id*. at 62-64.

The Court's Ruling

The petition is meritorious.

At the outset, it bears stressing that only questions of law may be raised in and resolved by this Court on petitions brought under Rule 45 of the Rules of Civil Procedure.[35] When supported by substantial evidence, the Court cannot inquire into the veracity of the CA's factual findings, which are final, binding, and conclusive upon this Court. However, when the CA's factual findings are contrary to those of the administrative body exercising quasi-judicial functions from which the action originated,[36] the Court may examine the facts only for the purpose of resolving allegations and determining the existence of grave abuse of discretion. This is consistent with the ruling that in a Rule 45 review in labor cases, the Court examines the CA's Decision from the prism of whether the latter had correctly determined the presence or absence of grave abuse of discretion in the NLRC's Decision.[37]

In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refer to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition.[38]

Under the parameter above-described and after a thorough evaluation of the evidence, the Court finds that the CA erroneously ascribed grave abuse of discretion on the part of

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[35] See *Leoncio v. MST Marine Services (Phils.), Inc.*, G.R. No. 230357, December 6, 2017.

[36] See *One Shipping Corp. v. Peñafiel*, 751 Phil. 204, 209-210 (2015).

[37] See *Maricalum Mining Corporation v. Florentino*, G.R. Nos. 221813 & 222723, July 23, 2018; citations omitted.

[38] *Quebral v. Angbus Construction, Inc.*, 798 Phil. 179, 188 (2016).

the NLRC, whose Decision was supported by substantial evidence and consistent with law and jurisprudence.

Case law states that in order to effect a valid dismissal of an employee, both substantial and procedural due process must be observed by the employer.[39] An employee's right not to be dismissed without just or authorized cause, as provided by law, is covered by his right to substantial due process. On the other hand, compliance with procedure provided in the Labor Code constitutes the procedural due process right of an employee.[40]

While not explicitly mentioned in the Labor Code,[41] case law recognizes that dismissal from employment due to the enforcement of the union security clause in the CBA is another just cause for termination of employment.[42] Similar to the enumerated just causes in the Labor Code, the violation of a union security clause amounts to a commission of a wrongful act or omission out of one's own volition; hence, it can be said that the dismissal process was initiated not by the employer but by the employee's indiscretion.[43] Further, a stipulation in the CBA authorizing the dismissal of employees is of equal import as the statutory provisions on dismissal under the Labor

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[39] See *Sang-an v. Equator Knights Detective and Security Agency, Inc.*, 703 Phil. 492, 500 (2013).

[40] See *Brown Madonna Press Inc. v. Casas*, 759 Phil. 479, 496-497 (2015).

[41] See Article 297 (formerly 282) of the Labor Code, 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."

[42] See *PICOP Resources, Inc. v. Tañeca*, 641 Phil. 175, 188 (2010), citing *Alabang Country Club, Inc. v. NLRC*, 569 Phil. 68, 78 (2008).

[43] See *Celebes Japan Foods Corporation v. Yermo,* 617 Phil. 626, 634-635 (2009).

Code, since a CBA is the law between the company and the union and compliance therewith is mandated by the express policy to give protection to labor;[44] thus, there is parallel treatment between just causes and violation of the union security clause.

Pertinent is Article 259 (formerly 248), paragraph (e) of the Labor Code, which states that "[n]othing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement. x x x" The stipulation in a CBA based on this provision of the Labor Code is commonly known as the "union security clause."

"Union security is a generic term which is applied to and comprehends 'closed shop,' 'union shop,' 'maintenance of membership' or any other form of agreement which imposes upon employees the obligation to acquire or retain union membership as a condition affecting employment. There is union shop when all new regular employees are required to join the union within a certain period for their continued employment. There is maintenance of membership shop when employees, who are union members as of the effective date of the agreement, or who thereafter become members, must maintain union membership as a condition for continued employment until they are promoted or transferred out of the bargaining unit, or the agreement is terminated. A closed shop, on the other hand, may be defined as an enterprise in which, by agreement between the employer and his employees or their representatives, no person may be employed in any or certain agreed departments of the enterprise unless he or she is, becomes, and, for the duration of the agreement, remains a member in good standing of a union entirely comprised of or of which the employees in interest are a part."[45]

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[44] See *General Milling Corporation v. Casio*, 629 Phil. 12, 30 (2010).

[45] See *Ergonomic Systems Philippines, Inc. v. Enaje*, G.R. No. 195163, December 13, 2017, citing *PICOP Resources, Incorporated v. Tañeca*, 641 Phil. 175, 187-188 (2010).

This is consistent with the State policy to promote unionism to enable workers to negotiate with management on an even playing field and with more persuasiveness than if they were to individually and separately bargain with the employer. Thus, the law has allowed stipulations for "union shop" and "closed shop" as means of encouraging workers to join and support the union of their choice in the protection of their rights and interest vis-à-vis the employer.[46]

To validly terminate the employment of an employee through the enforcement of the union security clause, the following requisites must concur: (1) the union security clause is applicable; (2) the union is requesting for the enforcement of the union security provision in the CBA; and (3) there is sufficient evidence to support the decision of the union to expel the employee from the union.[47]

In this case, the Court finds the confluence of the foregoing requisites, warranting the termination of respondent's employment.

It is undisputed that the CBA contains a closed shop agreement stipulating that petitioner's employees must join NLM-Katipunan and remain to be a member in good standing; otherwise, through a written demand, NLM-Katipunan can insist the dismissal of an employee. Notably, the Court has consistently upheld the validity of a closed shop agreement as a form of union security clause. In *BPI v. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank*[48] the Court has explained that:

> When certain employees are obliged to join a particular union as a requisite for continued employment, as in the case of Union Security Clauses, this condition is a valid restriction of the freedom or right

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[46] See *BPI v. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank,* 674 Phil. 609, 623 (2011); citation omitted.

[47] See *General Milling Corporation v. Casio*, *supra* note 44.

[48] 642 Phil. 47 (2010).

not to join any labor organization because it is in favor of unionism. This Court, on occasion, has even held that a union security clause in a CBA is not a restriction of the right of freedom of association guaranteed by the Constitution.

Moreover, a closed shop agreement is an agreement whereby an employer binds himself to hire only members of the contracting union who must continue to remain members in good standing to keep their jobs. It is "the most prized achievement of unionism." It adds membership and compulsory dues. By holding out to loyal members a promise of employment in the closed shop, it wields group solidarity.[49]

Further, records show that NLM-Katipunan requested the enforcement of the union security clause by demanding the dismissal of respondent from employment. In a letter[50] dated March 16, 2014, NLM-Katipunan asked petitioner to dismiss respondent from employment for having committed an act of disloyalty in violation of the CBA's union security clause. NLM-Katipunan explained that respondent solicited support from employees and thereafter, formed and organized a new union outside the freedom period, or from February 14, 2014 to April 14, 2014.

Finally, there is sufficient evidence to support the union's decision to expel respondent. Particularly, NLM-Katipunan presented to petitioner: (*a*) a written statement of one Elaine Rosel (Rosel), stating that respondent and one Henry Cabasa went to her house on December 13, 2013 to convince her to join in forming another union and made her sign on a yellow paper;[51] (*b*) a joint written statement of Meliorita V. Nolla and Emilda S. Rubido, corroborating Rosel's claim;[52] (*c*) a written statement of one Joselito Gonzales (Gonzales), attesting to

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

[50] CA *rollo*, pp. 181-182.

[51] See *Salaysay* dated January 10, 2014; *id*. at 196.

[52] See *Salaysay* received on February 11, 2014; *id*. at 195.

respondent's act of soliciting signatures for the purpose of forming a new union;[53] (*d*) an affidavit[54] of NLM-Katipunan President Lolita Abong, further corroborating Gonzales' statement and formally lodging a complaint against respondent before the union;[55] and (*e*) an application for registration[56] of BMSDC, showing that respondent formed and organized BMSDC on February 9, 2014.[57]

Notably, in contrast to the factual milieu of *PICOP Resources, Incorporated v. Tañeca*,[58] which was relied upon by the CA, respondent, in this case, did not only solicit support in the formation of a new union but actually formed and organized a rival union, BMSDC, outside the freedom period. Similarly, in *Tanduay Distillery Labor Union v. NLRC*,[59] the Court ruled that the organization by union members of a rival union outside the freedom period, without first terminating their membership in the union and without the knowledge of the officers of the latter union, is considered an act of disloyalty, for which the union members may be sanctioned.[60] As an act of loyalty, a union may require its members not to affiliate with any other labor union and to consider its infringement as a reasonable cause for separation, pursuant to the union security clause in its CBA. Having ratified the CBA and being members of the

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[53] See *Salaysay* dated January 17, 2014; *id*. at 186.

[54] *Id*. at 184-185.

[55] See *rollo*, pp. 183-184. See also *id*. at 206-207.

[56] See CA *rollo*, pp. 83-84.

[57] See *id*.

[58] In *PICOP Resources, Incorporated v. Tañeca* (*supra* note 45), the union members did not actually join or form another union but merely signed an authorization letter supporting the petition for certification election of another union.

[59] 233 Phil. 488 (1987).

[60] See *id*. at 502-504; citing *Manalang v. Artex Development Co. Inc.*, 128 Phil. 597, 602-605 (1967) and *Ang Malayang Manggagawa ng Ang Tibay Enterprises v. Ang Tibay*, 102 Phil. 669, 674-675 (1957).

union, union members owe fealty and are required under the union security clause to maintain their membership in good standing during the term thereof. This requirement ceases to be binding only during the sixty (60)-day freedom period immediately preceding the expiration of the CBA, which enjoys the principle of sanctity or inviolability of contracts guaranteed by the Constitution.[61]

Thus, based on the above-discussed circumstances, the NLRC did not gravely abuse its discretion in ruling that there existed just cause to validly terminate respondent's employment. This notwithstanding, petitioner, however, failed to observe the proper procedure in terminating respondent's employment, warranting the payment of nominal damages.

In *Distribution & Control Products, Inc. v. Santos*,[62] the Court has explained that procedural due process consists of the twin requirements of notice and hearing. The employer must furnish the employee with two (2) written notices before the termination of employment can be effected: (1) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him. The requirement of a hearing is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.[63]

Here, records fail to show that petitioner accorded respondent ample opportunity to defend himself through written notices and subsequent hearing. Thus, as held by the NLRC, as affirmed by the CA, respondent's right to procedural due process was violated, entitling him to the payment of nominal damages, which the Court deems proper to increase from ₱10,000.00 to ₱30,000.00 in line with existing jurisprudence. It is settled that in cases involving dismissals for just cause but without observance of the twin requirements of notice and hearing, the

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[61] See *id*. at 500.

[62] G.R. No. 212616, July 10, 2017, 830 SCRA 452.

[63] See *id*. at 463.

validity of the dismissal shall be upheld, but the employer shall be ordered to pay nominal damages in the amount of ₱30,000.00.[64]

WHEREFORE, the petition is **GRANTED**. The Decision dated January 25, 2017 and the Resolution dated July 7, 2017 of the Court of Appeals in CA-G.R. SP No. 138705 are hereby **REVERSED** and **SET ASIDE**. The Decision dated September 30, 2014 and the Resolution dated November 14, 2014 of the National Labor Relations Commission in NLRC LAC No. 09-002333-14 are **REINSTATED** with the **MODIFICATION** increasing the award of nominal damages to ₱30,000.00.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Caguioa*, and *Hernando,*[*] *JJ.*, concur.

Reyes, J. Jr., J., on official leave.

SECOND DIVISION

[G.R. No. 238117. February 4, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDWIN ALCONDE *y* MADLA and JULIUS QUERQUELA[*] *y* REBACA,** *accused-appellants.*

SYLLABUS

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

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[64] See *Ortiz v. DHL Philippines Corporation*, G.R. No. 183399, March 20, 2017, 821 SCRA 27, 40.

[*] Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018.

[*] "Queruela" and "Queruella" in some parts of the records and the TSN.

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 RULE; 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.— 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, although jurisprudence recognized that "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team."

3. ID.; ID.; ID.; ID.; PHYSICAL INVENTORY AND PHOTOGRAPHY OF THE SEIZED ITEMS; MUST BE DONE IN THE PRESENCE OF THE ACCUSED OR THE PERSON FROM WHOM THE ITEMS WERE SEIZED, OR HIS REPRESENTATIVES OR COUNSEL, AS WELL AS CERTAIN REQUIRED WITNESSES; RATIONALE FOR THE PRESENCE OF THE REQUIRED WITNESSES; NOT

COMPLIED WITH.— Pertinent to this case, **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, 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." In this case, the inventory and photography of the seized items were not conducted in the presence of the required witnesses, namely: an elected public official and a representative of the National Prosecution Service or the media. As the records show, the taking of photographs was immediately done upon the arrest but only in the presence of accused-appellants. It was only later when the police officers proceeded to the police precinct that a singular witness, Brgy. Capt. Malingin (an elected public official), was called to attend the marking and inventory of the confiscated items. Evidently, this procedure veers away from what is prescribed by law.

4. ID.; ID.; ID.; ID.; THE FAILURE OF THE APPREHENDING TEAM TO STRICTLY COMPLY WITH THE CHAIN OF CUSTODY PROCEDURE 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.— [I]t is important to note that 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." This notwithstanding, the Court has recognized that strict

compliance with the chain of custody procedure may not always be possible due to varying field conditions. 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.

5. **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.—** Anent the witness requirement, it is settled that 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. In this case, however, no plausible explanation was given by the police officers as to why all the required witnesses were not around during the conduct of inventory and photography of the confiscated items. Neither was it shown that genuine and sufficient efforts were made to secure the presence of all the witnesses, as in fact, it was only "after the consummation of the buy-bust operation" when PO3 Agravante called Brgy. Capt. Malingin to witness the marking and inventory of the confiscated items.

6. **ID.; ID.; ID.; ID.; UNJUSTIFIED DEVIATION FROM THE CHAIN OF CUSTODY RULE COMPROMISED THE INTEGRITY AND EVIDENTIARY VALUE OF THE ITEMS PURPORTEDLY SEIZED FROM ACCUSED-APPELLANTS, WARRANTING THEIR ACQUITTAL.—** [I]n view of this unjustified deviation from the chain of custody rule, the Court is constrained to conclude that the integrity and evidentiary value of the items purportedly seized from accused-appellants had been compromised, which consequently warrants their acquittal.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

This is an ordinary appeal[1] filed by accused-appellants Edwin Alconde *y* Madla (Alconde) and Julius Querquela *y* Rebaca (Querquela; collectively, accused-appellants) assailing the Decision[2] dated November 29, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01578-MIN, which affirmed the Decision[3] dated November 10, 2016 of the Regional Trial Court of Misamis Oriental, Cagayan de Oro City, Branch 23 (RTC) in Crim. Case Nos. CR-DRG-2015-414 and CR-DRG-2015-415, finding: (*a*) Alconde guilty beyond reasonable doubt of the crime of Illegal Possession of Dangerous Drugs under Section 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002;" and *(b)* accused-appellants guilty beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs under Section 5, Article II of the same Act.

The Facts

This case stemmed from two (2) separate Informations[5] filed before the RTC, respectively charging Alconde of Illegal

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[1] See Notice of Appeal dated December 21, 2017; *rollo,* pp. 18-19.

[2] *Id.* at 3-17. Penned by Associate Justice Oscar V. Badelles with Associate Justices Romulo V. Borja and Ruben Reynaldo G. Roxas, concurring.

[3] CA *rollo,* pp. 46-64. Penned by Presiding Judge Vincent F. B. Rosales.

[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] Crim. Case No. CR-DRG-2015-414 is for violation of Section 11, Article II of RA 9165 or Illegal Possession of Dangerous Drugs (records [Crim.

Possession of Dangerous Drugs and accused-appellants of Illegal Sale of Dangerous Drugs. The prosecution alleged that on August 9, 2015, the members of the Puerto Police Station 6 arrested a certain Angkie[6] for violation of RA 9165 and held him for further questioning. In the course thereof, Angkie revealed that Alconde was his source of *shabu,* prompting Police Officer 3 Armando Occeña Agravante (PO3 Agravante) to arrange a meet-up with the latter in Purok 7, Balubal, Cagayan de Oro City. Accordingly, a buy-bust operation was conducted, and the team proceeded to the said area.[7] When accused-appellants arrived, PO3 Agravante immediately handed over the ₱1,000.00 worth of marked money to Querquela; in exchange, Alconde gave the two (2) sachets containing a total of 0.1903 gram of *shabu* to PO3 Agravante.[8] Shortly thereafter, PO3 Agravante executed the pre-arranged signal, prompting Senior Police Officer 1 Rey Abecia to rush towards the scene and restrain Alconde. Meanwhile, PO3 Agravante frisked Querquela and recovered from him the marked money. He likewise performed a body search on Alconde, from whom he recovered one (1) sachet containing 1.2347 grams of marijuana fruit tops.[9] Subsequently, the seized items were photographed only in the presence of accused-appellants.[10] Not long after, accused-appellants were brought to the police station where the requisite marking and inventory were conducted by PO3 Agravante in the presence of accused-appellants and Barangay Captain Vivian Malingin (Brgy. Capt. Malingin).[11] The seized items were then

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Case No. CR-DRG-2015-414], pp. 2-3), while Crim. Case No. CR-DRG-2015-415 is for violation of Section 5, Article II of RA 9165 or Illegal Sale of Dangerous Drugs (records [Crim. Case No. CR-DRG-2015-415], pp. 2-3).

[6] "Angke," "Aki," and "Akie" in some parts of the TSN.

[7] See *rollo,* p. 4.

[8] See *id*. See also TSN, September 16, 2015, pp. 11-13.

[9] See *id*. See also TSN, October 8, 2015, p. 12.

[10] See *id*. at 4-5. See also TSN, September 16, 2015, pp. 17-18.

[11] See *id*. See also Property Receipt dated August 10, 2015; records (Crim. Case No. CR-DRG-2015-414), p. 7.

delivered to the PNP Crime Laboratory in Puerto, Cagayan de Oro City wherein upon examination, tested positive for the presence of methamphetamine hydrochloride or *shabu* and marijuana, both dangerous drugs.[12]

In his defense, Querquela denied the allegations against him, claiming that at around 9:00 o'clock in the evening of August 9, 2015, three (3) unidentified persons suddenly flagged him down and accosted him while he was on his way to the *habal-habal* terminal. Subsequently, the said men, who later on identified themselves as police officers, instructed him to bring them to his hut where Alconde was being interrogated. Afterwards, accused-appellants were brought to the Puerto Police Station.[13]

For his part, Alconde averred that at the time of the incident, he was simply sleeping in the hut of Querquela when an unknown person kicked the door open, pointed a gun at him, tied his hands with a rope, and brought him outside the hut. Thereafter, accused-appellants were brought to the police station, where Alconde was directed to hold one (1) small sachet of marijuana while a police officer took pictures of the same.[14]

In a Decision[15] dated November 10, 2016, the RTC found accused-appellants guilty beyond reasonable doubt of the crimes charged: *(a)* in Crim. Case No. CR-DRG-2015-414 for the crime of Illegal Possession of Dangerous Drugs, Alconde was sentenced to suffer the penalty of imprisonment for a period of twelve (12) years and one (1) day, as minimum, to twenty (20) years, as maximum, and ordered to pay a fine of ₱300,000.00; and *(b)* in Crim. Case No. CR-DRG-2015-415 for the crime of Illegal Sale of Dangerous Drugs, accused-appellants were sentenced to suffer the penalty of life imprisonment and ordered to pay the amount of ₱500,000.00 each as fine.[16] The RTC found the

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[12] See Chemistry Report No. D-591-2015 dated August 10, 2015; *id*. at 10.

[13] See *rollo*, pp. 6-7.

[14] See *id*. at 7.

[15] CA *rollo*, pp. 46-64.

[16] See *id*. at 63.

elements of the crimes of Illegal Possession and Illegal Sale of Dangerous Drugs to be present, as the same were duly proved in light of the positive testimonies of the prosecution witnesses.[17] On the other hand, it rejected accused-appellants' defense of denial, for it failed to prevail over the positive testimonies of the prosecution witnesses.[18] Aggrieved, accused-appellants appealed[19] to the CA.

In a Decision[20] dated November 29, 2017, the CA affirmed *in toto* the RTC's ruling that accused-appellants are guilty of the crimes charged.[21] It ruled that the prosecution competently established all the elements of the crimes of Illegal Possession and Illegal Sale of Dangerous Drugs. It likewise held that the chain of custody over the seized dangerous drugs was substantially complied with, as it was shown that the integrity and evidentiary value of the seized drugs had been preserved.[22] Meanwhile, it found that the inconsistencies in the testimonies of the police officers did not actually detract from the truth and were thus too trivial to affect what was already proven by the prosecution, *i.e.,* the fact that accused-appellants acted in concert in selling *shabu* to PO3 Agravante.[23]

Hence, this appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld accused-appellants' conviction for the crimes charged.

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[17] See *id*. at 57-63.

[18] See *id*. at 63.

[19] See Notice of Appeal dated December 21, 2017; *rollo*, pp. 18-19.

[20] *Id.* at 3-17.

[21] *Id*. at 17.

[22] See *id*. at 13-14.

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

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,[24] it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[25] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquitta1.[26]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[27] As

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

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

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

[27] See *People v. Año,* G.R. No. 230070, March 14, 2018; *People v. Crispo, supra* note 16; *People v. Sanchez, supra* note 16; *People v. Magsano, supra* note 16; *People v. Manansala, supra* note 24; *People v. Miranda, supra* note 24; and *People v. Mamangon, supra* note 24. See also *People v. Viterbo, supra* note 25.

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, although jurisprudence recognized that "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team."[28]

Pertinent to this case, **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,[29] a representative from the media *AND* the Department of Justice, and any elected public official;[30] 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.[31] 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."[32]

In this case, the inventory and photography of the seized items were not conducted in the presence of the required

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[28] *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).

[29] 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.

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

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

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

witnesses, namely: an elected public official and a representative of the National Prosecution Service or the media. As the records show, the taking of photographs was immediately done upon the arrest but only in the presence of accused-appellants. It was only later when the police officers proceeded to the police precinct that a singular witness, Brgy. Capt. Malingin (an elected public official), was called to attend the marking and inventory of the confiscated items. Evidently, this procedure veers away from what is prescribed by law.

At this juncture, it is important to note that 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."[33] 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."[34] This notwithstanding, the Court has recognized that strict compliance with the chain of custody procedure may not always be possible due to varying field conditions.[35] 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.[36] The foregoing is based on the saving clause found in Section 21 (a),[37] Article II of the Implementing Rules and Regulations

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[33] 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 26, at 1038.

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

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

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

[37] 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**

(IRR) of RA 9165, which was later adopted into the text of RA 10640.[38]

Anent the witness requirement, it is settled that 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.[39] In this case, however, no plausible explanation was given by the police officers as to why all the required witnesses were not around during the conduct of inventory and photography of the confiscated items. Neither was it shown that genuine and sufficient efforts were made to secure the presence of all the witnesses, as in fact, it was only "after the consummation of the buy-bust operation" when PO3 Agravante called Brgy. Capt. Malingin to witness the marking and inventory of the confiscated items.[40]

Thus, in view of this unjustified deviation from the chain of custody rule, the Court is constrained to conclude that the integrity and evidentiary value of the items purportedly seized from accused-appellants had been compromised, which consequently warrants their acquittal.

WHEREFORE, the appeal is **GRANTED.** The Decision dated November 29, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 01578-MIN is hereby **REVERSED** and **SET ASIDE.** Accordingly, accused-appellants Edwin Alconde *y* Madla and Julius Querquela *y* Rebaca are **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections

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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."

[38] 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."**

[39] See *People v. Manansala, supra* note 24.

[40] See TSN, September 16, 2015, p. 35.

is ordered to cause their immediate release, unless they are being lawfully held in custody for any other reason.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Caguioa,* and *Hernando,*[*] *JJ.,* concur.

Reyes, J. Jr., J., on official leave.

FIRST DIVISION

[G.R. No. 196874. February 6, 2019]

The Heirs of the Late Spouses ALEJANDRO RAMIRO and FELICISIMA LLAMADA, namely; HENRY L. RAMIRO; MERLYN R. TAGUBA; MARLON L. RAMIRO; MARIDEL R. SANTELLA, WILMA L. RAMIRO; VILMA R. CIELO and CAROLYN R. CORDERO, *petitioners, vs.* **SPOUSES ELEODORO and VERNA BACARON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; THE NATURE OF THE ACTION AND WHICH COURT HAS ORIGINAL AND EXCLUSIVE JURISDICTION OVER THE SAME IS DETERMINED BY THE MATERIAL ALLEGATIONS OF THE COMPLAINT, THE TYPE OF RELIEF PRAYED FOR BY THE PLAINTIFF AND THE LAW IN EFFECT WHEN THE ACTION IS FILED, IRRESPECTIVE OF WHETHER THE PLAINTIFFS ARE ENTITLED TO SOME OR ALL OF THE CLAIMS

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[*] Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018.

ASSERTED THEREIN.— Settled is the rule that the nature of the action and which court has original and exclusive jurisdiction over the same is determined by the material allegations of the complaint, the type of relief prayed for by the plaintiff and the law in effect when the action is filed, irrespective of whether the plaintiffs are entitled to some or all of the claims asserted therein. For instance, when the main relief sought is specific performance, the action is incapable of pecuniary estimation within the exclusive jurisdiction of the RTC. When the action, on the other hand, primarily involves title to, or possession of land, the court which has exclusive original jurisdiction over the same is determined by the assessed value of the property.

2. **ID.; ID.; ID.; AN ACTION INVOLVING TITLE TO REAL PROPERTY MEANS THAT THE PLAINTIFF'S CAUSE OF ACTION IS BASED ON A CLAIM THAT HE OWNS SUCH PROPERTY OR THAT HE HAS THE LEGAL RIGHTS TO HAVE EXCLUSIVE CONTROL, POSSESSION, ENJOYMENT, OR DISPOSITION OF THE SAME.—** x x x [W]hile respondents claim that their amended complaint before the RTC is denominated as one for the declaration of validity of the Deed of Sale and for specific performance, the averments in their amended complaint and the character of the reliefs sought therein reveal that the action primarily involves title to or possession of real property. An action "involving title to real property" means that the plaintiff's cause of action is based on a claim that he owns such property or that he has the legal rights to have exclusive control, possession, enjoyment, or disposition of the same. Title is the "legal link between (1) a person who owns property and (2) the property itself. The ultimate relief sought by respondents is for the recovery of the property through the enforcement of its sale in their favor by the late spouses Ramiro. Their other causes of action for the cancellation of the original title and the issuance of a new one in their name, as well as for injunction and damages, are merely incidental to the recovery of the property. Before any of the other reliefs respondents prayed for in their complaint can be granted, the issue of who between them and petitioners has the valid title to the lot must first be determined.

3. ID.; ID.; ID.; WHERE A COMPLAINT IS ENTITLED AS ONE FOR SPECIFIC PERFORMANCE BUT NONETHELESS PRAYS FOR THE ISSUANCE OF A DEED OF SALE FOR A PARCEL OF LAND, ITS PRIMARY OBJECTIVE AND NATURE IS ONE TO RECOVER THE PARCEL OF LAND ITSELF AND IS, THUS, DEEMED A REAL ACTION; ACCORDINGLY, THE COURT WHICH HAS JURISDICTION OVER THE SUBJECT MATTER OF THE CASE IS DETERMINED BY THE ASSESSED VALUE OF THE SUBJECT PROPERTY.— Similarly in *Gochan v. Gochan,* we ruled that where a complaint is entitled as one for specific performance but nonetheless prays for the issuance of a deed of sale for a parcel of land, its primary objective and nature is one to recover the parcel of land itself and is, thus, deemed a real action. Accordingly, under these circumstances, the court which has jurisdiction over the subject matter of the case is determined by the assessed value of the subject property. Here, respondents neither alleged the assessed value of the property. The Court cannot take judicial notice of the assessed or market value of lands. Thus, absent any allegation in the complaint of the assessed value of the property, it cannot be determined which between the RTC or the Municipal Trial Court had original and exclusive jurisdiction over respondents' action. Consequently, the complaint filed before the RTC should be dismissed.

4. ID.; ID.; ID.; IT IS NOT SIMPLY THE FILING OF THE COMPLAINT OR APPROPRIATE INITIATORY PLEADING BUT THE PAYMENT OF THE PRESCRIBED DOCKET FEE THAT VESTS A TRIAL COURT WITH JURISDICTION OVER THE SUBJECT MATTER OR NATURE OF THE ACTION ; ALL THE PROCEEDINGS BEFORE THE REGIONAL TRIAL COURT ARE NULL AND VOID WHERE THE SAME HAS NO JURISDICTION OVER THE SUBJECT MATTER OF THE CASE FOR FAILURE OF THE PARTY TO PAY THE CORRECT DOCKET FEES. — [I]t is not simply the filing of the complaint or appropriate initiatory pleading but the payment of the prescribed docket fee that vests a trial court with jurisdiction over the subject matter or nature of the action. In resolving the issue of whether or not the correct amount of docket fees were paid, it is also necessary to determine the true nature of the

complaint. Having settled that the action instituted by respondents is a real action and not one incapable of pecuniary estimation, the basis for determining the correct docket fees shall, therefore, be the assessed value of the property, or the estimated value thereof as alleged by the claimant. As already discussed, however, respondents did not allege the assessed value of the property in their amended complaint. They also did not allege its estimated value. As a result, the correct docket fees could not have been computed and paid by respondents and the RTC could not have acquired jurisdiction over the subject matter of the case. All the proceedings before it are consequently null and void.

APPEARANCES OF COUNSEL

Arturo Ladera for petitioners.
Oswaldo Macadangdang for respondents.

D E C I S I O N

JARDELEZA,[*] *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Revised Rules of Court assailing the October 19, 2010 Decision[2] (assailed Decision) and May 3, 2011 Resolution[3] (assailed Resolution) of the Court of Appeals (CA) in CA-G.R. CV No. 01350-MIN. The CA affirmed *in toto* the July 13, 2007 Decision[4] of Branch 32 of the Regional Trial Court (RTC) of Lupon, Davao Oriental, in Civil Case No. 1966 (045).

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[*] Designated as Acting Chairperson of the First Division per Special Order No. 2636 dated January 31, 2019.

[1] *Rollo*, pp. 4-16.

[2] *Id.* at 18-25, penned by Associate Justice Edgardo T. Lloren with Associate Justices Romulo V. Borja and Ramon Paul L. Hernando (now a Member of this Court), concurring.

[3] *Id.* at 28-29, penned by Associate Justice Edgardo T. Lloren with Associate Justices Romulo V. Borja and Rodrigo F. Lim, Jr., concurring.

[4] Records, pp. 492-522, penned by Presiding Judge Pelagio S. Paguican.

Respondent spouses Eleodoro and Verna Bacaron (spouses Bacaron) filed Civil Case No. 1966 (045) before the RTC against petitioners. In their amended complaint,[5] spouses Bacaron claimed that the father of petitioners, the late Alejandro Ramiro (Alejandro), was the registered owner of Lot 329, Cad-600 containing an area of 48,639 square meters and covered by Original Certificate of Title (OCT) No. P-12524 (property); that Alejandro and his wife, Felicisima Llamada (spouses Ramiro), sold the property to spouses Bacaron, as evidenced by a Deed of Sale[6] executed on October 20, 1991;[7] that spouses Bacaron took possession of the property after the sale; that the property, however, was earlier mortgaged by spouses Ramiro to the Development Bank of the Philippines (DBP); that spouses Bacaron paid the DBP ₱430,150.00 for the redemption of the property; and that in June 1998, petitioners forcibly dispossessed spouses Bacaron of the property.[8]

Petitioners, on the other hand, denied the material allegations of the amended complaint, raising the following affirmative defenses: (a) the RTC does not have jurisdiction over the case considering that it involves recovery of possession of the property; (b) the instrument denominated as a Deed of Sale should be interpreted as an equitable mortgage; and (c) laches has barred respondents from instituting the complaint.[9]

After trial on the merits, the RTC rendered a Decision[10] on July 13, 2007 in favor of spouses Bacaron. It ruled that spouses Bacaron were able to prove by preponderance of evidence the due execution of the Deed of Sale dated October 20, 1991 with spouses Ramiro over the property. Although the original copy of the Deed of Sale was lost, the RTC held that spouses Bacaron

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[5] *Id.* at 68-76.

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

[7] *Id.* at 69.

[8] *Id.* at 69-71.

[9] *Id.* at 24-25; *Rollo*, p. 5.

[10] *Supra* note 4.

were able to introduce competent secondary evidence to prove its existence.[11] It also found that the purchase price of ₱400,000.00 as stated in the Deed of Sale corresponded, more or less, to the amount paid by spouses Bacaron to the DBP. The dispositive portion of the RTC Decision states:

> WHEREFORE, Premises Considered, a DECISION is hereby issued:
>
> 1. DECLARING as VALID the Deed of Sale dated October 20, 1991;
>
> 2. Directing herein Defendants to execute a Deed of Extra-Judicial Partition with Confirmation of the Sale dated October 20, 1991 in favor of herein Plaintiffs within fifteen (15) days from the finality of this DECISION. Should Defendants fail to execute said document as directed by the Court the execution of said document shall be undertaken pursuant to law and the rules;
>
> 3. Directing the Register of Deeds to cause the registration of the parcel of land subject of this case in the name of the Plaintiffs upon the presentation by Plaintiffs of the Deed of Extra-Judicial Partition and Confirmation of Sale referred to in par. No. 2 hereof.
>
> a) Directing Defendants and all other persons acting for and in their behalf to vacate the property subject of this case and restore the possession thereof to herein Plaintiffs;
>
> b) Directing Defendants to pay the amount of ₱30,000.00 as reasonable Attorney's Fees.
>
> SO ORDERED.[12] (Emphasis omitted.)

Aggrieved, petitioners appealed the trial court's Decision to the CA. In their appeal, petitioners argued that the main thrust of the complaint was to recover the property; yet, spouses Bacaron failed to allege its assessed value. Petitioners, thus, asserted that the RTC did not acquire jurisdiction over the subject

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[11] Records, pp. 518-520.

[12] *Id.* at 521-522.

matter of the case pursuant to *Batas Pambansa* (B.P.) Blg. 129,[13] as amended by Republic Act (R.A.) No. 7691.[14]

On October 19, 2010, the CA rendered its assailed Decision,[15] dismissing the appeal and affirming the RTC Decision *in toto*. The CA upheld the jurisdiction of the RTC over the subject matter of the case. Noting that the amended complaint alleged causes of action for the declaration of validity of the Deed of Sale or specific performance, and recovery of possession, damages, attorney's fees and injunction all of which are incapable of pecuniary estimation, joinder in the RTC is allowed by the Rules of Court.[16]

The CA likewise rejected petitioners' contention that in view of their actual physical possession of the property and their payment of realty taxes thereon, the real transaction between their late parents and spouses Bacaron was an equitable mortgage. The CA ruled that petitioners failed to assail the trial court's finding that the reason they currently have possession of the property was because they forcibly took possession of the same from respondents in June 1998. The CA also found that contrary to petitioners' claims of religious payment of realty taxes, the official receipts they presented showed that they paid the realty taxes for 1991 and 1992, and for 1993 and 1994, only on August 17, 1998 and March 12, 1999, respectively.[17] The CA also found petitioners' arguments on laches untenable due to their failure to prove its elements.[18]

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[13] The Judiciary Reorganization Act of 1980.

[14] An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, Amending for the Purpose *Batas Pambansa Blg.* 129, Otherwise Known As The "Judiciary Reorganization Act of 1980." See *Rollo*, p. 21.

[15] *Supra* note 2.

[16] *Rollo*, pp. 21-22.

[17] *Id.* at 22-24.

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

Petitioners filed a motion for reconsideration but the same was denied by the CA via its assailed Resolution.[19] Hence, this petition which presents the following issues:

I. Whether the RTC acquired jurisdiction over the subject matter of the action.

II. Whether the Deed of Sale dated October 20, 1991 should be treated as an equitable mortgage.

III. Whether the spouses Bacaron's claims are barred by laches.

We grant the petition.

Section 19 of B.P. Blg. 129, as amended by R.A. No. 7691, provides that the RTC shall exercise exclusive original jurisdiction on the following actions:

> Sec. 19. *Jurisdiction in civil cases*. – Regional Trial Courts shall exercise exclusive original jurisdiction.
>
> (1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;
>
> (2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty thousand pesos (₱20,000,00) or, for civil actions in Metro Manila, where such value exceeds Fifty thousand pesos (₱50,000.00) except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts;
>
> x x x x x x x x x

Meanwhile, Section 33 of the same law provides the exclusive original jurisdiction of the first level courts, *viz.*:

> Sec. 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Civil Cases*. –

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[19] *Supra* note 3.

Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:

x x x x x x x x x

(3) Exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs:

Provided, That in cases of land not declared for taxation purposes, the value of such property shall be determined by the assessed value of the adjacent lots.

Settled is the rule that the nature of the action and which court has original and exclusive jurisdiction over the same is determined by the material allegations of the complaint, the type of relief prayed for by the plaintiff and the law in effect when the action is filed, irrespective of whether the plaintiffs are entitled to some or all of the claims asserted therein.[20] For instance, when the main relief sought is specific performance, the action is incapable of pecuniary estimation within the exclusive jurisdiction of the RTC. When the action, on the other hand, primarily involves title to, or possession of land, the court which has exclusive original jurisdiction over the same is determined by the assessed value of the property.

Here, petitioners argue against the CA's view that the action is under the RTC's jurisdiction because it is incapable of pecuniary estimation. They contend that the main thrust of respondents' complaint before the RTC is the recovery of possession of the property. Thus, the primary purpose of all of respondents' alternative causes of action involves title to or possession of real property. This is allegedly evident from respondents' amended complaint which seeks, among others,

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[20] *Hilario v. Salvador*, G.R. No. 160384, April 29, 2005, 457 SCRA 815, 824.

to cancel OCT No. P-12524 covering the property, to have a new title issued in their name, and to place respondents in peaceful and undisturbed possession of the property. In view of these allegations, petitioners posit that the complaint should be filed with the court having jurisdiction based on the assessed value of the property. In this case, however, there was no effort on the part of respondents to allege the assessed value of the property.[21]

Spouses Bacaron counter that the case record shows that the main relief prayed for in the amended complaint is one for the declaration of validity and effectivity of the Deed of Sale and specific performance or, in the alternative, that petitioners be ordered and directed to execute the deed or instrument of conveyance and transfer of the property in respondents' favor. They argue that based on existing jurisprudence, the Court has recognized actions involving the legality of conveyances as actions incapable of pecuniary estimation. Likewise, actions for specific performance are exclusively within the jurisdiction of the RTC. Hence, in this case, since the main reliefs prayed for by respondents are the declaration of validity of the Deed of Sale and specific performance, the RTC has jurisdiction over the case.[22]

We agree with petitioners.

Respondents' amended complaint pertinently narrates the following:

> 3. That the above-named defendants are all surviving heirs of the late spouses [Alejandro] Raqmiro (*sic*) and Felicisima Llamada-Ramiro;
>
> 4. That the late Alejandro Ramiro, father of the defendants, is the registered owner of a parcel of land situated in Gov. Generoso, Davao Oriental, consisting of an area of about Forty Eight Thousand Six Hundred Thirty Nine (48,639) square meters, more or less, and embraced and covered by Original Certificate of Title (OCT) No. P-12524; said property is mainly used and operated as a fish

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[21] *Rollo*, pp. 6-8.

[22] *Id.* at 59-63.

pond, with some portions of the said parcel of land being devoted to and planted with coconut trees;

(Said parcel of land formed part of spouses Ramiro's [spouses Alejendro (*sic*) Ramiro's and Felicisima Llamada's] conjugal properties- as registered owner Alejandro Ramiro is referred-to and acknowledged in the property's title as married to Felicisima Llamda') (*sic*);

x x x x x x x x x

5. That sometime in 1991, said spouses Alejandro Ramiro and Felicisima Llamada-Ramiro sold the above- mentioned property unto the plaintiffs herein, as may be shown and evidenced by a Deed of Sale duly executed by the spouses, dated October 20, 1991;

x x x x x x x x x

11.a. That just sometime after the aforesaid sale of the subject property, plaintiffs took over the possession thereof;

11.b. That likewise, since the subject property was earlier mortgaged by the Ramiro spouses unto the Development Bank of the Philippines (DBP). Plaintiffs caused the payment unto the bank the amount of about Four Hundred Thirty Thousand Pesos and Hundred Fifty Pesos (₱430,150.00) for the redemption of the property from the Development Bank of the Philippines;

12. That Alejandro Ramiro passed away sometime in 1996 or thereabout; That Felicisima Llamada on the other hand died later in 1997 or sometime thereabout;

13. That thereafter (*sic*), sometime on the month of June of 1998, or thereabout, the above-named defendants, led by defendant Henry Ramiro, unlawfully and coercively took over the possession of the subject property without any justifiable cause whatsoever, to the exclusion of the plaintiffs, arrogating unto themselves the supposed ownership of the property;

14. And despite several demands, defendants unjustifiably refused to return unto the plaintiffs the possession thereof, thus causing unwarranted damage and injuries unto the latter;

x x x x x x x x x[23] (Underscoring in the original.)

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[23] Records, pp. 69-71.

In the same vein, the following are the reliefs sought by respondents in their amended complaint:

a.) that a Temporary Restraining Order (TRO) be issued enjoining and prohibiting the defendants from exercising, doing and/or otherwise causing to be done all acts, deeds and activities which may be inimical to the plaintiffs' claims, rights and interest as lawful owners thereof — more specifically (but not limited to), the actual operation of the fishpond by the defendants, and defendants' gathering and harvesting of coconuts and other products found within the property; **directing the defendants to return unto the plaintiffs the possession of the subject property; and enjoining and prohibiting said defendants from further effecting and causing whatever acts of disturbances in contravention of plaintiffs['] peaceful possession of the property**;

b.) that Writs of Preliminary Mandatory and Prohibitory Injunctions likewise be issued in plaintiffs' favor directing and/or providing the same wise (as stated in the foregoing);

c.) that after hearing, the said Injunctions be made permanent;

d.) **that after the fact and verity of the subject property's sale (in plaintiffs' favor) shall have been proved and established in the course of the proceedings of the above-entitled case, the validity and effectivity of said sale be categorically declared and upheld: Or otherwise, defendants be ordered and directed to execute the proper deed or instrument of conveyance and transfer of the subject property in plaintiffs' favor;**

e.) **that [the] Original Certificate of Title (OCT) No. P-12524 be ordered cancelled and in lieu thereof, another title be accordingly issued in the name of the plaintiffs; and**

f.) **that the plaintiffs be ordered placed in a peaceful and undisturbed possession over the property.**

g.) that defendants be ordered to pay plaintiffs the sum of ₱20,000.00 as attorney's fees and ₱1,200.00 as appearance fees of counsel per hearing;

h.) that defendants be made to pay plaintiffs the amount of ₱100,000.00 as moral damages as well as exemplary damages in the amount to be fixed by this Honorable Court.

All other reliefs in plaintiffs' favor, as may be deemed by this Honorable Court as just and equitable under the premises, are herein likewise prayed for.[24] (Emphasis supplied; underscoring in the original.)

It is clear from the foregoing that while respondents claim that their amended complaint before the RTC is denominated as one for the declaration of validity of the Deed of Sale and for specific performance, the averments in their amended complaint and the character of the reliefs sought therein reveal that the action primarily involves title to or possession of real property. An action "involving title to real property" means that the plaintiff's cause of action is based on a claim that he owns such property or that he has the legal rights to have exclusive control, possession, enjoyment, or disposition of the same. Title is the "legal link between (1) a person who owns property and (2) the property itself."[25]

The ultimate relief sought by respondents is for the recovery of the property through the enforcement of its sale in their favor by the late spouses Ramiro. Their other causes of action for the cancellation of the original title and the issuance of a new one in their name, as well as for injunction and damages, are merely incidental to the recovery of the property.[26] Before any of the other reliefs respondents prayed for in their complaint can be granted, the issue of who between them and petitioners has the valid title to the lot must first be determined.[27]

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[24] *Id.* at 73-74.

[25] *Padlan v. Dinglasan*, G.R. No. 180321, March 20, 2013, 694 SCRA 91, 100. Citation omitted.

[26] See *Zuñiga-Santos v. Santos-Gran*, G.R. No. 197380, October 8, 2014, 738 SCRA 33; *Heirs of Enrique Toring v. Heirs of Teodosia Boquilaga*, G.R. No. 163610, September 27, 2010, 631 SCRA 278; *Alfredo v. Spouses Borras*, G.R. No. 144225, June 17, 2003, 404 SCRA 145; *Pingol v. Court of Appeals,* G.R. No. 102909, September 6, 1993, 226 SCRA 118.

[27] See *Padlan v. Dinglasan*, *supra* note 25.

Similarly in *Gochan v. Gochan,*[28] we ruled that where a complaint is entitled as one for specific performance but nonetheless prays for the issuance of a deed of sale for a parcel of land, its primary objective and nature is one to recover the parcel of land itself and is, thus, deemed a real action. Accordingly, under these circumstances, the court which has jurisdiction over the subject matter of the case is determined by the assessed value of the subject property.[29]

Here, respondents neither alleged the assessed value of the property. The Court cannot take judicial notice of the assessed or market value of lands. Thus, absent any allegation in the complaint of the assessed value of the property, it cannot be determined which between the RTC or the Municipal Trial Court had original and exclusive jurisdiction over respondents' action. Consequently, the complaint filed before the RTC should be dismissed.[30]

Furthermore, it is not simply the filing of the complaint or appropriate initiatory pleading but the payment of the prescribed docket fee that vests a trial court with jurisdiction over the subject matter or nature of the action.[31] In resolving the issue of whether or not the correct amount of docket fees were paid, it is also necessary to determine the true nature of the complaint.[32] Having settled that the action instituted by respondents is a real action and not one incapable of pecuniary estimation, the basis for determining the correct docket fees shall, therefore, be the assessed value of the property, or the estimated value thereof as alleged by the claimant.[33] As already discussed,

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[28] G.R. No. 146089, December 13, 2001, 372 SCRA 256, 264.

[29] *Hilario v. Salvador, supra* note 20 at 825.

[30] *Id.* at 826.

[31] *Gochan v. Gochan*, *supra* note 28 at 263, citing S*un Insurance Office, Ltd. (SIOL) v. Asuncion*, G.R. Nos. 79937-38, February 13, 1989, 170 SCRA 274.

[32] *Id.* at 263.

[33] *Id.* at 265; See also RULES OF COURT, Rule 141, Sec. 7 as amended by A.M. No. 00-2-01-SC.

however, respondents did not allege the assessed value of the property in their amended complaint. They also did not allege its estimated value. As a result, the correct docket fees could not have been computed and paid by respondents and the RTC could not have acquired jurisdiction over the subject matter of the case.[34] All the proceedings before it are consequently null and void.

In light of all the foregoing, we see no further need to discuss the other issues raised by petitioners.

WHEREFORE, the petition is **GRANTED**. The Decision dated October 19, 2010 and Resolution dated May 3, 2011 of the Court of Appeals in CA-G.R. CV No. 01350-MIN are hereby **REVERSED** and **SET ASIDE**. The Decision of the Regional Trial Court dated July 13, 2007 is declared **NULL and VOID**. The amended complaint in Civil Case No. 1966 (045) is dismissed without prejudice.

SO ORDERED.

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

Del Castillo, J., on official leave.

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[34] See *Serrano v. Delica*, G.R. No. 136325, July 29, 2005, 465 SCRA 82, 89.

SECOND DIVISION

[G.R. No. 206709. February 6, 2019]

VDM TRADING, INC. and SPOUSES LUIS and NENA DOMINGO, represented by their Attorney-in-fact, ATTY. F. WILLIAM L. VILLAREAL, *petitioners, vs.* **LEONITA CARUNGCONG and WACK WACK TWIN TOWERS CONDOMINIUM ASSOCIATION, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; QUESTIONS OF FACT CANNOT BE RAISED IN AN APPEAL *VIA CERTIORARI* BEFORE THE SUPREME COURT AND ARE NOT PROPER FOR ITS CONSIDERATION; RATIONALE.— A question of facts exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation. That is precisely what the petitioners are asking the Court to do — to reassess, reexamine, and recalibrate the evidence on record. A *catena* of cases has consistently held that questions of fact cannot be raised in an appeal *via certiorari* before the Court and are not proper for its consideration. The Court is not a trier of facts. It is not the Court's function to examine and weigh all over again the evidence presented in the proceedings below.

2. CIVIL LAW; EXTRACONTRACTUAL OBLIGATIONS; QUASI-DELICT; THE CAUSE OF ACTION IS ANCHORED ON QUASI-DELICT WHEN THE ALLEGATION STATED THAT THE DAMAGE WAS CAUSED TO THE PROPERTY BY VIRTUE OF COLLECTIVE FAULT AND/OR NEGLIGENCE OF THE OTHER PARTIES; ELEMENTS.— By alleging that damage was caused to their property by virtue of the respondents' individual and collective fault and/or negligence, the petitioners' cause of action is anchored on quasi-delict. According to Article

2176 of the Civil Code, whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict. A quasi-delict has the following elements: a) the **damage** suffered by the plaintiff; b) the act or omission of the defendant supposedly constituting **fault or negligence**; and c) the **causal connection** between the act and the damage sustained by the plaintiff, or **proximate cause**.

3. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; THE IDENTIFICATION AND AUTHENTICATION OF A PRIVATE DOCUMENT MAY ONLY BE PROVEN BY A PERSON WHO SAW THE EXECUTION OF THE DOCUMENT, OR BY A PERSON WHO HAS KNOWLEDGE AND CAN TESTIFY AS TO THE GENUINENESS OF THE SIGNATURE OR HANDWRITING OF THE MAKER; NOT ESTABLISHED IN CASE AT BAR.— As a prerequisite to its admission in evidence, the identity and authenticity of a private document must be properly laid and reasonably established. According to Section 20, Rule 132 of the Rules of Court, the identification and authentication of a private document may only be proven by either: (1) a person who saw the execution of the document, or (2) a person who has knowledge and can testify as to the genuineness of the signature or handwriting of the maker. In the instant case, with Atty. Villareal having not seen the execution of the document, and having no personal knowledge whatsoever as regards the execution of the document, the letter-quotation from M. Laher was not deemed to have been properly identified and authenticated, thus making it inadmissible in evidence. The petitioners should have instead presented a witness from M. Laher who actually executed the letter-quotation, or any other witness who saw the actual execution of the document or can testify as to the signatures and handwritings found on the document. Therefore, the petitioners cannot rely on M. Laher's letter-quotation to prove their claims for damages.

4. ID.; ID.; TESTIMONIAL EVIDENCE; ADMISSION BY SILENCE; JURISPRUDENCE HOLDS THAT THE RULE ON ADMISSION BY SILENCE APPLIES TO ADVERSE STATEMENTS IN WRITING IF THE PARTY WAS CARRYING ON A MUTUAL CORRESPONDENCE WITH

THE DECLARANT; NOT APPLICABLE IN CASE AT BAR.— As correctly cited by respondent Wack Wack in its Comment, jurisprudence holds that the rule on admission by silence applies to adverse statements in writing if the party was carrying on a mutual correspondence with the declarant. However, if there was no such mutual correspondence, the rule is relaxed on the theory that while the party would have immediately reacted by a denial if the statements were orally made in his presence, such prompt response can generally not be expected if the party still has to resort to a written reply. In the case at hand, it is not disputed that Lagman-Castillo's handwritten report was not addressed to the respondents. Instead, the report was addressed to Atty. Villareal. Hence, the rule on admission on silence is negated.

5. CIVIL LAW; EXTRACONTRACTUAL OBLIGATIONS; QUASI-DELICT; IN THE CAUSE OF ACTION BASED ON QUASI-DELICT, THE NEGLIGENCE OR FAULT MUST BE ESTABLISHED AS IT IS THE BASIS OF THE ACTION; NOT ESTABLISHED IN CASE AT BAR.— The Court has held that in a cause of action based on quasi-delict, the negligence or fault should be clearly established as it is the basis of the action. The burden of proof is thus placed on the plaintiff, as it is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law. Therefore, if the plaintiff alleged in his complaint that he was damaged because of the negligent acts of the defendant, he has the burden of proving such negligence. x x x To constitute quasi-delict, the alleged fault or negligence committed by the defendant must be the proximate cause of the damage or injury suffered by the plaintiff. Proximate cause is that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred. Stated in simple terms, it must be proven that the supposed fault or negligence committed by the respondents, *i.e.*, the undertaking of plumbing works on Unit 2308B-1, was the cause of the damage to the Unit. Such was not proven by the petitioners.

APPEARANCES OF COUNSEL

Florante Arceo Bautista for petitioners.

Nitura Malabanan Lagunilla Mendoza & Gaddi Law Offices for respondent Leonita Carungcong.

Molo Sia Dy Tuazon Ty & Coloma Law Offices for respondent Wack Wack Twin Towers Condominium Association, Inc.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court filed by petitioners VDM Trading, Inc. (petitioner VDM) and Spouses Luis and Nena Domingo (collectively referred to as the petitioners Sps. Domingo), assailing the Decision[2] dated July 13, 2012 (assailed Decision) and Resolution[3] dated March 20, 2013 (assailed Resolution) of the Court of Appeals (CA) Eleventh Division in CA-G.R. CV No. 89479.

The Facts and Antecedent Proceedings

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

On August 21, 2002, petitioner VDM and the petitioners Sps. Domingo filed before the Regional Trial Court of Mandaluyong City, Branch 213 (RTC) a Complaint for Damages[4] (Complaint) against respondents Leonita Carungcong (respondent Carungcong), Wack Wack Twin Towers Condominium Association, Inc. (respondent Wack Wack), and Hak Yek Tan (Tan).

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[1] *Rollo*, pp. 9-31.

[2] *Id*. at 33-51; penned by Associate Justice Magdangal M. De Leon, with Associate Justices Stephen C. Cruz and Myra V. Garcia-Fernandez concurring.

[3] *Id* at 53-54.

[4] *Id*. at 55-66.

In the said Complaint, it was alleged that petitioner VDM is the owner of Unit 2208B-1 (the Unit) located at Wack Wack Twin Towers Condominium (the Condominium) at Wack Wack Road, Mandaluyong City. Petitioner Nena Domingo (petitioner Nena), the majority stockholder of petitioner VDM, and her husband, petitioner Luis Domingo (petitioner Luis), are the actual occupants of the Unit.

Sometime in December 1998, while the petitioners Sps. Domingo were in the United States, petitioner Nena's sister, Nancy Lagman-Castillo (Lagman-Castillo), discovered that soapy water was heavily penetrating through the ceiling of the Unit. With the leak persisting for several days, Lagman-Castillo reported the matter with the petitioners Sps. Domingo's counsel and attorney-in-fact, Atty. William Villareal (Atty. Villareal), as well as respondent Wack Wack's building administrator.

On December 10, 1998, Atty. Villareal allegedly met with respondent Wack Wack's Acting Property Manager, Arlene Cruz (Cruz), who supposedly revealed that she previously conducted an inspection on the Unit and found that the strong leak apparently came from Unit 2308B-1, which is located directly above the Unit. Unit 2308B-1 is owned by respondent Carungcong, but was being leased by Tan at that time. Cruz allegedly explained that Unit 2308B-1's balcony, which was being utilized as a laundry area, had unauthorized piping and plumbing works installed therein, which were in violation of respondent Wack Wack's rules and regulations, as well as the building's original plans.

Atty. Villareal conducted his own inspection of the Unit in the presence of Lagman-Castillo and Cruz, and noted damages on the following: (1) ceilings and walls, including the wall paper and panel board; (2) cabinets and other improvements on the wall; (3) narra flooring, which showed warping and permanent discoloration; (4) bed, mattress, sheets, and covers; (5) curtains, which showed signs of shrinking and deterioration; (6) personal clothing, articles of personal use, and important documents inside the cabinet; and (7) miscellaneous damages.

For this reason, on behalf of the petitioners Sps. Domingo, Atty. Villareal sent a letter[5] dated December 16, 1998, demanding that respondents Wack Wack and Carungcong make restoration works and/or pay for the damages caused upon the Unit.

When no action was taken by respondents Wack Wack and Carungcong after the lapse of a considerable length of time, Atty. Villareal allegedly sent another letter[6] dated September 1, 1999 to respondents Wack Wack, Carungcong, and Tan, as well as Golden Dragon Real Estate Corporation (Golden Dragon), the developer of the Condominium, demanding that repairs be made on the Unit.

Subsequently, repair works on the Unit were referred to M. Laher Construction (M. Laher) for a quotation. In its letter[7] dated September 1, 2000 addressed to petitioner Luis, M. Laher stated that the estimated cost in repairing the Unit's balcony, master bedroom, dining and living room, and the children's room amounted to ₱490,635.00. Afterwards, several demand letters[8] were sent by the counsel of the petitioners Sps. Domingo to respondents Wack Wack, Carungcong, Tan, and Golden Dragon for the payment of the amount quoted by M. Laher, but to no avail.

Hence, the petitioners Sps. Domingo were constrained to file their Complaint. As stated in the Complaint, the cause of action against Tan is based on the supposed "unauthorized installation of plumbing in the balcony of Unit 2308-B1 and x x x unauthorized conversion of said balcony into a laundry/wash area"[9] undertaken by Tan. As regards, respondent Carungcong, she was being held solidarity liable with respondent Tan as the registered owner of Unit 2308-B1, allegedly failing in her

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[5] *Id*. at 72-73.

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

[7] *Id*. at 76-77.

[8] *Id*. at 78-85.

[9] *Id*. at 61.

responsibility of ensuring that Tan is complying with all of the rules and regulations of respondent Wack Wack.[10] With respect to respondent Wack Wack, the cause of action was based on the latter's alleged act of being "utterly negligent in failing to enforce and implement the Association's Rules and Regulations prohibiting illegal or unauthorized constructions, additions, or alteration by tenants to their units."[11]

The petitioners Sps. Domingo prayed for the award of ₱490,635.00 as actual damages, ₱300,000.00 as exemplary damages, and ₱40,000.00 as attorney's fees, litigation expenses, and costs of suit.

Summonses were served upon all the respondents, except Tan who was no longer residing at the given address.

Subsequently, respondent Wack Wack filed an Answer with Counterclaim and Crossclaim[12] against respondent Carungcong and Tan. It was respondent Wack Wack's contention that the responsibility of enforcing and monitoring the policies on the use and occupancy of condominium units lied solely with Golden Dragon, as embodied in the Amended Master Deed with Declaration of Restrictions of Wack Wack Twin Towers (Amended Master Deed).[13] As stipulated therein, Golden Dragon had the duty to orient the unit owners of the Condominium on the prohibitions and restrictions regarding the construction, repair, or alteration of any structure within the units. On the other hand, respondent Wack Wack's obligation was limited to the implementation of the house rules and regulations affecting only the common and limited areas of the Condominium.

In its crossclaim, respondent Wack Wack alleged that if there was indeed any damage caused on the Unit, it would have been due to Tan's wrongdoing and the failure of respondent Carungcong to diligently and regularly monitor the former's activities.

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

[11] *Id*. at 62.

[12] *Id*. at 90-99.

[13] *Id*. at 100-114.

For her part, respondent Carungcong filed her Answer with Third Party Complaint[14] against Golden Dragon and its specialty contractor, Stalwart Builders Corporation (Stalwart). Respondent Carungcong argued that the soapy water which seeped through the ceiling of the Unit did not come from the balcony of her unit, Unit 2308B-1. Also, the installation of piping and plumbing works done by Stalwart was done with the permission and approval of Golden Dragon. She countered that if there was any defect in the plumbing works, the damages on the Unit should be assessed against Golden Dragon and Stalwart.

Summonses were not served upon Golden Dragon and Stalwart as they were no longer holding office in the addresses supplied by respondent Carungcong.[15] As such, the RTC did not tackle anymore the Third Party Complaint.

The Ruling of the RTC

On December 19, 2006, the RTC rendered its Decision[16] granting the Complaint against respondent Carungcong, the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing[,] judgment is hereby rendered granting the [C]omplaint against [respondent] Carungcong, and ordering the said [respondent] to pay [petitioner] the following amounts:
>
> (1) Php 490,635.00 as actual damages;
>
> (2) Php 100,000.00 as legal fees.
>
> SO ORDERED.[17]

The petitioners VDM and Sps. Domingo filed their Motion for Partial Reconsideration[18] dated January 10, 2007, praying

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[14] *Id*. at 118-123.

[15] *Id*. at 153.

[16] *Id*. at 283-287. Penned by Acting Presiding Judge Marissa M. Guillen.

[17] *Id*. at 287.

[18] *Id*. at 288-294.

that respondent Wack Wack be held solidarily liable with respondent Carungcong pursuant to the provisions of the Amended Master Deed.

Respondent Carungcong likewise moved for a reconsideration[19] of the RTC's Decision, maintaining that the petitioners VDM and Sps. Domingo's causes of action should be directed and litigated against Golden Dragon instead.

In its Order[20] dated July 18, 2007, the RTC modified its Decision and held that respondent Wack Wack is solidarily liable with respondent Carungcong for the award of damages granted to the petitioners. Meanwhile, the Motion for Reconsideration filed by respondent Carungcong was denied for lack of merit.

Hence, respondents Carungcong and Wack Wack appealed the RTC's Decision and Order before the CA.

The Ruling of the CA

In the assailed Decision, the CA granted the appeal of respondents Carungcong and Wack Wack, reversing the RTC's Decision dated December 19, 2006 and Order dated July 18,2007. The dispositive portion of the assailed Decision reads:

WHEREFORE, the appeal is **GRANTED**. The appealed *Decision* and *Order* are **REVERSED and SET ASIDE**. The complaint for damages is hereby **DISMISSED**.

SO ORDERED.[21]

In sum, the CA found that the records are bereft of any evidence showing that the damage to the petitioners' Unit was caused by the plumbing works done on the balcony of Unit 2308B-1. Further, the CA took cognizance of an already settled case previously initiated by the petitioners before the Housing and

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[19] *Id*. at 295-299.

[20] *Id*. at 300-311. Issued by Judge Carlos A. Valenzuela.

[21] *Id*. at 50.

Land Use Regulatory Board (HLURB) concerning the Unit. The said case decided by the HLURB found that water leakage in the Unit was caused by the defective and substandard construction of the Unit by Golden Dragon, and not the plumbing works on the balcony of Unit 2308B-1.

The petitioners filed their Motion for Reconsideration of the assailed Decision on August 17, 2012, which was denied by the CA in the assailed Resolution.

Hence, this appeal *via* Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.[22]

On October 30, 2013, respondent Carungcong filed her Comments [To The Petition for Review on Certiorari under Rule 45][23] dated October 24, 2013. In response, on November 29, 2013, the petitioners filed their Omnibus Motion and Reply *Ad Cautelam* (To Respondent Leonita Carungcong's *Comments*)[24] dated November 28, 2013. In their Omnibus Motion, the petitioners prayed that the counsel of respondent Carungcong, *i.e.*, Atty. Adriano I. Gaddi, be ordered to show cause for the late filling of respondent Carungcong's Comment. In a Resolution[25] dated January 27, 2014, the Court denied the petitioners' Omnibus Motion.

After having been fined a sum of ₱1,000.00 by the Court in its Resolution[26] dated February 16, 2015 for failing to file a comment on the instant Petition within the required period, on May 13, 2015, respondent Wack Wack filed its Comment[27] [on the *Petition for Review on Certiorari* dated 28 May 2013] dated May 11, 2015.

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[22] *Id*. at 9-31.

[23] *Id*. at 348-352.

[24] *Id*. at 359-370.

[25] *Id*. at 371.

[26] *Id*. at 377.

[27] *Id*. at 444-467.

Issue

Stripped to its core, the central issue to be decided by the Court is whether the CA erred in reversing the RTC's Decision dated December 19, 2006 and Order dated July 18, 2007, thus dismissing the petitioners' Complaint for Damages against respondents Carungcong and Wack Wack.

The Court's Ruling

The instant Petition is denied for lack of merit.

First and foremost, it must be stressed that the instant Petition centers on the petitioners' contention that the CA's assailed Decision and Resolution "are based on a misapprehension of facts."[28] The instant Petition then proceeds to reiterate the contents of the testimony of their sole witness, Atty. Villareal, and the various documents he produced, arguing that the evidence on record allegedly establish the fact that the proximate cause of the damage to the Unit is the plumbing works made on the balcony of Unit 2308B-1 owned by respondent Carungcong.

Simply stated, the instant Petition raises pure questions of fact.

A question of facts exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.[29] That is precisely what the petitioners are asking the Court to do — to reassess, reexamine, and recalibrate the evidence on record.

A *catena* of cases has consistently held that questions of fact cannot be raised in an appeal *via certiorari* before the Court and are not proper for its consideration.[30] The Court is not a

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[28] *Id*. at 21.

[29] *Republic v. Sandiganbayan*, 426 Phil. 104, 109-110 (2002).

[30] *Bautista v. Puyat Vinyl Products, Inc.*, 416 Phil. 305, 309 (2001).

trier of facts. It is not the Court's function to examine and weigh all over again the evidence presented in the proceedings below.[31]

For this reason alone, the instant Petition warrants dismissal.

Nonetheless, after a careful review of the records of the instant case, the Court finds no cogent reason to reverse the CA's holding that the petitioners' Complaint for Damages against the respondents should be dismissed.

By alleging that damage was caused to their property by virtue of the respondents' individual and collective fault and/or negligence, the petitioners' cause of action is anchored on quasi-delict.

According to Article 2176 of the Civil Code, whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict.

A quasi-delict has the following elements: a) the **damage** suffered by the plaintiff; b) the act or omission of the defendant supposedly constituting **fault or negligence**; and c) the **causal connection** between the act and the damage sustained by the plaintiff, or **proximate cause**.[32]

A perusal of the evidence on record shows that the foregoing elements of a quasi-delict are absent insofar as respondents Carungcong and Wack Wack are concerned.

The full extent of the damage caused to the petitioners' Unit was not sufficiently proven.

Aside from the purely self-serving testimony of Atty. Villareal, the sole witness of the petitioners who is also the petitioners' counsel, there was no sufficient evidence presented to show the extent of the damage caused to the Unit.

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[31] *Republic v. Sandiganbayan*, *supra* note 29 at 110.

[32] *Andamo v. Intermediate Appellate Court*, 269 Phil. 200, 206 (1990), citing *Vergara v. Court of Appeals*, 238 Phil. 565 (1987).

As correctly found by the CA, the photographs offered into evidence by the petitioners merely depict a wet bed, wet floor, and wet cabinet apparently taken from one room only, *i.e.*, the master bedroom. The CA was correct in its assessment that "[n]o photographs were presented to prove that the other rooms of Unit 2208B-1 were also damaged by the leak."[33]

The petitioners maintain that the letter-quotation from M. Laher, a private document, proves the full extent of the damage caused to the Unit.

Such contention is erroneous.

As a prerequisite to its admission in evidence, the identity and authenticity of a private document must be properly laid and reasonably established. According to Section 20, Rule 132 of the Rules of Court, the identification and authentication of a private document may only be proven by either: (1) a person who saw the execution of the document, or (2) a person who has knowledge and can testify as to the genuineness of the signature or handwriting of the maker.

In the instant case, with Atty. Villareal having not seen the execution of the document, and having no personal knowledge whatsoever as regards the execution of the document, the letter-quotation from M. Laher was not deemed to have been properly identified and authenticated, thus making it inadmissible in evidence. The petitioners should have instead presented a witness from M. Laher who actually executed the letter-quotation, or any other witness who saw the actual execution of the document or can testify as to the signatures and handwritings found on the document. Therefore, the petitioners cannot rely on M. Laher's letter-quotation to prove their claims for damages.

The petitioners also heavily rely on the handwritten report of the petitioners' sister, Lagman-Castillo, which purportedly show the extent and location of the damage caused to the Unit.

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[33] *Rollo*, pp. 47-48.

Atty. Villareal's testimony on the observations contained in the handwritten report of Lagman-Castillo is inadmissible. Atty. Villareal is not competent to testify on the veracity of the observations contained in the said handwritten report because he may only testify to those facts which he has personal knowledge, and derived from his own perception. Simply stated, as to the contents of the handwritten report of Lagman-Castillo, Atty. Villareal's testimony is hearsay. The petitioners should have instead presented Lagman-Castillo herself to testify on her own observations, which was not done.

The petitioners argue that the presentation of Lagman-Castillo was not needed anymore due to certain stipulations made by the respondents. But it must be stressed that the stipulations of the respondents regarding the handwritten report of Lagman-Castillo were merely limited to: (1) the authorship of the said report, (2) the fact that the photographs attached in the said report were taken by Lagman-Castillo, and (3) the fact that Lagman-Castillo is the sister of petitioner Nena. There was no stipulation made as to the accuracy and veracity of the contents of the handwritten report. Hence, it was still incumbent upon the petitioners to present Lagman-Castillo to prove the truthfulness of the contents of her handwritten report.

The petitioners also argue that the principle of admission of silence applies *vis-à-vis* Lagman-Castillo's handwritten report because the respondents supposedly failed to issue a response to the said report. The argument is not convincing. As correctly cited by respondent Wack Wack in its Comment, jurisprudence holds that the rule on admission by silence applies to adverse statements in writing if the party was carrying on a mutual correspondence with the declarant. However, if there was no such mutual correspondence, the rule is relaxed on the theory that while the party would have immediately reacted by a denial if the statements were orally made in his presence, such prompt response can generally not be expected if the party still has to resort to a written reply.[34]

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[34] *Villanueva v. Balaguer*, 608 Phil. 463, 474 (2009).

In the case at hand, it is not disputed that Lagman-Castillo's handwritten report was not addressed to the respondents. Instead, the report was addressed to Atty. Villareal. Hence, the rule on admission on silence is negated.

Aside from the foregoing, the petitioners likewise rely on the supposed statements made by Cruz, the Acting Property Manager of respondent Wack Wack, who supposedly intimated that the strong leak apparently came from Unit 2308B-1, which is located directly above the Unit. However, it must be emphasized that Cruz herself was not presented as a witness. Atty. Villareal was not competent to testify as to the truth of Cruz's supposed observations and findings because, to reiterate, Atty. Villareal may only testify to those facts which he has personal knowledge, and derived from his own perception. Hearsay evidence such as this, whether objected to or not, cannot be given credence for it has no probative value.[35]

Lastly, the petitioners cite the various demand letters as evidence of the supposed damage caused to their Unit. It goes without saying that these letters are self-serving documents that deserve scant consideration in the determination of damages. As previously held by the Court, one cannot make evidence for himself by writing a letter containing the statements that he wishes to prove. He does not make the letter evidence by sending it to the party against whom he wishes to prove the facts stated therein.[36]

Fault or negligence on the part of respondents Carungcong and Wack Wack was not proven.

As regards the second element of a quasi-delict, a careful perusal of the evidence on record shows that the petitioners failed to present even a shred of evidence that there was fault or negligence on the part of the respondents Carungcong and Wack Wack.

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[35] *People v. Parungao*, 332 Phil. 917, 924 (1996).

[36] *Villanueva v. Balaguer*, *supra* note 34.

The Court has held that in a cause of action based on quasi-delict, the negligence or fault should be clearly established as it is the basis of the action. The burden of proof is thus placed on the plaintiff, as it is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law. Therefore, if the plaintiff alleged in his complaint that he was damaged because of the negligent acts of the defendant, he has the burden of proving such negligence.[37]

Applying the foregoing in the instant case, the burden of proving fault or negligence was clearly not discharged by the petitioners.

As to the supposed fault or negligence of respondent Carungcong, while it is undisputed that plumbing works were done on the balcony of the unit owned by respondent Carungcong, there is no evidence presented that suggests that such plumbing works were illegally or negligently made. The petitioners could not even point out what specific rule or regulation was supposedly violated by respondent Carungcong or her lessee, Tan, in undertaking the plumbing works. There was no proof offered showing that such plumbing works were even prohibited, disallowed, or undertaken in a negligent manner.

The closest piece of evidence presented that remotely suggests some negligence or wrongdoing on the part of respondent Carungcong or her lessee, Tan, was the supposed statements made by respondent Wack Wack's Acting Property Manager, Cruz. However, as already explained, as Atty. Villareal's testimony on Cruz's statements is pure hearsay, the veracity of Cruz's findings was not sufficiently proven.

With respect to the supposed negligence on the part of respondent Wack Wack, the petitioners do not even dispute that under the Amended Master Deed, respondent Wack Wack holds title over and exercises maintenance and supervision only with respect to the common areas. It is also not disputed that

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[37] *Huang v. Philippine Hoteliers, Inc.*, 700 Phil. 327, 358-359 (2012).

the maintenance and repair of the condominium units shall be made solely on the account of the unit owners, with each unit owner being "responsible for all the damages to any other Units and/or to any portion of the Projects resulting from his failure to effect the required maintenance and repairs of his unit."[38]

Proximate cause between the supposed damage caused and the plumbing works undertaken was not established.

To constitute quasi-delict, the alleged fault or negligence committed by the defendant must be the proximate cause of the damage or injury suffered by the plaintiff.

Proximate cause is that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred.[39]

Stated in simple terms, it must be proven that the supposed fault or negligence committed by the respondents, *i.e.*, the undertaking of plumbing works on Unit 2308B-1, was the cause of the damage to the Unit.

Such was not proven by the petitioners.

First, as correctly observed by the CA, the claim that a supposed leak in the plumbing works located in the balcony of Unit 2308B-1 caused the leakage of soapy water in various parts of the Unit, including the various bedrooms inside the Unit, is highly doubtful and illogical. As noted by the CA, the subject plumbing works are isolated in the balcony area of Unit 2308B-1. The petitioners do not dispute that the said area is separated from the other areas of the unit and sealed off by a wall and beam. Hence, if a leakage in the plumbing works on the balcony of Unit 2308B-1 indeed occurred, it is highly improbable that such leak would spread to a wide area of the Unit.

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[38] *Rollo*, p. 105.

[39] *The Consolidated Bank & Trust Corp. v. Court of Appeals*, 457 Phil. 688, 709 (2003).

Second, aside from the unsubstantiated self-serving testimony of Atty. Villareal, there was no evidence presented to show that the supposed widespread leak of soapy water in the various parts of the Unit was caused by plumbing works on the balcony of Unit 2308B-1. No witness or document establishing a causal link between the plumbing works and the damage to the Unit was offered. The petitioners could have utilized assessors or technical experts on building and plumbing works to personally examine and assess the damage caused to the Unit to provide some substantiation to the claim of proximate cause. However, no such witness was presented. The petitioners relied solely on the testimony of their own counsel, Atty. Villareal. Proximate cause cannot be established by the mere say-so of a self-serving witness.

Lastly, the fact that the plumbing works done in Unit 2308B-1 was not the cause of the damage suffered by the petitioners' Unit is further supported by the factual finding of the CA that a case before the HLURB was previously filed by the petitioners against Golden Dragon. In this complaint, which was offered in evidence by the petitioners themselves, the latter alleged that in 1996, way before the installation of the subject plumbing works in Unit 2308B-1, they had already discovered water leaks in the Unit which damaged the interiors thereof. It was the petitioners' allegation that the water leakage in the Unit was made possible due to Golden Dragon's delivery of a "defective and/or substandard unit."[40] In fact, the CA noted that the HLURB issued a Decision dated July 9, 2009 holding Golden Dragon liable for the water leakage suffered by the petitioners. It is of no coincidence that the award for actual damages granted to the petitioners is similar to the award for actual damages sought by the petitioners in the instant case.[41]

The petitioners attempt to downplay the aforesaid complaint that was lodged and subsequently settled by the HLURB by

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

[41] *Id*. at 50.

arguing that the said complaint was offered for a different purpose, *i.e.*, to prove that Golden Dragon previously refused to execute a Deed of Absolute Sale covering the Unit. Such argument fails to convince. As correctly held by the CA, as the said HLURB complaint was formally offered by the petitioners, thus forming part of the records of the case, "this Court shall not close its eyes" to the contents of the said document.[42] Section 24, Rule 132 merely states that the court shall consider no evidence which has not been formally offered, and that the purpose for which the evidence is offered must be specified. There is nothing in the Rules of Court which limits the appreciation of the court to the specified purpose for which the evidence was offered.

All in all, with the petitioners failing to prove the existence of the elements of a quasi-delict in the instant case, the CA committed no reversible error that warrants the Court's exercise of its discretionary appellate power.

WHEREFORE, the appeal is hereby **DENIED**. The Decision dated July 13, 2012 and Resolution dated March 20, 2013 rendered by the Court of Appeals, Eleventh Division in CA-G.R. CV No. 89479 are **AFFIRMED**.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe*, and *Hernando,*[*] *JJ.*, concur.

Reyes, J. Jr., J., on wellness leave.

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[42] *Id*.

[*] Additional Member per S.O. No. 2630.

THIRD DIVISION

[G.R. No. 211176. February 6, 2019]

BANGKO SENTRAL NG PILIPINAS and PHILIPPINE NATIONAL BANK, *petitioner, vs.* **SPOUSES JUANITO and VICTORIA LEDESMA,** *respondents.*

[G.R. No. 211583. February 6, 2019]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **SPOUSES JUANITO and VICTORIA LEDESMA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; SUGAR RESTITUTION LAW (REPUBLIC ACT NO. 7202); SUGAR PRODUCERS COMPENSATION; THE MONEY TO BE USED TO COMPENSATE THE SUGAR PRODUCERS FOR THEIR LOSSES SHOULD COME FROM THE SUGAR RESTITUTION FUND.— The Court of Appeals erred in ruling that petitioner Bangko Sentral ng Pilipinas is mandated to pay the sugar producers. The money to be used to compensate these sugar producers should come from the sugar restitution fund. Without the fund, there is no restitution to speak of at all. Petitioner Bangko Sentral ng Pilipinas cannot effect the restitution since neither the Presidential Commission on Good Government nor other government agencies have turned over funds to it for the sugar producers' compensation. The trial court was correct in ruling, "[t]hat there is no Sugar Restitution Fund even up to this time is not the fault of the herein defendants. Indeed[,] one cannot give what he does not have."

2. ID.; ID.; ID.; ID.; LENDING BANKS ARE NOT OBLIGATED TO COMPENSATE SUGAR PRODUCERS FOR THEIR LOSSES, AS RESTITUTION FALLS UNDER THE BANGKO SENTRAL NG PILIPINAS, UPON THE ESTABLISHMENT OF A SUGAR RESTITUTION FUND.— [P]etitioner Philippine National Bank is not beholden to respondents. All claims for restitution shall be filed with

the Bangko Sentral ng Pilipinas. x x x. Petitioner Philippine National Bank's role was merely that of a lending bank. Under Republic Act No. 7202 and its Implementing Rules and Regulations, lending banks are not obligated to compensate sugar producers for their losses. Restitution falls under the Bangko Sentral ng Pilipinas, upon the establishment of a sugar restitution fund. There is no dispute that respondents are covered under Republic Act No. 7202. While this Court recognizes the plight of the thousands of sugar producers and their right as beneficiaries, there is, sadly, no fund from where the money should come.

3. **REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; CAUSE OF ACTION; ELEMENTS; NOT PRESENT; THE BANGKO SENTRAL NG PILIPINAS COMMITS NEITHER A DELICT NOR A WRONGFUL ACT OR OMISSION IN VIOLATION OF THE SUGAR PRODUCERS' RIGHTS, FOR WITHOUT THE SUGAR RESTITUTION FUND, IT HAS NO CORRELATIVE LEGAL DUTY TO COMPENSATE THE SUGAR PRODUCERS FOR THEIR LOSSES.—** This Court agrees with the trial court that the Complaint states no cause of action against petitioners. A cause of action is "the delict or wrongful act or omission committed by the defendant in violation of the primary rights of the plaintiff." The elements of a cause of action are: (1) [T]he existence of a legal right in the plaintiff, (2) a correlative legal duty on the part of the defendant, and (3) an act or omission of the defendant in violation of plaintiffs right with consequential injury or damage to the plaintiff for which he may maintain an action for the recovery of damages or other appropriate relief. Here, the second and third elements are lacking. Without the sugar restitution fund, petitioners have no correlative legal duty to compensate respondents for their losses. They committed neither a delict nor a wrongful act or omission in violation of respondents' rights.

4. **ID.; ID.; JUDGMENTS; A JUDGMENT CONDITIONED UPON A CONTINGENCY IS NULL AND VOID; A JUDGMENT MUST BE DEFINITIVE AND WHEN A DEFINITIVE JUDGMENT CANNOT BE RENDERED BECAUSE IT DEPENDS UPON A CONTINGENCY, THE PROPER PROCEDURE IS TO RENDER NO JUDGMENT**

AT ALL AND DEFER THE SAME UNTIL THE CONTINGENCY HAS PASSED.— Petitioner Philippine National Bank has not violated any of its obligations toward respondents since it was never tasked by the law to refund the claim for excess payments. As a private banking institution and as a publicly listed company, it has no jurisdiction, control, or relation to the sugar restitution fund. Thus, the Court of Appeals Decision and Resolution are contrary to law and jurisprudence. In *Cu Unjieng E Hijos v. Mabalacat Sugar Company, et al.*: We have once held that orders or judgments of this kind, subject to the performance of a condition precedent, are not final until the condition is performed. *Before the condition is performed or the contingency has happened, the judgment is not effective and is not capable of execution. In truth, such judgment contains no disposition at all and is a mere anticipated statement of what the court shall do in the future when a particular event should happen. For this reason, as a general rule, judgments of such kind, conditioned upon a contingency, are held to be null and void*. "A judgment must be definitive. By this is meant that the decision itself must purport to decide finally the rights of the parties upon the issue submitted, by specifically denying or granting the remedy sought by the action." And when a definitive judgment cannot thus be rendered because it depends upon a contingency, the proper procedure is to render no judgment at all and defer the same until the contingency has passed.

APPEARANCES OF COUNSEL

BSP Office of the General Counsel & Legal Services for petitioner.

April C. Pintor for Philippine National Bank.

Crispin S. Sumagaysay, Jr. for respondents.

D E C I S I O N

LEONEN, *J.*:

This case involves the determination of whether the Bangko Sentral ng Pilipinas and the Philippine National Bank are liable

to the sugar producers for the refund of excess payments under Republic Act No. 7202,[1] or the Sugar Restitution Law.

These are two (2) Petitions[2] for Review on Certiorari assailing the Court of Appeals May 29, 2013 Decision[3] and January 29, 2014 Resolution[4] in CA-G.R. CV No. 02904. The Court of Appeals reversed and set aside the November 17, 2008 Decision[5] of the Regional Trial Court in Civil Case No. 01-11591 for Sum of Money/Refund of Excess Payments. The Court of Appeals ordered the Bangko Sentral ng Pilipinas and the Philippine National Bank to pay Spouses Juanito and Victoria Ledesma (the Ledesma Spouses) the amount of ₱353,529.67, to be taken from the sugar restitution fund upon its establishment.[6]

The Ledesma Spouses stated in their Complaint that they were farmers engaged in sugar farming in Negros Occidental, with sugar productions from crop year 1974 to 1975 to crop year 1984 to 1985. Within this period, they were among those who suffered losses in sugar farming operations due to the actions of government-owned and controlled agencies. Among these agencies were the Bangko Sentral ng Pilipinas and the Philippine National Bank.[7]

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[1] An Act Authorizing the Restitution of Losses Suffered by Sugar Producers from Crop Year 1974-1975 To Crop Year 1984-1985 Due to The Actions of Government-Owned and Controlled Agencies.

[2] *Rollo* (G.R. No. 211583), pp. 26-44 and *rollo* (G.R. No. 211176), pp. 9-25.

[3] *Rollo* (G.R. No. 211583), pp. 7-18. The Decision was penned by Associate Justice Carmelita Salandanan-Manahan and concurred in by Associate Justices Ramon Paul L. Hernando (now a member of this Court) and Ma. Luisa C. Quijano-Padilla of the Twentieth Division, Court of Appeals, Cebu City.

[4] *Id*. at 20-21. The Resolution was penned by Associate Justice Carmelita Salandanan-Manahan and concurred in by Associate Justices Ramon Paul L. Hernando (now a member of this Court) and Ma. Luisa C. Quijano-Padilla of the Former Twentieth Division, Court of Appeals, Cebu City.

[5] *Id*. at 101-114. The Decision was penned by Judge George S. Patriarca of Branch 46, Regional Trial Court, Bacolod City.

[6] *Id*. at 18.

[7] *Id*. at 8.

The Ledesma Spouses obtained several crop loans from the Philippine National Bank. After full payment of the loans, there was an excess payment of ₱353,529.67, as admitted by the Philippine National Bank and as certified by the Commission on Audit.[8] The Ledesma Spouses argued that under Republic Act No. 7202, the Bangko Sentral ng Pilipinas and the Presidential Commission on Good Government should compensate them for their losses and refund the excess payment from the sugar restitution fund.[9]

After trial, the Regional Trial Court, in its November 17, 2008 Decision, ruled:

> WHEREFORE, the Complaint is hereby DISMISSED for reason of prematurity and/or lack of cause of action against the herein defendants Bangko Sentral ng Pilipinas (BSP) and Philippine National Bank (PNB). This Judgment is, however, without prejudice to its (Complaint) refiling by the plaintiffs once the Sugar Restitution Fund under R.A. No. 7202 or any fund for that purpose is already set up and ready for distribution.
>
> The counterclaims interposed by defendants Bangko Sentral Ng Pilipinas (BSP) and the Philippine National Bank (PNB) are dismissed for lack of proof and basis.
>
> SO ORDERED.[10]

On Appeal, the Court of Appeals found the Ledesma Spouses' case meritorious. It held that there is no dispute as to the Ledesma Spouses' inclusion in the coverage of Republic Act No. 7202, "which was enacted to restitute the losses suffered by sugar producers due to actions taken by government agencies in order to revive the economy in the sugar-producing areas of the country."[11]

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[8] *Id*.

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

[10] *Id*. at 114.

[11] *Rollo* (G.R. No. 211176), p. 32.

The Court of Appeals found that the Ledesma Spouses filed their claim in accordance with the law's implementing rules and regulations. Both the Bangko Sentral ng Pilipinas and the Philippine National Bank recognized the rights of the Ledesma Spouses to the benefits of the law.[12]

The Court of Appeals noted that the excess payment of ₱353,529.67 resulted from the Philippine National Bank's re-computation, as certified by the Commission on Audit under Section 3 of Republic Act No. 7202.[13]

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[12] *Id*.

[13] *Id*. Rep. Act No. 7202 (1992), Sec. 3 provides:

SECTION 3. The Philippine National Bank and Republic Planters Bank, the Development Bank of the Philippines and other government-owned and controlled financial institutions which have granted loans to the sugar producers shall extend to accounts of said sugar producers incurred from Crop Year 1974-1975 up to and including Crop Year 1984-1985 the following:

(a) Condonation of interest charged by the banks in excess of twelve percent (12%) per annum and all penalties and surcharges[.]

See also Chapter 3, Section 6 of the Rules and Regulations Implementing Rep. Act No. 7202 (1993), which provides:

SECTION 6. E.O. 31, as amended by E.O. 114 provides as follows:

SECTION 1. The Philippine National Bank, the Republic Planters Bank, the Development Bank of the Philippines, and other government-owned and-controlled financial institutions shall, individually or collectively, immediately formulate and implement a comprehensive program for the immediate write off from their respective books of interest in excess of twelve per cent (12%) per annum and all penalties and surcharges due from sugar producers on account of loan obligations they incurred from Crop Year 1974-1975 up to and including Crop Year 1984-1985.

The said financial institutions shall coordinate with sugar producers concerned to facilitate the recomputation of their loan obligations, which shall be payable in accordance with the schedule prescribed under Section 3 (b) of Republic Act No. 7202.

SECTION 2. In cases, however, where sugar producers have no outstanding loan balance with said financial institutions as of the date of effectivity of RA No. 7202 (*i.e.* sugar producers who have fully paid their loans either through actual payment or foreclosure of collateral, or who have partially paid their loans and after the recomputation of the interest charges, they

The Court of Appeals held that as the lending bank, the Philippine National Bank could not deny its obligation to the Ledesma Spouses since Republic Act No. 7202 mandates its obligation to condone interest in excess of 12% per annum, including all penalties and surcharges, and to give effect to the condonation.[14]

Likewise, the Court of Appeals noted that the Bangko Sentral ng Pilipinas was tasked to promulgate rules and regulations for the law's adequate implementation.[15] Section 10 of the Rules and Regulations Implementing Republic Act No. 7202 provides:

SECTION 10. The BSP shall arrange with the PCGG, its successors-in-interest, or any other agency which may have recovered ill-gotten wealth from whatever sources, or any assets and/or funds which may

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end up with excess payment to said financial institutions), said producers shall be entitled to the benefits of recomputation in accordance with Sections 3 and 4 of RA No. 7202, but the said financial institutions, instead of refunding the interest in excess of twelve (12%) per cent per annum, interests, penalties and surcharges, apply the excess payment as an offset and/or as payment for the producers' outstanding loan obligations. Applications of restructuring banks under Section 6 of RA No. 7202 shall be filed with the Central Monetary Authority of the Philippines within one (1) year from application of excess payment.

SECTION 3. The respective Presidents or their equivalent of the said financial institutions shall be responsible for carrying out the provisions of this Order. They shall submit to the Executive Secretary, as soon as practicable, a compliance report, which shall include a summary of the action taken pursuant to this Order. . .

In accordance with the abovementioned provisions, all sugar producers shall file with the lending banks their applications for condonation and restructuring. Pursuant to Section 5 of R.A. 7202, accounts of sugar producers pertaining to Crop Year 1974-1975 up to and including Crop year 1984-1985 with banks under liquidation or receivership by the Central Bank shall likewise be covered by the abovestated provisions.

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

[15] *Id*. at 35. Rep. Act No. 7202 (1992), Sec. 9 provides:

SECTION 9. Such other rules and regulations that may be necessary for the adequate implementation of this Act should be promulgated by the Central Bank of the Philippines within sixty (60) days from the effectivity of this Act.

have been determined to have been stolen or illegally acquired, directly or indirectly, from the sugar industry to deliver or transfer such recovered assets, funds, and/or interest earned or other increments thereto. All further recoveries by aforementioned agencies, which assets, funds, and/or ill-gotten wealth recovered shall be delivered by the recovering agency to the BSP as soon as may be possible but not later than sixty (60) calendar days. The BSP and the PCGG shall work out the details for the transfer of such funds/recoveries.

The Court of Appeals did acknowledge that the Bangko Sentral ng Pilipinas and the Philippine National Bank's liability to pay the Ledesma Spouses depends on the establishment of the sugar restitution fund under Republic Act No. 7202.[16] Section 11 of its Implementing Rules and Regulations provides how the sugar restitution fund shall be established:

SECTION 11. All assets, funds, and/or ill-gotten wealth turned over to the BSP pursuant hereto shall constitute the Sugar Restitution Fund from which restitution shall be affected by the BSP pursuant to Section 2 of the Act. Such Fund shall be held in trust by the BSP for the sugar producers pending distribution thereof. The BSP shall take all necessary steps, consistent with its responsibility as Trustee to preserve and maintain the value of all such recovered assets, funds, and/or ill-gotten wealth.

The Court of Appeals held that it was clear that until the sugar restitution fund is established, payment to the Ledesma Spouses and other sugar producers under Republic Act No. 7202 would "have to be held in abeyance."[17]

The Court of Appeals noted that based on an April 11, 2002 Certification issued by the then Deputy Governor of the Bangko Sentral ng Pilipinas and the Ad Hoc Committee Chair on the Sugar Restitution Law, the Presidential Commission on Good Government, along with all other government agencies, have not made any funds available for the Bangko Sentral ng Pilipinas to pay the sugar producers' claims.[18]

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[16] *Id*.

[17] *Id*. at 36.

[18] *Id*.

The Presidential Commission on Good Government, in an April 11, 2002 Letter, certified that it had not made any fund or asset available to the Bangko Sentral ng Pilipinas for the sugar restitution fund. It stated that all recoveries it had made were remitted to the agrarian reform fund under the Comprehensive Agrarian Reform Law.[19]

According to the Court of Appeals, it was indeed lamentable that after more than two (2) decades after Republic Act No. 7202 was enacted, the Ledesma Spouses and thousands of other sugar producers still could not reap the law's benefits. Nevertheless, there is no other recourse but to await the establishment of the sugar restitution fund.[20]

The dispositive portion of the Court of Appeals Decision read:

> WHEREFORE, the appeal is GRANTED. The November 17, 2008 Decision of the RTC Branch 46, Bacolod City is REVERSED AND SET ASIDE and a new one entered ORDERING defendants-appellees to pay plaintiffs-appellants the sum of ₱353,529.67 with interest at the legal rate from November 26, 2001 to be taken from the Sugar Restitution Fund once duly established.
>
> SO ORDERED.[21]

The Bangko Sentral ng Pilipinas and the Philippine National Bank separately filed Motions for Reconsideration, both of which were denied by the Court of Appeals.[22]

Hence, they filed separate Petitions for Review on Certiorari before this Court.

In its Petition, docketed as G.R. No. 211176, before this Court, petitioner Bangko Sentral ng Pilipinas argues that the

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[19] *Id*.

[20] *Id*. at 36-37.

[21] *Id*. at 37.

[22] *Id*. at 38-39.

Court of Appeals rendered a conditional judgment, contrary to law and jurisprudence.[23]

Petitioner Bangko Sentral ng Pilipinas contends that the Court of Appeals' judgment created a bad precedent. It opened the floodgate to any party to file cases based on speculation and conditional facts, not necessarily akin to the case of respondents, the Ledesma Spouses.[24]

Petitioner Bangko Sentral ng Pilipinas further argues that it is not mandated by Republic Act No. 7202 and the law's Implementing Rules and Regulations to pay the sugar producers' claims with its own funds. Rather, it is tasked to promulgate the law's implementing rules and regulations.[25]

The law and its implementing rules and regulations provide that the funds for sugar producers' compensation shall not come from petitioner Bangko Sentral ng Pilipinas, but from the money recovered and determined by the government to have been stolen or illegally acquired from the sugar industry.[26]

Hence, petitioner Bangko Sentral ng Pilipinas claims that it is merely a trustee of the sugar restitution fund. Since no funds have been turned over to it for that purpose, its obligation as trustee could not even be considered to have commenced.[27]

Petitioner Bangko Sentral ng Pilipinas quotes in its Petition how trust is defined: "a fiduciary relationship concerning property which obliges the person holding it to deal with the property for the benefit of another."[28] It states that without a trust property, no trust is created.[29]

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[23] *Id*. at 9.

[24] *Id*. at 17-20.

[25] *Id*.

[26] *Id*.

[27] *Id*.

[28] *Id.* at 19 citing IV, EDGARDO L. PARAS, *CIVIL CODE OF THE PHILIPPINES ANNOTATED* (16th ed., 2008).

[29] *Id*.

Petitioner Bangko Sentral ng Pilipinas argues that the Complaint had no cause of action against it. Thus, the decision of the trial court, which found the case premature, should be reinstated.[30]

In its Petition docketed as G.R. No. 211583, petitioner Philippine National Bank argues that Republic Act No. 7202 does not mandate it to compensate "respondents from a 'fund' specifically held 'in trust' by another independent entity."[31]

Petitioner Philippine National Bank asserts that it has no jurisdiction and control over the sugar restitution fund. It is not the agency mandated by law to implement the restitution and/or distribution of the sugar producers' compensation.[32]

Petitioner Philippine National Bank points out that Republic Act No. 7202 and its Implementing Rules and Regulations provide that all claims shall be filed with the Bangko Sentral ng Pilipinas, as the government agency exclusively named and directed by the statute to effect the restitution to sugar producers.[33]

Petitioner Philippine National Bank argues that lending banks are not mandated to compensate sugar producers who are qualified for restitution. This duty lies solely with the Bangko Sentral ng Pilipinas upon the establishment of the sugar restitution fund.[34]

Petitioner Philippine National Bank asserts that in statutory construction, "when the law is clear and unambiguous, the court is left with no alternative but to apply the same according to its clear language."[35] Thus, "[w]here a requirement or condition is made in explicit and unambiguous terms, no discretion is left to the judiciary. It must see to it that its mandate is obeyed."[36]

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[30] *Id*. at 17-20.

[31] *Rollo* (G.R. No. 211583), p. 27.

[32] *Id*. at 27.

[33] *Id*. at 34.

[34] *Id*. at 27.

[35] *Id*.

[36] *Id*. citing *Security Bank and Trust Company v. Regional Trial Court of Makati, Branch 61*, 331 Phil. 787 (1996) [Per *J*. Hermosisima, Jr., First Division].

Petitioner Philippine National Bank further argues that respondents have no cause of action against it, for it has neither committed an act or omission in violation of their rights nor breached whatever obligation it has toward them.[37]

Petitioner Philippine National Bank claims that it has complied with its obligation to issue a statement of excess payment in favor of respondents as a requisite for reimbursement. Unfortunately, that is the extent of its responsibility. The law does not compel it to demand respondents' claims from the Bangko Sentral ng Pilipinas, or to even facilitate the process. Further, it is unauthorized to withdraw any amount from the sugar restitution fund to satisfy respondents' claims.[38]

The only issue for this Court's resolution is whether or not the Court of Appeals erred in holding petitioners Bangko Sentral ng Pilipinas and Philippine National Bank liable for the refund of excess payments to sugar producers covered by Republic Act No. 7202.

The Petitions are meritorious.

Respondents base their claim on Section 2 of Republic Act No. 7202, which provides:

> SECTION 2. Whatever amount recovered by the Government through the Presidential Commission on Good Government or any other agency or from any other source and whatever assets or funds that may be recovered, or already recovered, which have been determined to have been stolen or illegally acquired from the sugar industry shall be used to compensate all sugar producers from Crop Year 1974-1975 up to and including Crop Year 1984-1985 on a pro rata basis.

Moreover, Sections 2(r) and 11 of the Rules and Regulations Implementing Republic Act No. 7202 state:

> SECTION 2. *Definitions of Terms*. — As used in these Implementing Rules and Regulations, the following terms shall have their respective meanings as set forth below:

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[37] *Id*. at 39.

[38] *Id*. at 40.

. . . . . .

r. SUGAR RESTITUTION FUND shall refer to the ill-gotten wealth recovered by the Government through the PCGG or any other agency or from any other source within the Philippines or abroad, and whatever assets or funds that may be recovered, or already recovered, which have been determined by PCGG or any other competent agency of the Government to have been stolen or illegally acquired from the sugar industry whether such recovery be the result of a judicial proceeding or by a compromise agreement.

. . . . . .

SECTION 11. *All assets, funds, and/or ill-gotten wealth turned over to the BSP pursuant hereto shall constitute the Sugar Restitution Fund from which restitution shall be affected by the BSP pursuant to Section 2 of the Act*. Such Fund shall be held in trust by the BSP for the sugar producers pending distribution thereof. The BSP shall take all necessary steps, consistent with its responsibility as Trustee to preserve and maintain the value of all such recovered assets, funds, and/or ill-gotten wealth. (Emphasis supplied)

The Court of Appeals erred in ruling that petitioner Bangko Sentral ng Pilipinas is mandated to pay the sugar producers. The money to be used to compensate these sugar producers should come from the sugar restitution fund. Without the fund, there is no restitution to speak of at all.

Petitioner Bangko Sentral ng Pilipinas cannot effect the restitution since neither the Presidential Commission on Good Government nor other government agencies have turned over funds to it for the sugar producers' compensation.

The trial court was correct in ruling, "[t]hat there is no Sugar Restitution Fund even up to this time is not the fault of the herein defendants. Indeed[,] one cannot give what he does not have."[39]

Likewise, petitioner Philippine National Bank is not beholden to respondents.

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[39] *Rollo* (G.R. No. 211583), p. 114.

All claims for restitution shall be filed with the Bangko Sentral ng Pilipinas. Section 12 of the Rules and Regulations Implementing Republic Act No. 7202 provides:

SECTION 12. The Restitution Fund shall be distributed in accordance with these guidelines:

a. Within one hundred eighty (180) calendar days from the effectivity of these Implementing Rules *sugar producers shall file their claims for restitution of sugar losses with the BSP*. The BSP in the implementation of these rules may request the assistance/advise from representatives of the GFIs, sugar producers, PCGG and other government agencies. Claims received during the period shall be the basis for the pro-rata distribution.

b. The BSP, shall, upon receipt of the application for reimbursement of excess payments, request from lending banks (a) statement of excess payments of claimant-sugar producer duly audited and certified to by the Commission on Audit (COA) indicating the amount of excess interest, penalties and surcharges due the sugar producer; and (b) a certification that the sugar producer has no outstanding loans with the bank.

In cases where the loan records which will serve as the basis for computing the excess payments of the sugar producer are no longer available, the lending bank shall immediately notify the BSP. The BSP shall then direct the claimant sugar producer to submit documents in his possession which are acceptable to COA to substantiate his claim. Such documents shall be submitted by the sugar producer to the lending bank within sixty (60) calendar days from receipt of notification from the BSP. (Emphasis supplied)

Petitioner Philippine National Bank's role was merely that of a lending bank. Under Republic Act No. 7202 and its Implementing Rules and Regulations, lending banks are not obligated to compensate sugar producers for their losses. Restitution falls under the Bangko Sentral ng Pilipinas, upon the establishment of a sugar restitution fund.

There is no dispute that respondents are covered under Republic Act No. 7202. While this Court recognizes the plight of the thousands of sugar producers and their right as beneficiaries, there is, sadly, no fund from where the money should come.

This Court agrees with the trial court that the Complaint states no cause of action against petitioners. A cause of action is "the delict or wrongful act or omission committed by the defendant in violation of the primary rights of the plaintiff."[40]

The elements of a cause of action are:

> (1) [T]he existence of a legal right in the plaintiff, (2) a correlative legal duty on the part of the defendant, and (3) an act or omission of the defendant in violation of plaintiff's right with consequential injury or damage to the plaintiff for which he may maintain an action for the recovery of damages or other appropriate relief.[41] (Citation omitted)

Here, the second and third elements are lacking. Without the sugar restitution fund, petitioners have no correlative legal duty to compensate respondents for their losses. They committed neither a delict nor a wrongful act or omission in violation of respondents' rights.

Petitioner Philippine National Bank has not violated any of its obligations toward respondents since it was never tasked by the law to refund the claim for excess payments. As a private banking institution and as a publicly listed company, it has no jurisdiction, control, or relation to the sugar restitution fund.

Thus, the Court of Appeals Decision and Resolution are contrary to law and jurisprudence. In *Cu Unjieng E Hijos v. Mabalacat Sugar Company, et al.*:[42]

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[40] *Joseph v. Hon. Bautista*, 252 Phil. 560, 564 (1989) [Per *J.* Regalado, Second Division].

[41] *Development Bank of the Philippines v. Judge Pundogar*, 291-A Phil. 128, 155 (1993) [Per *J.* Romero, *En Banc*].

[42] 70 Phil. 380 (1940) [Per *J.* Moran, Second Division].

We have once held that orders or judgments of this kind, subject to the performance of a condition precedent, are not final until the condition is performed. *Before the condition is performed or the contingency has happened, the judgment is not effective and is not capable of execution. In truth, such judgment contains no disposition at all and is a mere anticipated statement of what the court shall do in the future when a particular event should happen. For this reason, as a general rule, judgments of such kind, conditioned upon a contingency, are held to be null and void*. "A judgment must be definitive. By this is meant that the decision itself must purport to decide finally the rights of the parties upon the issue submitted, by specifically denying or granting the remedy sought by the action." And when a definitive judgment cannot thus be rendered because it depends upon a contingency, the proper procedure is to render no judgment at all and defer the same until the contingency has passed.[43] (Emphasis supplied, citations omitted)

WHEREFORE, the Petitions for Review on Certiorari are **GRANTED**. The Court of Appeals May 29, 2013 Decision and January 29, 2014 Resolution in CA-G.R. CV No. 02904 are **REVERSED AND SET ASIDE**. The November 17, 2008 Decision of the Regional Trial Court Branch 46, Bacolod City in Civil Case No. 01-11591 for Sum of Money/Refund of Excess Payments is **AFFIRMED**.

SO ORDERED.

Peralta (*Chairperson*), *Jardeleza,*[*] *Reyes, A. Jr.,* and *Carandang,*[**] *JJ.*, concur.

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[43] *Id*. at 384.

[*] Designated additional Member in lieu of Associate Justice Ramon Paul L. Hernando, per Raffle dated February 4, 2019.

[**] Designated additional Member per Special Order No. 2624 dated November 28, 2018.

THIRD DIVISION

[G.R. No. 217123. February 6, 2019]

OSCAR M. PARINGIT, *petitioner, vs.* **GLOBAL GATEWAY CREWING SERVICES, INC.,[*] MID-SOUTH SHIP AND CREW MANAGEMENT, INC., and/or CAPTAIN SIMEON FLORES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PARAMETERS OF THE SUPREME COURT'S RULE 45 REVIEW OF A COURT OF APPEALS RULING IN A RULE 65 REVIEW OF THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC), CLARIFIED.— In reviewing the Court of Appeals' decision, this Court determines its legal correctness "from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the [National Labor Relations Commission] decision before it." *Montoya v. Transmed Manila Corporation* laid down the parameters of judicial review for a labor case under Rule 45: In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. In question

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[*] Respondent name corrected from Global Shipping Management to Global Gateway Crewing Services, Inc.

form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case? A court or tribunal is said to have acted with grave abuse of discretion when it capriciously acts or whimsically exercises judgment. The abuse of discretion must be so flagrant that it amounts to a virtual refusal to perform a duty as provided by law. "Mere abuse of discretion is not enough." A review of the records convinces this Court that the findings of the National Labor Relations Commission were amply supported by substantial evidence.

2. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; SEAFARER; REQUISITES FOR THE GRANT OF A SEAFARER'S CLAIM FOR DISABILITY BENEFITS.—** To grant a seafarer's claim for disability benefits, the following requisites must be present: (1) [H]e suffered an illness; (2) he suffered this illness during the term of his employment contract; (3) he complied with the procedures prescribed under Section 20-B; (4) his illness is one of the enumerated occupational disease[s] or that his illness or injury is otherwise work-related; and (5) he complied with the four conditions enumerated under Section 32-A for an occupational disease or a disputably-presumed work-related disease to be compensable.

3. **ID.; ID.; ID.; ID.; FOR ILLNESS TO BE COMPENSABLE, IT IS NOT NECESSARY THAT THE NATURE OF THE EMPLOYMENT BE THE SOLE AND ONLY REASON FOR THE ILLNESS SUFFERED BY THE SEAFARER; IT IS SUFFICIENT THAT THERE IS A REASONABLE LINKAGE BETWEEN THE DISEASE SUFFERED BY THE EMPLOYEE AND HIS WORK TO LEAD A RATIONAL MIND TO CONCLUDE THAT HIS WORK MAY HAVE CONTRIBUTED TO THE ESTABLISHMENT OR, AT THE VERY LEAST, AGGRAVATION OF ANY PRE-EXISTING CONDITION HE MIGHT HAVE HAD.—** Petitioner took medication to normalize his high blood pressure, but the working conditions and mandatory diet aboard the vessel made it difficult and nearly impossible for him to maintain a healthy lifestyle. He stressed that he and the other seafarers were served mostly high-fat, high-cholesterol, and low-fiber food aboard the vessel. Furthermore, his work as Chief Mate carried considerable stress and required him to stay up for long stretches of time, up to

the early hours of the morning. x x x. *Magsaysay Maritime Services, et al. v. Laurel* emphasized that in determining the compensability of an illness, it is not necessary that the nature of the employment be the sole reason for the seafarer's illness. A reasonable connection between the disease and work undertaken already suffices: Settled is the rule that for illness to be compensable, it is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer. It is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had.

4. ID.; ID.; ID.; ID.; RULES FOR ENTITLEMENT TO DISABILITY BENEFITS.— *Kestrel Shipping Co., Inc., et al. v. Munar*, then summarized the rules for entitlement to disability benefits discussed in *Vergara*: In *Vergara v. Hammonia Maritime Services, Inc.*, this Court read the POEA-SEC in harmony with the Labor Code and the AREC in interpreting in holding that: (a) the 120 days provided under Section 20-B (3) of the POEA-SEC is the period given to the employer to determine fitness to work and when the seafarer is deemed to be in a state of total and temporary disability; (b) the 120 days of total and temporary disability may be extended up to a maximum of 240 days should the seafarer require further medical treatment; and (c) a total and temporary disability becomes permanent when so declared by the company-designated physician within 120 or 240 days, as the case may be, or upon the expiration of the said periods without a declaration of either fitness to work or permanent disability and the seafarer is still unable to resume his regular seafaring duties.

APPEARANCES OF COUNSEL

Bermejo Laurino-Bermejo and Luna Law Offices for petitioner.
Jeronimo B. Cumigad for respondents.

D E C I S I O N

LEONEN, *J.*:

There is very little that seafarers can do to better their working conditions upon boarding a ship. It is the shipowners and their representatives who have better resources to ensure that their crew members are properly nourished, kept adequately fit, and are placed in a situation where they are not put at any risk greater than what is inherent in their jobs. After all, a crew properly nourished, adequately fit, and enjoying humane working conditions will redound to the benefit of the shipowners. No ship sails without a human crew. Consequently, the crew's quality of skills and state of health significantly determine the efficiency of the shipping business. Taking responsibility for the health of all human souls on their ships also defines the shipowners' sense of humanity and justice.

This resolves the Petition for Review on Certiorari[1] filed by Oscar M. Paringit (Paringit), assailing the Court of Appeals September 11, 2014 Decision[2] and February 24, 2015 Resolution[3] in CA-G.R. SP. No. 129579. The Court of Appeals reversed the January 31, 2013 Decision[4] and March 27, 2013

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[1] *Rollo*, pp. 39-66.

[2] *Id*. at 71-91. The Decision was penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Rosmari D. Carandang (now a member of this Court) and Edwin D. Sorongon of the Fourth Division, Court of Appeals, Manila.

[3] *Id*. at 68-69. The Resolution was penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Rosmari D. Carandang (now a member of this Court) and Edwin D. Sorongon of the Former Fourth Division, Court of Appeals, Manila.

[4] *Id*. 289-302. The Decision was penned by Presiding Commissioner Alex A. Lopez and concurred in by Commissioners Gregorio O. Bilog III and Pablo C. Espiritu, Jr. of the Third Division, National Labor Relations Commission, Quezon City.

Resolution[5] of the National Labor Relations Commission in NLRC LAC (OFW-M)-11-001006-12 (NLRC NCR (M)-06-08823-12).

On June 1, 2010, Paringit entered into a six (6)-month employment contract with Mid-South Ship and Crew Management, Inc., representing Seaworld Marine Services, S.A. He was employed as Chief Mate of the Panaman vessel Tsavliris Hellas with a basic monthly salary of US$1,700.00 for 48 hours a week, overtime pay of US$1,500.00, and vacation leave with pay of US$200.00.[6] Prior to his deployment, Paringit underwent a pre-employment medical examination, where he disclosed that he had high blood pressure. Still, he was declared fit for duty.[7]

A few months later, Paringit began to feel constantly fatigued and stressed. He also noticed blood in his feces beginning October 1, 2011.[8]

On January 13, 2012, when the vessel docked at the port of Las Palmas, Spain, Paringit was rushed to the intensive care unit of Clinica Perpetuo Socorro, where he underwent blood transfusion.[9]

On January 14, 2012, Paringit was discharged from the intensive care unit with a diagnosis of: "Decompensated cardiac insufficiency. Severe anemia. Renal dysfunction."[10] He was transferred to a regular room for further treatment and monitoring and was discharged from the hospital on February 2, 2012. He was soon medically repatriated and arrived in Manila on February 9, 2012.[11]

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[5] *Id*. at 315-316. The Resolution was penned by Presiding Commissioner Alex A. Lopez and concurred in by Commissioners Gregorio O. Bilog III and Pablo C. Espiritu, Jr. of the Third Division, National Labor Relations Commission, Quezon City.

[6] *Id*. at 125.

[7] *Id*. at 126.

[8] *Id*. at 169.

[9] *Id*. at 166 and 207.

[10] *Id*. at 166.

[11] *Id*. at 169.

On February 13, 2012, Paringit was admitted to the YGEIA Medical Center for evaluation and management. He again underwent blood transfusion and was placed on medication.[12]

On February 20, 2012, Paringit was discharged from the hospital with a working diagnosis of: "Congestive Heart Failure; Hypertensive Cardio Vascular Disease[;] Valvular Heart Disease; Anemia Secondary to Upper GI Bleeding Secondary to Bleeding Peptic Ulcer Disease[.]"[13] Dr. Maria Lourdes A. Quetulio (Dr. Quetulio), the company-designated physician, prescribed Paringit's medication and advised him to return to the hospital on February 29, 2012 for his check-up.[14]

On February 29, 2012, after his check-up, Dr. Quetulio advised Paringit to continue his prescribed medication and referred him to a valvular heart specialist for further management. She also advised him to return for his follow-up check-up on March 5, 2012.[15]

On March 2, 2012, Paringit consulted a valvular heart specialist at the Philippine Heart Center who advised him to have a repeat 2D echocardiogram and coronary angiography.[16]

On March 5, 2012, Dr. Quetulio noted that Paringit was a candidate for open heart surgery. She also advised him to continue his medication while waiting for his employer's go signal on his recommended procedures.[17]

Paringit underwent repeat 2D echocardiogram, which showed that he had a severe valvular problem. The cardiologist who examined him recommended that he undergo open heart surgery

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[12] *Id*. at 169-170.

[13] *Id*. at 171.

[14] *Id*.

[15] *Id*. at 172.

[16] *Id*. at 173.

[17] *Id*.

for valve replacement or repair, with possible coronary bypass graft.[18]

On March 22, 2012, Paringit underwent a coronary angiography. While the procedure revealed that he had no blocked coronary vessels, the attending cardiologist opined that he still had to undergo open heart surgery for valve replacement or repair. Dr. Quetulio again advised him to continue his medication while awaiting his employer's approval of the recommended open-heart surgery.[19]

By April 30, 2012, Paringit was still waiting for his employer's decision on his open-heart surgery.[20]

On May 18, 2012, Dr. Quetulio noted that Paringit hesitated to undergo the recommended open-heart surgery and wanted to undergo a herbal treatment instead.[21]

On June 4, 2012, Paringit consulted Dr. May S. Donato-Tan (Dr. Donato-Tan), a cardiologist at the Philippine Heart Center. After evaluating Paringit and reviewing the results of his laboratory examinations, Dr. Donato-Tan concluded that with his heart condition, he would need regular medication, further laboratory procedures, and periodic check-ups with a cardiologist to prevent any aggravation of his illness. She declared him to be permanently disabled and unfit for duty as a seaman.[22]

On June 11, 2012, Paringit filed a Complaint[23] for medical expenses and other money claims against Global Gateway Crewing Services, Inc. (Global Gateway),[24] Mid-South Ship & Crew Management, Inc., Seaworld Marine Services, S.A., and

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[18] *Id*. at 174.

[19] *Id*. at 175.

[20] *Id*. at 176.

[21] *Id*. at 177.

[22] *Id*. at 142-143.

[23] *Id*. at 98-100.

[24] Not Global Shipping Management as erroneously stated in the Petition.

Captain Simeon Flores (Captain Flores), president of Global Gateway.

On June 13, 2012, Paringit executed a quitclaim,[25] where he acknowledged receiving US$6,636.70 from St. Tsavliris Hellas as his sickness allowance from February 8, 2012 to June 8, 2012.

On June 18, 2012, Dr. Quetulio informed Global Gateway that Paringit seemed hesitant to undergo the recommended operation and instead opted for herbal treatment. She also stated that Paringit's heart condition was pre-existing, not work-related.[26]

After the parties failed to settle the issue, they were directed to submit their respective position papers.[27]

In her October 4, 2012 Decision,[28] Labor Arbiter Lilia S. Savari (Labor Arbiter Savari) granted Paringit's Complaint. She found that his various illnesses were work-related or work-aggravated, brought about by the type of food served and the stressful nature of his job aboard the ship.

Further, Labor Arbiter Savari found that since Dr. Donato-Tan declared Paringit's unfitness to work as a seafarer, his disability was total and permanent.[29]

The dispositive portion of Labor Arbiter Savari's Decision read:

WHEREFORE, a Decision is hereby rendered ordering Respondents jointly and severally to pay Complainant permanent total disability Grade 1, in the amount of **US$60,000.00** plus **10%** thereof as and by way of attorney's fees.

SO ORDERED.[30] (Emphasis in the original)

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[25] *Id*. at 178.

[26] *Id*. at 179.

[27] *Id*. at 293.

[28] *Id*. at 206-215.

[29] *Id*. at 214-215.

[30] *Id*. at 215.

Global Gateway and Captain Flores appealed Labor Arbiter Savari's Decision before the National Labor Relations Commission.[31]

In its January 31, 2013 Decision,[32] the National Labor Relations Commission dismissed the Appeal and affirmed Labor Arbiter Savari's Decision.

The National Labor Relations Commission upheld Labor Arbiter Savari's ruling that Paringit was entitled to permanent total disability benefits, his illness being work-related and acquired during the term of his employment contract.[33]

The dispositive portion of the National Labor Relations Commission Decision read:

> WHEREFORE, premises considered, respondent's appeal is hereby DISMISSED for lack of merit. The assailed Decision is AFFIRMED.[34]

Global Gateway and Captain Flores moved for reconsideration,[35] but their Motion was denied[36] on March 27, 2013.

They then filed a Petition for Certiorari[37] before the Court of Appeals.

On September 11, 2014, the Court of Appeals[38] granted their Petition.

The Court of Appeals faulted Paringit for choosing an alternative treatment, then demanding permanent and total

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[31] *Id*. at 216-232.

[32] *Id*. at 289-302.

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

[34] *Id*. at 301.

[35] *Id*. at 303-313.

[36] *Id*. at 315-316.

[37] *Id*. at 317-335.

[38] *Id*. at 71-91.

disability benefits based on his doctor's assessment on his unfitness for sea duty, rather than consulting a third physician as required by law.[39]

Further, the Court of Appeals noted that Paringit filed his Complaint 124 days after his medical repatriation, which was still well within the 240-day medical treatment period granted to his employer. Thus, the Complaint was premature since he had no cause of action for his claim of total and permanent disability benefits.[40]

The dispositive portion of the Court of Appeals Decision read:

> **WHEREFORE**, premises considered, the instant Petition for Certiorari is **GRANTED**. Accordingly, the January 31, 2013 Decision and March 27, 2013 Resolution of the National Labor Relations Commission, which affirmed the Labor Arbiter's October 4, 2012 Decision, are **REVERSED** and **SET ASIDE**. The complaint filed by Oscar Paringit is hereby **DISMISSED**.
>
> **SO ORDERED.**[41] (Emphasis in the original)

Paringit moved for reconsideration,[42] but the Court of Appeals denied[43] his Motion on February 24, 2015.

In his Petition for Review on Certiorari,[44] petitioner Paringit assails the Court of Appeals' reversal of the labor tribunals' uniform factual findings that he was entitled to disability benefits due to his permanent and total disability.[45]

Petitioner asserts that his ailment was work-related and aggravated by the nature of his job aboard the vessel. He insists

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

[40] *Id*. at 87-89.

[41] *Id*. at 90.

[42] *Id*. at 435-452.

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

[44] *Id*. at 39-66.

[45] *Id*. at 48.

that the Court of Appeals erred in relying on the company-designated physician's assessment to refute the statutory presumption of compensability of a listed disease.[46]

Furthermore, petitioner points out that the disputable presumption of compensability is in favor of the seafarer. Thus, the employer has the burden of overcoming the statutory presumption.[47] With his employer's failure to discredit his claim of a work-related or work-aggravated ailment, he insists that he is entitled to the maximum disability benefit as he was already unfit to work on board the vessel.[48]

In their Comment,[49] respondents Global Gateway and Captain Flores maintain that the Court of Appeals did not err in reversing the labor tribunals' rulings because petitioner failed to prove that he suffered a work-related illness. They claim that the findings of the company-designated physician were rightfully given credence over those of petitioner's private physician, since she had the opportunity to closely monitor petitioner through a prolonged period. They also highlight petitioner's failure to refer the matter to a third doctor, as required under the law.[50]

In his Reply,[51] petitioner emphasizes that the company-designated physician diagnosed him with a coronary disease, and even recommended that he undergo open-heart surgery. The issue of compensability only arose when the company-designated physician concluded that his ailment was not work-related. He underscores that the company-designated physician never explained why his ailment was not work-related or what caused it.[52]

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[46] *Id*. at 48-50.

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

[48] *Id*. at 58-61.

[49] *Id*. at 472-479.

[50] *Id*. at 474-476.

[51] *Id*. at 483-499.

[52] *Id*. at 484-485.

The sole issue for this Court's resolution is whether or not the Court of Appeals erred in reversing the findings and rulings of the labor tribunals, which granted petitioner's disability claims.

In reviewing the Court of Appeals' decision, this Court determines its legal correctness "from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the [National Labor Relations Commission] decision before it."[53]

Montoya v. Transmed Manila Corporation[54] laid down the parameters of judicial review for a labor case under Rule 45:

> In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?[55]

A court or tribunal is said to have acted with grave abuse of discretion when it capriciously acts or whimsically exercises judgment. The abuse of discretion must be so flagrant that it

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[53] *Magsaysay Maritime Corporation v. National Labor Relations Commission*, 630 Phil. 352, 361 (2010) [Per *J*. Brion, Second Division].

[54] 613 Phil. 696 (2009) [Per *J*. Brion, Second Division].

[55] *Id*. at 707.

amounts to a virtual refusal to perform a duty as provided by law. "Mere abuse of discretion is not enough."[56]

A review of the records convinces this Court that the findings of the National Labor Relations Commission were amply supported by substantial evidence.

To grant a seafarer's claim for disability benefits, the following requisites must be present:

> (1) [H]e suffered an illness; (2) he suffered this illness during the term of his employment contract; (3) he complied with the procedures prescribed under Section 20-B; (4) his illness is one of the enumerated occupational disease[s] or that his illness or injury is otherwise work-related; and (5) he complied with the four conditions enumerated under Section 32-A for an occupational disease or a disputably-presumed work-related disease to be compensable.[57]

It is not disputed that petitioner was initially diagnosed with heart disease, anemia, renal dysfunction, and that he fell ill while he was aboard the Tsavrilis Hellas.[58] This resulted in his medical repatriation and arrival in Manila on February 9, 2012.[59]

Likewise, petitioner submitted himself to a post-employment medical examination conducted by a company-designated physician. On February 14, 2012, Dr. Quetulio, the company-designated physician, directed admitting petitioner to a hospital to undergo blood transfusion and further tests to rule out coronary artery disease or cardiomyopathy.[60]

On March 19, 2012, after petitioner underwent more laboratory tests, procedures, and consulted with a cardiologist, Dr. Quetulio

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[56] *The Hongkong Shanghai Banking Corporation Employees Union v. National Labor Relations Commission*, 421 Phil. 864, 870 (2001) [Per J. Sandoval-Gutierrez, Third Division].

[57] *Jebsen Maritime, Inc., et al. v. Ravena*, 743 Phil. 371, 388-389 (2014) [Per J. Brion, Second Division].

[58] *Rollo*, p. 166.

[59] *Id*. at 169.

[60] *Id*. at 170.

informed respondent Global Gateway that petitioner had to undergo open-heart surgery, which costs around ₱1,000,000.00 to ₱1,200,000.00.[61] Dr. Quetulio awaited several months[62] for respondent Global Gateway's permission to push through with petitioner's needed open-heart surgery.

On June 18, 2012, Dr. Quetulio diagnosed petitioner with "Congestive Heart Failure; Hypertensive Cardiovascular Disease; Valvular Heart Disease; Anemia Secondary to Upper GI Bleeding Secondary to Bleeding Peptic Ulcer Disease."[63] Her diagnosis was consistent with the findings of Dr. Donato-Tan, petitioner's private physician, who confirmed that petitioner had a heart ailment.[64]

The Philippine Overseas Employment Administration Standard Employment Contract (POEA Standard Employment Contract) defines a work-related illness as "any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied."[65] The conditions under Section 32-A are:

SECTION 32-A. Occupational Diseases. —

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

1. The seafarer's work must involve the risks described herein;
2. The disease was contracted as a result of the seafarer's exposure to the described risks;
3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and
4. There was no notorious negligence on the part of the seafarer.

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[61] *Id*. at 174.

[62] *Id*. at 174-177.

[63] *Id*. at 179.

[64] *Id*. at 142.

[65] Philippine Overseas Employment Administration Memorandum Circular No. 010-10 (2010), definition of terms, no. 16.

Petitioner's heart ailments are classified under a cardiovascular event, as defined in Section 32-A(11) of the POEA Standard Employment Contract:

> Section 32-A. Occupational Diseases.—
>
> . . . . . .
>
> The following diseases are considered as occupational when contracted under working conditions involving the risks described herein:
>
> Occupational Disease
>
> . . . . . .
>
> 11. Cardio-vascular events — to include heart attack, chest pain (angina), heart failure or sudden death. Any of the following conditions must be met:
>
> a. If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by an unusual strain by reasons of the nature of his work
>
> b. the strain of work that brings about an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of a cardiac insult to constitute causal relationship
>
> c. if a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship
>
> d. if a person is a known hypertensive or diabetic, he should show compliance with prescribed maintenance medications and doctor-recommended lifestyle changes. The employer shall provide a workplace conducive for such compliance in accordance with Section 1(A) paragraph 5
>
> e. in a patient not known to have hypertension or diabetes, as indicated on his last PEME

Petitioner, known to be hypertensive, was required under Section 32-A(11)(d) to prove that he complied with the

"prescribed maintenance medications and doctor-recommended lifestyle changes." Likewise, the employer is required to "provide a workplace conducive for such compliance[.]"

In reversing the labor tribunals' rulings, the Court of Appeals held that petitioner failed to prove the causal connection between his heart disease and work aboard the vessel as Chief Mate. It noted that petitioner's valvular heart disease was mostly a result of poor lifestyle choices and health habits. Hence, it was not indicative of work-relatedness.[66]

The Court of Appeals is mistaken.

Petitioner took medication to normalize his high blood pressure,[67] but the working conditions and mandatory diet aboard the vessel made it difficult and nearly impossible for him to maintain a healthy lifestyle. He stressed that he and the other seafarers were served mostly high-fat, high-cholesterol, and low-fiber food aboard the vessel. Furthermore, his work as Chief Mate carried considerable stress and required him to stay up for long stretches of time, up to the early hours of the morning.[68] Labor Arbiter Savari noted:

> This Office takes judicial notice that ocean going vessels are in the high seas for a considerable length of time and that the seafarers on board are not free to choose their diet as they must content with the provisions on board which are usually frozen, preserved, smoked, salted and canned meats and vegetable products as these foods are not easily perishable while fresh fruits and vegetables cannot last long in the high seas. Therefore, with this kind of diet plus the stress of the job on board if only to keep the safety of the vessel, its crew and cargoes have their toll even upon a healthy person. Seafarers have to brave storms, typhoons and high waves during the vessel's journey plus the sudden change of climate and temperature as the vessel crossed territories. These are the factors sufficient to make a person ill.[69]

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[66] *Rollo*, p. 81.

[67] *Id*. at 170.

[68] *Id*. at 213.

[69] *Id*. at 213-214.

Labor Arbiter Savari also found that petitioner, despite being hypertensive, was declared fit to work in his pre-employment medical examination. Moreover, the poor food choices in his workplace led or contributed to his heart disease:

> Complainant was declared fit to work prior to embarkation, hence, there is no other conclusion than that he developed or his illnesses were triggered or aggravated on board and his working conditions precipitated his unknown illnesses.
>
> Hence, Complainant's diseases which are congestive heart failure, hypertensive cardiovascular disease, valvular heart disease are work-related or aggravated because the fats and chemicals in frozen and preserved meats congested his arteries. His stress caused peptic ulcer to the Complainant. Clearly, Complainant's illnesses are work-related/aggravated.[70]

The National Labor Relations Commission upheld Labor Arbiter Savari's findings, thus:

> We agree with the Labor Arbiter's finding that complainant's current medical condition was a work-acquired illness. As correctly noted by the Labor Arbiter, complainant was subjected to several tests by the respondents prior to embarkation and was "declared fit for sea duty" thus the conclusive presumption that complainant's illness was acquired while on-board the ocean-going vessel.[71]

Magsaysay Maritime Services, et al. v. Laurel[72] emphasized that in determining the compensability of an illness, it is not necessary that the nature of the employment be the sole reason for the seafarer's illness. A reasonable connection between the disease and work undertaken already suffices:

> Settled is the rule that for illness to be compensable, it is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer. It is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work

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[70] *Id*. at 214.

[71] *Id*. at 297.

[72] 707 Phil. 210 (2013) [Per *J*. Mendoza, Third Division].

to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had.[73] (Citation omitted)

The Court of Appeals also faulted petitioner for filing his Complaint while Dr. Quetulio was still evaluating his condition.

The Court of Appeals is again mistaken.

Vergara v. Hammonia Maritime Services, Inc., et al.[74] explained the relevant rules and period for reckoning a seafarer's permanent disability for entitlement to disability benefits:

> As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.
>
> . . . . . .
>
> As we outlined above, a *temporary total disability only becomes permanent when so declared by the company physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability*. In the present case, while the initial 120-day treatment or temporary total disability period was exceeded, the company-designated doctor duly

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[73] *Id*. at 225.

[74] 588 Phil. 895 (2008) [Per *J*. Brion, Second Division].

made a declaration well within the extended 240-day period that the petitioner was fit to work. Viewed from this perspective, both the NLRC and CA were legally correct when they refused to recognize any disability because the petitioner had already been declared fit to resume his duties. In the absence of any disability after his temporary total disability was addressed, any further discussion of permanent partial and total disability, their existence, distinctions and consequences, becomes a surplusage that serves no useful purpose.[75] (Emphasis supplied, citations omitted.

Kestrel Shipping Co., Inc., et al. v. Munar,[76] then summarized the rules for entitlement to disability benefits discussed in *Vergara*:

> In *Vergara v. Hammonia Maritime Services, Inc.*, this Court read the POEA-SEC in harmony with the Labor Code and the AREC in interpreting in holding that: (a) the 120 days provided under Section 20-B (3) of the POEA-SEC is the period given to the employer to determine fitness to work and when the seafarer is deemed to be in a state of total and temporary disability; (b) the 120 days of total and temporary disability may be extended up to a maximum of 240 days should the seafarer require further medical treatment; and (c) a total and temporary disability becomes permanent when so declared by the company-designated physician within 120 or 240 days, as the case may be, or upon the expiration of the said periods without a declaration of either fitness to work or permanent disability and the seafarer is still unable to resume his regular seafaring duties.[77] (Citation omitted)

The records show that Dr. Quetulio recommended petitioner to undergo open-heart surgery, but respondent Global Gateway failed or refused to act on this. Dr. Quetulio first broached the possibility of open-heart surgery on March 5, 2012, about a month after petitioner's medical repatriation. The succeeding weeks led to her formally advising respondent Global Gateway of petitioner's need for open-heart surgery, yet the company

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[75] *Id*. at 912-913.

[76] 702 Phil. 717 (2013) [Per J. Reyes, First Division].

[77] *Id*. at 732-733.

failed or refused to respond to her request, despite repeated follow-ups.

The Court of Appeals faulted petitioner for filing a Complaint before Dr. Quetulio could issue a disability assessment, and declared that she had 240 days to do so since petitioner needed additional treatment and evaluation. However, with respondent Global Gateway's deafening silence over the requested operation, stretching beyond the mandated 120 days within which Dr. Quetulio could give her assessment, it cannot be said that she needed additional time to assess petitioner's condition.

The facts show that petitioner had to undergo an open-heart surgery before Dr. Quetulio could properly assess his condition and issue a disability assessment. Unfortunately, Dr. Quetulio had reached an impasse with her management of petitioner's case. Respondent Global Gateway's silence meant that she could neither issue the required disability assessment within the 120-day period nor extend the period to 240 days to further evaluate and treat petitioner.

Dr. Quetulio's failure to timely issue a disability assessment was due to respondent Global Gateway, not because petitioner impliedly refused treatment due to his supposed inclination toward an alternative treatment, as the Court of Appeals held.[78] Thus, the labor tribunals did not err in giving credence to the findings of the private physician, who concluded:

Final Diagnosis: mitral valve prolapse with severe mitral regurgitation and severe tricuspid regurgitation.

Disability Claim:

Based on the history, Physical examinations and laboratory examination, the patient suffers from mitral valve prolapse with severe mitral regurgitation and severe tricuspid regurgitation. Medications will need to be adjusted and further laboratories be done to prevent progression of signs and symptoms. Lifestyle medication is also advised. A consult with his cardiologist is warranted to control further

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[78] *Rollo*, p. 85.

recurrence of symptom as well as further deterioration caused by his present condition. His persistent symptoms hinder him from sufficiently performing his work as a seaman. He is therefore given permanent disability and declared unfit for duty in whatever capacity as a seaman.[79]

The POEA Standard Employment Contract spells out the conditions for compensability. Here, the compensability of petitioner's condition is clear; however, instead of fulfilling its responsibilities, respondent Global Gateway delayed his treatment and raised technical procedural barriers that were clearly unwarranted.

Shipowners who avail of Filipino hands on their decks take on the obligations of their contracts. Their crew members risk their lives and spend inordinate amounts of time attending to their businesses. Here, it would have been a measure of good business practice and a show of justice for respondents to have promptly attended to the people that make their businesses possible.

WHEREFORE, premises considered, the Petition for Review on Certiorari is **GRANTED**. The assailed Court of Appeals September 11, 2014 Decision and February 24, 2015 Resolution in CA-G.R. SP No. 129579 are **REVERSED AND SET ASIDE**.

SO ORDERED.

Peralta (*Chairperson*), *Jardeleza,*[**] *Reyes, A. Jr.*, and *Hernando, JJ.*, concur.

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[79] *Id.* at 142-143.

[**] Designated additional Member per Special Order No. 2624-I dated January 28, 2019.

SECOND DIVISION

[G.R. No. 221434. February 6, 2019]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RESTBEI B. TAMPUS,** *appellant.*

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165), AS AMENDED BY REPUBLIC ACT NO. 10640; CHAIN OF CUSTODY RULE; INVENTORY AND TAKING OF PHOTOGRAPH OF THE SEIZED ITEMS; REQUIRED WITNESSES.—** Contrary to the ruling of the RTC and the CA, the prosecution clearly failed to comply with the requirements of the *chain of custody rule* under Section 21 of RA 9165, as amended. x x x. [T]he conduct of physical inventory and taking of photograph of the seized items in drugs cases must be in the presence of at least three (3) witnesses, particularly: **(1) the accused or the persons from whom such items were confiscated and seized or his/her counsel, (2) an elected public official, and (3) a representative of the National Prosecution Service or the media. The three witnesses, thereafter, should sign copies of the inventory and be given a copy thereof.**

2. **ID.; ID.; ID.; ID.; ID.; JUSTIFIABLE REASONS FOR THE ABSENCE OF ANY OF THE REQUIRED WITNESSES.—** *People v. Sipin* ruled what constitutes *justifiable reasons* for the absence of any of the three witnesses: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets,

prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.

3. ID.; ID.; ID.; ID.; MANDATORY POLICY TO PROVE CHAIN OF CUSTODY.— *People v. Lim* enumerated this Court's **mandatory policy** to prove *chain of custody* under Section 21 of RA 9165, as amended: 1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21(1) of RA 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.

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, *J.*:

The Case

G.R. No. 221434 is an appeal assailing the Decision[1] dated 26 June 2015 of the Court of Appeals (CA) in CA-G.R. CR

[1] *Rollo,* pp. 4-14. Penned by Associate Justice Jhosep Y. Lopez, with Associate Justices Pamela Ann Abella Maxino and Germano Francisco D. Legaspi concurring.

HC No. 01644. The CA affirmed the Judgment[2] dated 30 October 2012 of the Regional Trial Court of Cebu City, Branch 57 (RTC), in Criminal Case No. CBU-90797 convicting Restbei B. Tampus (appellant) of violating Section 5, Article II of Republic Act No. 9165 (RA 9165).

The Facts

The CA summarized the facts as follows:

Accused Restbei Tampus was charged with Violation of Section 5, Article II of R.A. 9165 in an Information dated November 10, 2010 which reads as follows:

> That on or about the 9th day of November 2010, at about 11:00 in the morning, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and without authority of law, did then and there sell, deliver or give away to poseur buyer one (1) big heat-sealed transparent plastic pack of white crystalline substance weighing 918.17 grams, locally known as shabu, containing methamphetamine hydrochloride, a dangerous drug.
>
> CONTRARY TO LAW.

Upon her arrest, accused was detained at the Cebu City Jail. On November 25, 2010, accused was arraigned with the assistance of Atty. Prescilla A. Salvacion and pleaded not guilty to the crime charged. Pre-trial was conducted where the parties made certain stipulations of facts and the prosecution pre-marked their Exhibits. Thereafter, trial on the merits ensued.

The Evidence for the Plaintiff-Appellee

From the testimonies of the prosecution witnesses, namely: PO1 Adriano Bacatan and P/Chief Insp. Romeo Santander, the following were established:

Sometime in November 2010, the police got wind of the illegal drug activities of a certain "Ebing". Acting on the said information, P/Chief Insp. Romeo Santander, Chief of the CIB, Cebu City Police

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[2] CA *rollo,* pp. 25-30. Penned by Presiding Judge Enriqueta Loquillano-Belarmino.

Office, held a conference on November 8, 2010 with other police officers, together with the informant, for the conduct of an operation against "Ebing". Based on their information, shabu would be arriving from Manila on November 9, 2010. The informant, who had direct contact with "Ebing", told the police officers that "Ebing" would sell about a kilo of shabu for the amount of ₱5,000,000.00, which amount was negotiated down to ₱3,000,000.00. PO1 Bacatan was designated as the poseur-buyer and it was agreed that he, together with the informant would meet with "Ebing" along Gen. Maxilom Ave. near the Sacred Heart School for Boys.

At around 9:30 in the morning of November 9, 2010, PO1 Bacatan and the informant met with a woman, later identified as the accused, at the agreed place. After the informant introduced PO1 Bacatan to the woman as the buyer of shabu, the informant left. The woman, who was then bringing a bag, asked PO1 Bacatan if he had the money with him. When he said yes, they agreed to transfer to another place where it was safe. They boarded a taxi cab towards the Traveler's Lodge. Meanwhile, the rest of the buy-bust team and standby force were stationed at the Jollibee branch in front of the Immaculada school.

Upon arriving at the Traveler's Lodge, they checked into room A24 where PO1 Bacatan handed the money, which he had placed in a blue bag, to accused who handed him the shabu. He then identified himself as a police officer and placed accused under arrest. Using the pre-arranged signal, he called P/Chief Insp. Romeo Santander to tell him that the buy-bust operation had been consummated. The buy-bust team led by P/Chief Insp. Santander then arrived at the Traveler's Lodge. Several members of the media also arrived.

PO1 Bacatan placed markings on the shabu taken from accused, prepared an inventory and had photographs taken, all at the place where accused was arrested. The accused was thereafter brought to the CIB office and the shabu was brought to the Crime Laboratory for examination. The buy-bust money was also brought to the police station where the incident was entered in the police blotter. The laboratory examination of the shabu yielded positive results for methamphetamine hydrochloride.

After the witnesses' testimonies, the prosecution formally offered their Exhibits "A" to "N" with sub-markings which were admitted by the trial court per Order of November 16, 2011.

On rebuttal, Guamitos P. Logroño stated that he wrote an article in the Sun-Star Super Balita regarding the incident of accused-appellant's arrest and that all information contained therein was based on the statements of accused-appellant to him.

Kevin A. Lagunda, also on rebuttal, declared that he is a news reporter of the Sun-Star Daily and he wrote a news story regarding accused-appellant's arrest on November 9, 2010 which was published in the November 10, 2010 issue of the newspaper.

Tile Evidence for the Accused-Appellant

In her testimony, accused-appellant, who is also known as Ebing, declared that she was arrested at the Pier 4 in Cebu City at around 4:00 in the morning of November 9, 2010. She had just arrived from Ormoc City where she was supposed to work as a house helper but it turned out that the job was for a GRO so she went back to Cebu. When she was about to board a taxi, two persons approached her and told her not to worry. She was told to board the persons' vehicle and she was brought to a hotel at the back of Mango Square. At the pier, before she was approached by the two (2) persons, she was asked by a woman who was carrying a child for help to carry a trolley bag. She agreed to help the woman so she held the woman's trolley and walked ahead. When she turned to give back the trolley, the woman and her child were no longer there. That was when the two (2) persons approached her. She was brought inside a room at a hotel at the back of Mango Square with Officer Bacatan at around 4:30 A.M. At around 9:00 A.M., she and Officer Bacatan went to the Traveler's Lodge. While she was at the hotel at the back of Mango Square, she and Officer Bacatan were just waiting for his companions. She was afraid to ask what they were doing there. The officer did not recover anything from her backpack. However, he found a package wrapped in plastic inside the trolley of the woman from the pier. The package was about 7"x10" size and contained a white substance. She was later told that it was shabu. She got frightened and she cried because she does not own the trolley where the shabu was recovered. It was at the Traveler's Lodge where media personnel and other companions of Officer Bacatan arrived.

After the testimony of accused-appellant, she rested her case without documentary exhibits offered.[3]

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[3] *Rollo,* pp. 5-9. Emphasis in the original.

The Ruling of the RTC

In a Judgment dated 30 October 2012, the RTC convicted appellant of violating Section 5, Article II of RA 9165. The RTC gave credence to Officer Bacatan's testimony that established in detail the negotiation for the sale of ₱3,000,000 worth of shabu. Appellant did not substantiate her statement that she came from Ormoc. She failed to present a manifesto from the shipping company to show that she was indeed a passenger. Appellant's bare denial cannot outweigh the positive and direct declarations of officer Bacatan. The RTC further stated that the arresting officers, as strangers to appellant, had no motive to fabricate a grave offense against her.

The RTC also stated that the chain of custody was duly established. The RTC declared:

> As stated earlier, the pack of shabu was sold to officer Bacatan by the accused. The former placed the markings "RTB-11-9-10" on the illegal drug and brought the same to the office and finally delivered it to the PNP Crime Laboratory for examination. It was duly received by officer Rama and turned it [sic] over to P/Supt. Salinas. After her examination of the illegal drug, she submitted the same, the letter request and her Chemistry Report No. D-1063-2010 to officer Bucayan, Evidence Custodian of the laboratory. Finally, the subject shabu was presented in court.[4]

The dispositive portion of the Judgment reads:

> WHEREFORE, in view of the foregoing, the Court finds accused RESTBEI BASAK TAMPUS guilty beyond reasonable doubt of Violation of Section 5, Article II of RA 9165 and is hereby sentenced to suffer the penalty of life imprisonment and a fine of three (3) million pesos.
>
> The subject one big plastic pack of shabu is forfeited in favor of the government.
>
> SO ORDERED.[5]

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[4] CA *rollo,* p. 29.

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

The CA's Ruling

The CA affirmed the ruling of the RTC.

The CA ruled that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers because it is presumed that they performed their duties in a regular manner and without ill motive. There was a lack of ill motive on the part of the police officers in the present case. Appellant was caught *in flagrante delicto* violating Section 5, Article II of the Dangerous Drugs Act pursuant to a buy-bust operation.

The CA also found that contrary to appellant's contention, the procedural safeguards enunciated in Section 21 of RA 9165 had been complied with. The sale through a buy-bust operation was duly established by the testimony of Officer Bacatan. Officer Bacatan bought the shabu from the appellant, placed markings on it, brought it to the police station, entered the incident of arrest on the police blotter, prepared the letter request for examination, and delivered it to the Crime Laboratory.

The CA rejected appellant's contention that the chain of custody was not established because not one of the media representatives or witnesses signed the receipt. The CA ruled that the succession of events, established by the evidence, shows that the shabu taken from appellant was the same one tested, subsequently identified, and testified to in court. Non-compliance with Section 21, especially as to the lack of signatures of media personnel in the present case, is not fatal as long as there is a justifiable ground therefor, and as long as the integrity of the confiscated items is properly preserved by the apprehending officers.

Finally, the CA decreed that the prosecution was able to overcome beyond reasonable doubt accused's presumption of innocence.

The dispositive portion of the CA's Decision, promulgated on 26 June 2015, reads as follows:

WHEREFORE, the appeal is DISMISSED and the October 30, 2012 Judgment rendered by the Regional Trial Court, Branch 57, Cebu City is AFFIRMED.

SO ORDERED.[6]

The Public Attorney's Office (PAO) manifested appellant's intent to appeal in a Notice of Appeal dated 16 July 2015.

The Office of the Solicitor General (OSG) filed a Manifestation and Motion (in lieu of Supplemental Brief) on 18 March 2016[7] which stated that appellee's brief filed before the CA adequately discussed its position on the merits of the case. The Regional Special and Appealed Cases Unit of the PAO, on the other hand, filed a Supplemental Brief on behalf of appellant on 28 April 2016.[8]

The Issue

The PAO questioned in its supplemental brief the Court of Appeals' ruling that the prosecution proffered sufficient evidence to prove that appellant was caught *in flagrante delicto* of selling illegal drugs pursuant to a buy-bust operation.[9]

The Court's Ruling

We acquit appellant.

Contrary to the ruling of the RTC and the CA, the prosecution clearly failed to comply with the requirements of the *chain of custody rule* under Section 21 of RA 9165, as amended. Section 21 of RA 9165 states:

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[6] *Rollo,* p. 14.

[7] *Id*. at 25-26. Submitted under the name Solicitor General Florin T. Hilbay, and signed by Assistant Solicitor General Rex Bernardo L. Pascual, and Associate Solicitor Jerros S. Dolino.

[8] *Id*. at 30-35. Submitted under the name of Public Attorney V Maria G-Ree R. Calinawan, Public Attorney II Sylvia A. Aguipo-Luna, Public Attorney II Lyndon D. Falcon, and signed by Public Attorney I Mandy R. Majarocon.

[9] *Id*. at 30.

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

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

The implementing rule for Section 21 of RA 9165 states:

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

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

> photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further,* that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;
>
> x x x x x x x x x

On 15 July 2014, Republic Act No. 10640 amended Section 21 of RA 9165. The pertinent provision 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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the **same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media** who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance [with] these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved

by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

x x x x x x x x x (Emphasis supplied)

It is clear that the conduct of physical inventory and taking of photograph of the seized items in drugs cases must be in the presence of at least three (3) witnesses, particularly: **(1) the accused or the persons from whom such items were confiscated and seized or his/her counsel, (2) an elected public official, and (3) a representative of the National Prosecution Service or the media. The three witnesses, thereafter, should sign copies of the inventory and be given a copy thereof.**

People v. Sipin[10] ruled what constitutes *justifiable reasons* for the absence of any of the three witnesses:

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

People v. Lim[11] enumerated this Court's **mandatory policy** to prove *chain of custody* under Section 21 of RA 9165, as amended:

1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21(1) of RA 9165, as amended, and its IRR.

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[10] G.R. No. 224290, 11 June 2018.

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

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.

In its brief for accused-appellant filed before the CA,[12] the PAO pointed out the following irregularities, thus:

In the course of PO1 Adriano Bacatan's testimony, he unravelled that from the Gen. Maxilom Avenue, he and Restbei Tampus moved to the Traveller's Lodge situated in Carreta near the old White Gold Department Store. The rest of the buy-bust team remained at Jollibee, Gorordo Avenue. At this point when the two moved out from the original place, no transaction of sale took place yet.

While at first, the poseur-buyer and the accused may be visible from where the team stood at Jollibee, the two left for a different place quite far removed. The rest of the team were not there to see or hear anything material to this case for illegal sale of drugs. What truly transpired that very time is only known between PO1 Adriano Bacatan and Restbei Tampus.

Even if the prosecution would present all other members of the buy-bust team to attest to the fact that a buy-bust operation took place, it would not serve the purpose of establishing the elements of the crime since they were not there at the very scene. They left the heart of the operation to just one person, PO1 Adriano Bacatan.

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[12] CA *rollo,* pp. 18-23.

PO1 Adriano Bacatan also said that he wore maong short pants and sleeveless white *sando* when he met with Restbei Tampus. But the shirt he wore in the photograph taken during the inventory in the alleged crime scene was different. When confronted for the disparity, he said that he changed it for security reasons. This does not persuade. What kind of security did he mean? If anything, it only confirms that he lied. He could lie even about the procedures taken over the alleged buy-bust.

Allegedly, the buy-bust team took photos of the inventory. But when the prosecutor asked PO1 Adriano Bacatan to identify what or who were on the photos, nothing about his answers would show that the requirements of Section 21, Paragraph 1 of Republic Act 9165 were met which provides:

> 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.

PO1 Adriano Bacatan testified:

Q: Now, I'm showing to you photographs, seven (7) photographs attached to the record, please go over these photographs and tell the Court whether these are the same photographs that were taken on the items during the inventory that you conducted?

A: Yes, sir. This one is the picture taken during the preparation of the inventory of the evidences.

Q: Now, please go over the first photograph, who is being depicted on this first photograph?

A: This person wearing white t-shirt, this is me, sir.

Q: And what is this on top of the table?

A: This plastic pack containing white crystalline substance placed on top of the table is the shabu I bought from the suspect, sir.

Q: The second photograph, who is this depicted on this second photograph?

A: This woman is our subject, "Bing", and she was arrested for selling shabu, sir.

Q: Now, this third photograph, what is being depicted on this third photograph?

A: On this picture is the pack of shabu I bought from the accused and the next picture is the colored blue bag where the money was placed and beside the bag is the pack of shabu.

Q: Now, on this 8th photograph, what is being shown in this?

A: This is the room of the Traveller's Lodge where we checked in and the door was opened, sir.

Q: So, all the rest of the photographs were taken inside the room where you and the accused transacted?

A: Yes, sir.

The question which now confronts us is at which point did the media representatives and Mayor Michael Rama arrive? Their presence during the inventory was not identified in the photos. What PO1 Adriano Bacatan enumerated as the ones appearing were himself, the drugs allegedly seized and the accused.

Granting *arguendo,* even if the other persons required were reflected in the photos, it is not conclusive of their involvement in the actual inventory as they did not sign the inventory receipt. In such a situation how could it be proven that the policemen, especially PO1 Adrian Bacatan, faithfully conducted the operation? It needs emphasis once more that the other members of the team were not there when the alleged transaction occurred. There stood a high occasion for irregularities.

PO1 Adriano Bacatan described a highly improbable scenario as follows:

Q: I'm curious as to what was the condition of the bag for the accused to believe that inside this bag was ₱3 Million?

A: When this bag was shown to the accused, this masking tape attached was not yet placed or attached to this bag, ma'am, this bag containing the boodle money and the genuine money and on top of these wad of papers were four pieces genuine money of ₱1,000.00 bills and when I showed this bag to the

accused, I partially opened the bag and showed to her the contents and what can be seen is just the genuine money of Php 1,000.00 bills. During the inventory the contents of this bag were taken out in the presence of the media personnel.

Q: So, you want to impress [to] this Honorable Court that the accused did not open the bag or did not even attempt to examine the contents thereof, she just believed you with just slightly opening it and with only the ₱1,000.00 bills visible to her?

A: She opened the bag after she handed the pack of shabu to me and I handed this bag to her and she examined it, ma'am.

Q: You mean she handed first the item before examining the payment?

A: No, ma'am, there was really an exchange. She showed to me the pack of shabu and handed it to me and at the same time, I slightly opened this bag and showed to her the contents. So, there was a simultaneous exchange of the shabu and the bag.

There is nothing trivial about the amount involved in the transaction alleged to have taken place. It is a staggering ₱3 Million. It is beyond imagination that the accused should deal with the situation inadvertently. But this is the scenario as PO1 Adriano Bacatan described.

According to PO1 Adriano Bacatan, he merely half-opened the bag where only four marked genuine money were placed along with the voluminous wads of paper. After that the accused handed the bag where the shabu was. It was merely that, despite the multi-million transaction.

It would have been excusable that the accused would be lax in dealing with PO1 Adriano Bacatan had they had transactions as such many times before. But that was their first encounter. It would not take a genius to understand that where a large sum of money is at stake, all precautions possible would be undertaken.

x x x x x x x x x

The prosecution attempted to reinforce its case by presenting certain people from the media who narrated about the arrest incident of the accused. But their statements could not agree. One reporter mentioned of a certain Lara who ordered the accused

to sell the drugs and yet the other reporter mentioned of a Chinese man.

It was a highly irregular conduct for the policemen to allow the media to meddle into the operation to such an extent as eliciting incriminating interview with the accused. Technically speaking, Restbei Tampus was already a suspect for a particular offense under police scrutiny.

Such a highly sensationalized exposure to the media could very well affect the outcome of a case which was yet to come. They deprived the accused of the dignity she deserves.

What the law requires is an inventory signed by a media representative. But it could not escape notice that despite the presence of a number of media men, not one of them signed the inventory receipt.[13] (Emphasis supplied)

It is grave error to trivialize the necessity of the number and identity of the witnesses enumerated in the law. The present case is a clear-cut example of the police officers' cavalier attitude towards adherence to procedure and protection of the rights of the accused. This is contrary to what is expected from our servants and protectors. Not only was there non-observance of the three-witness rule, there was also no justification offered for its non-observance.

WHEREFORE, we **GRANT** the appeal. The 26 June 2015 Decision of the Court of Appeals in CA-G.R. CR HC No. 01644, which affirmed the 30 October 2012 Judgment of the Regional Trial Court of Cebu City, Branch 57 in Criminal Case No. CBU-90797 finding appellant Restbei B. Tampus of violating Section 5, Article II of Republic Act No. 9165 is **REVERSED** and **SET ASIDE.** Accordingly, appellant Restbei B. Tampus is **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless she is being lawfully held for another cause.

Let a copy of this Decision be furnished the Superintendent of the Correctional Institution for Women in Mandaluyong City

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[13] *Id*. at 22.

for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action she has taken.

SO ORDERED.

Perlas-Bernabe, Caguioa, and *Hernando,*[*] *JJ.,* concur.

Reyes, J. Jr., J., on official leave.

SECOND DIVISION

[G.R. No. 221967. February 6, 2019]

RAMIRO LIM & SONS AGRICULTURAL CO., INC., SIMA REAL ESTATE DEVELOPMENT, INC., and RAMIRO LIM, *petitioners, vs.* **ARMANDO GUILARAN, ROMEO FRIAS, SANTIAGO CARAMBIAS, SR., JOEL SUAREZ, VICENTE OBORDO, JESSIE DAYON, JOEL PALMA, DOMICIANO PITULAN, NINFA ESPINOSA, ROMULO DELA PEÑA, FERNANDO ROWEL, VICENTE ESPINOSA, PONCIANO DACUMOS, OFELIA FRIAS, GILBERT CARAMBIAS, RODRIGO FRIAS, NIXON CARAMBIAS, RESTITUTO JUANICA, MARIANITA GUILARAN, ALY ROMERO, ROSEMINDA JUANICA, LOLITA ROMERO, LILIA ROWEL, ANTONIO DUMDUMAN, SANTIAGO CARAMBIAS, JR., DIOSCORO DACUMOS, ROSENDO DACUMOS, JONIEL DACUMOS, LEONARDA DACUMOS, JUDITA DACUMOS, MIGUELA DACUMOS, and NINFA CARAMBIAS,** *respondents.*

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[*] Designated additional member per Special Order No. 2630 dated 18 December 2018.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS AND BURDEN OF PROOF; "PRESUMPTION" AND "*PRIMA FACIE* EVIDENCE," DEFINED; A "PRESUMPTION" HAS THE EFFECT OF SHIFTING THE BURDEN OF PROOF TO THE PARTY WHO WOULD BE DISADVANTAGED BY A FINDING OF THE PRESUMED FACT WHILE "*PRIMA FACIE* EVIDENCE" IS NOT CONCLUSIVE OR ABSOLUTE AS EVIDENCE TO THE CONTRARY MAY BE PRESENTED BY THE PARTY DISPUTING THE ASSUMPTION OF FACT MADE BY INFERENCE OF LAW AND THE COURT MAY VALIDLY CONSIDER SUCH; WHILE ENTRIES IN THE PAYROLLS ENJOY THE PRESUMPTION OF REGULARITY, IT IS MERELY A DISPUTABLE PRESUMPTION THAT MAY BE OVERTHROWN BY CLEAR AND CONVINCING EVIDENCE TO THE CONTRARY.— While it is true that entries in the payrolls enjoy the presumption of regularity, it is merely a *disputable* presumption that may be overthrown by clear and convincing evidence to the contrary. x x x. A presumption is merely an assumption of fact that the law requires to be made based on another fact or group of facts. It is an inference as to the existence of a fact that is not actually known, but arises from its usual connection with another fact, or a conjecture based on past experience as to what the ordinary human affairs take. A presumption has the effect of shifting the burden of proof to the party who would be disadvantaged by a finding of the presumed fact. Moreover, *prima facie* evidence is defined as evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue it supports, but which may be contradicted by other evidence. Thus, *prima facie* evidence is not conclusive or absolute—evidence to the contrary may be presented by the party disputing the assumption of fact made by inference of law and the court may validly consider such. In this case, we find that the CA did not err when it found that the inconsistencies in the signatures of respondents are so questionable to the naked eye that there exists doubt on their genuineness. x x x. Thus, while payrolls in question enjoyed the presumption of regularity as entries made in the course of business, this presumption of regularity was effectively overthrown evidence to the contrary.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; BACKWAGES; TO DETERMINE THE AMOUNT OF BACKWAGES FOR PIECE-RATE OR PAKYAW WORKERS, THERE IS A NEED TO DETERMINE THE VARYING DEGREES OF PRODUCTION AND DAYS WORKED BY EACH WORKER.— A distinguishing characteristic of a task basis engagement or *pakyaw,* as opposed to straight-hour wage payment, is the non-consideration of the time spent in working. In a payment by *pakyaw* basis, the emphasis is on the task itself, in the sense that payment is reckoned in terms of completion of the work, not in terms of the number of hours spent in the completion of the work. To determine the amount of backwages for piece-rate or *pakyaw* workers, there is a need to determine the varying degrees of production and days worked by each worker. In *Velasco v. NLRC,* the Court held that since the workers were paid on a piece-rate basis, there was a need for the NLRC to determine the varying degrees of production and the number of days worked by each worker x x x.

3. ID.; ID.; ID.; ID.; IN THE ABSENCE OF WAGE RATES APPROVED BY THE SECRETARY OF LABOR IN ACCORDANCE WITH THE APPROPRIATE TIME AND MOTION STUDIES, THE ORDINARY MINIMUM WAGE RATES BASED ON THE APPLICABLE WAGE ORDERS SHALL BE APPLIED TO DETERMINE THE AMOUNT OF BACKWAGES DUE TO PIECE-RATE WORKERS.— x x x [W]hen the CA adopted the method used by the Labor Arbiter which granted respondents' backwages based on the mandated rates provided by law for the period from 2000 to December 2009, and limited the computation of the amount to a period of six months of work per year, it was not baseless and arbitrary. This was based on applicable law and jurisprudence. Article 124 of the Labor Code of the Philippines provides, in part: Art. 124. *Standards/Criteria for minimum wage fixing*. x x x All workers paid by result, including those who are paid on piecework, takay, *pakyaw* or task basis, **shall receive not less than the prescribed wage rates per eight (8) hours of work a day, or a proportion thereof for working less than eight (8) hours.** x x x Moreover, in *Pulp and Paper, Inc. v. NLRC,* the Court held that in the absence of wage rates approved by the Secretary of Labor in accordance with the

appropriate time and motion studies, the ordinary minimum wage rates are applicable to piece-rate workers. The Court held: x x x. To ensure the payment of fair and reasonable wage rates, **Article 101 of the Labor Code provides that "the Secretary of Labor shall regulate the payment of wages by results, including *pakya[w]*, piecework and other non-time work."** x x x. **In the absence of such prescribed wage rates for piece-rate workers, the ordinary minimum wage rates prescribed by the Regional Tripartite Wages and Productivity Boards should apply.** Similarly, petitioners herein failed to adduce any evidence on the agreed amount of payment for work based on *pakyaw* basis, and whether such amount was determined and approved by the Secretary of Labor. Thus, the Labor Arbiter was correct in applying the minimum wage rates based on the applicable Wage Orders to determine the amount of backwages due to respondents. Consequently, we find that the amount awarded to respondents was not based on social justice but rather was in accordance with law.

4. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI*; GRAVE ABUSE OF DISCRETION; THE ABUSE OF DISCRETION MUST BE PATENT AND GROSS AS TO AMOUNT TO AN EVASION OF A POSITIVE DUTY OR A VIRTUAL REFUSAL TO PERFORM A DUTY ENJOINED BY LAW, OR TO ACT AT ALL IN CONTEMPLATION OF LAW, AS WHERE THE POWER IS EXERCISED IN AN ARBITRARY AND DESPOTIC MANNER BY REASON OF PASSION AND HOSTILITY; FINDINGS OF THE COURT OF APPEALS THAT THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION, AFFIRMED.— By finding merit in the petition filed by respondents, the CA obviously found that there was indeed grave abuse of discretion amounting to lack of jurisdiction committed by the NLRC. Grave abuse of discretion has been described as such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. Under such definition, it must be proven that the CA found that the NLRC gravely abused its discretion

in the appreciation of the evidence. We find that the CA precisely did so, when it found that the NLRC based its computation on the payrolls submitted by petitioners, which were self-serving, unreliable, and unsubstantial evidence. Through a painstaking scrutiny of the payrolls, the CA found that the inconsistent signatures of respondents were so questionable that their genuineness is doubtful. Thus, the CA found that the NLRC based its computation of backwages on pieces of evidence which were extremely doubtful; and thus, the NLRC gravely abused its discretion. While the decision of the CA did not explicitly state such words or use such phrase, a reading of the *ratio* and the discussion in the body of the decision would show that the CA found that the NLRC committed grave abuse of discretion. Based on the foregoing, we find no reversible error on the part of the CA.

5. CIVIL LAW; DAMAGES; INTEREST; LEGAL INTEREST OF TWELVE PERCENT (12%) AND SIX PERCENT (6%) *PER ANNUM*, IMPOSED.— [W]e note that the Resolution of this Court affirming the finding of illegal dismissal of the respondents attained finality on 17 November 2009. Thus, in accordance with *Nacar v. Gallery Frames,* the monetary awards shall earn legal interest of twelve percent (12%) *per annum* computed from 17 November 2009 until 30 June 2013, and legal interest of six percent (6%) *per annum* from 1 July 2013 until full satisfaction thereof.

APPEARANCES OF COUNSEL

Zosa & Quijano Law Offices for petitioners.
Quiachon & Associates Law Offices for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court. Petitioners Ramiro Lim & Sons Agricultural Co., Inc., Sima Real Estate Development, Inc., and Ramiro Lim

challenge the 16 April 2015 Decision[1] and 9 November 2015 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 06044 which set aside the 10 January 2011 Decision[3] and 21 March 2011 Resolution[4] of the National Labor Relations Commission (NLRC) and reinstated the 29 March 2010 Order[5] of the Labor Arbiter.

The Facts

Respondents filed complaints for illegal dismissal, underpayment of wages and non-payment of allowance, separation pay, service incentive leave pay and 13th month pay, and for moral and exemplary damages against petitioners. They alleged that they were agricultural workers of the petitioners, employed to work in all the agricultural stages of work on the 84-hectare hacienda owned by petitioners. Respondents also alleged that they were paid on a mixed *pakyaw* and daily basis. Respondents further alleged that they were illegally dismissed on 22 July 2000, when they asked to be paid based on the rates prescribed by the prevailing Wage Order.

Petitioners, on the other hand, argued that respondents – except Romeo Frias who was paid purely on a daily basis – were employed as laborers on a *pakyaw* basis. When their attention was called to the plan to conduct stricter measures to prevent wastage and production losses due to their half-hearted performance, respondents refused to return to work, paralyzing operations for about three weeks. Because of their unjustified absence even after show-cause notices, petitioners considered them to have abandoned their respective jobs.

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[1] *Rollo*, pp. 48-60. Penned by Associate Justice Renato C. Francisco, with Associate Justices Marilyn B. Lagura-Yap and Germano Francisco D. Legaspi concurring.

[2] *Id*. at 87-89.

[3] *Id*. at 226-234.

[4] *Id*. at 239-244.

[5] *Id*. at 169-172.

The Labor Arbiter and the NLRC dismissed the complaints, ruling that respondents were considered to have abandoned their work in the hacienda. In the petition for *certiorari* filed before the CA, the CA granted in part the petition of respondents, finding that petitioners failed to prove the existence of abandonment. Since the respondents have been performing services necessary and desirable to the business which are badges of regular employment, even though they did not work throughout the year and the employment depended on a specific season, the CA granted the reinstatement and payment of full backwages based on the latest Wage Order in the region, and the payment of attorney's fees. The case was remanded to the Labor Arbiter for the computation of back wages from 19 July 2000 up to the date of reinstatement.

Meanwhile, petitioners filed a petition for review on *certiorari* to this Court, but was denied on 22 June 2009 for failure to sufficiently show any reversible error to warrant the exercise of its discretionary appellate jurisdiction.[6] The Resolution of this Court denying the petition attained finality on 17 November 2009.[7]

The Ruling of the Labor Arbiter

In an Order dated 29 March 2010,[8] the Labor Arbiter adopted the computation of the Fiscal Examiner who awarded to respondents their backwages in the amount of Five Million Fifty Eight Thousand Two Hundred Sixty Four Pesos and 64/100 (₱5,058,264.64). The award for each of the respondents was uniform in character in the amount of ₱143,700.70, which was based on the mandated rates provided by law for the period from 2000 until December 2009, and was limited to six months of work per year, considering that sugarcane farming is not continuous the whole year round. The dispositive portion of the Order states:

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[6] *Id*. at 158-159.

[7] *Id*. at 164.

[8] *Id*. at 169-172.

WHEREFORE, in view of the foregoing, the computation of the Fiscal Examiner dated December 8, 2006, is hereby APPROVED.

Accordingly, let a Writ of Execution be immediately issued to effect the reinstatement of the complainants and for the payment of their respective backwages in the amount of FIVE MILLION FIFTY EIGHT THOUSAND TWO HUNDRED SIXTY FOUR PESOS AND 64/100 centavos (Php5,058,264.64) immediately upon receipt of this Order.

SO ORDERED.[9]

On 3 June 2010, petitioners filed a Memorandum of Appeal to the NLRC.[10] They argued that the computation used by the Fiscal Examiner and approved by the Labor Arbiter was without basis in fact and in law as respondents barely and sparingly worked, and thus, are not entitled to the computation of six months pay per year.

The Ruling of the NLRC

In a Decision dated 10 January 2011, the NLRC annulled and set aside the Order of the Labor Arbiter finding that the computation used was erroneous. The NLRC upheld the validity of the Work Summary of Workers and the payrolls submitted by petitioners, which showed that as *pakyaw* workers, respondents, except Romeo Frias, did not observe the regular eight hour work daily for the tasks given to them. Thus, the NLRC ruled that the straight computation based on six months per year or 13 days per month could not be applied because this formula, as adopted by this Court in *Philippine Tobacco Flue-Curing & Redrying Corporation v. NLRC,*[11] requires that the service was rendered for at least six months in a given year. Based on the voluminous records submitted by the petitioners, the NLRC found that not all of the respondents worked for at least six months in the last six years prior to their dismissal.

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[9] *Id*. at 172.

[10] *Id*. at 173-183.

[11] 360 Phil. 218 (1998).

As to the argument of respondents questioning the authenticity and completeness of the payrolls submitted, the NLRC held that the payrolls, being entries in the course of business, enjoy the presumption of regularity under the Rules of Court.

Moreover, the NLRC adopted the method used by petitioners to compute the amount of backwages due to the respondents, which is to get the average monthly income of respondents based on the payrolls for the twelve-month period immediately preceding their dismissal, taking into consideration the Wage Orders prevailing during the period. The NLRC further ruled that the computation should be made from July 2000 until the actual reinstatement of the respondents. The dispositive portion of the NLRC Decision reads:

> WHEREFORE, foregoing premises considered, the Order of the Labor Arbiter, dated 29 March 2010 is, hereby ANNULLED and SET ASIDE. The Labor Arbiter below is, hereby, ordered to cause the computation of the backwages of the complainants from July 19, 2000 up to the date of their reinstatement, the amount of which shall be determined, in conformity with the method of computation used by the respondents, by getting the average monthly income of the complainants based on the payrolls for the twelve month period immediately preceding their dismissal, taking into consideration the Wage Orders prevailing during the period covered.
>
> The proposed computation by the respondents shall be adjusted to include the period, which was not covered by the said computation, up to complainants' actual reinstatement. The workers who refused to be reinstated despite due notice shall be deemed to have waived their reinstatement, otherwise, it shall be construed as defiance to the order of the Court of Appeals directing their reinstatement, in which case the computation of backwages shall be limited up to the date immediately preceding the date when complainants refused reinstatement.
>
> SO ORDERED.[12]

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[12] *Rollo,* pp. 233-234.

The Motion for Reconsideration[13] filed by respondents was denied by the NLRC in a Resolution dated 21 March 2011. Thereafter, respondents filed a petition for *certiorari* under Rule 65 before the CA.[14]

The Ruling of the CA

In a Decision dated 16 April 2015, the CA reversed and set aside the Decision of the NLRC and reinstated the 29 March 2010 Order of the Labor Arbiter. The CA found that the NLRC erred in relying on the payrolls presented by petitioners as these payrolls were self-serving, unreliable, and unsubstantial evidence. The inconsistencies in the signatures of respondents were so questionable to the naked eye that the CA found that its genuineness is doubtful. Moreover, the signatures on the payrolls pertained to different or unknown persons who were not shown to be authorized. The CA also found the argument that respondents worked for only one hour a day was hardly believable and contrary to human experience. The CA sustained the factual findings of the Labor Arbiter and held:

> WHEREFORE, the Petition is GRANTED. The *Decision* of the NLRC dated 10 January 2011 in NLRC-V-000390-2004 (AE-06-10) is REVERSED and SET ASIDE. The Order of the Labor Arbiter dated 29 March 2010 is hereby REINSTATED.[15]

In a Resolution dated 9 November 2015, the CA denied the Motion for Partial Reconsideration[16] filed by petitioners.

Hence, this petition.

The Issues

In this petition, petitioners seek a reversal of the decision of the CA, and raises the following arguments:

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[13] *Id*. at 235-238.

[14] *Id*. at 103-135.

[15] *Id*. at 60.

[16] *Id*. at 61-69.

I. THE COURT OF APPEALS COMMITTED GRAVE ERROR IN DISREGARDING THE PAYROLLS SUBMITTED BY THE PETITIONERS AS BASIS FOR THE COMPU[T]ATION OF RESPONDENTS' BACKWAGES;

II. THE COURT OF APPEALS COMMITTED GRAVE ERROR IN APPLYING THE SOCIAL POLICY JUSTICE OF LABOR LAWS IN FAVOR OF THE RESPONDENTS; and

III. THE COURT OF APPEALS COMMITTED GRAVE ERROR IN REVERSING AND SETTING ASIDE THE DECISION OF THE NLRC WITHOUT ANY FINDING AND DISCUSSION THAT THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN ISSUING THE DECISION.[17]

The Ruling of the Court

The petition is without merit.

Appreciation of Payrolls

Petitioners allege that the CA gravely erred in disregarding the payrolls submitted by them. However, a careful reading of the CA Decision shows that contrary to the allegation that there was a disregard of the payrolls, it was actually the careful scrutiny of such payrolls which led the CA to conclude that the inconsistencies in the signatures of respondents were so questionable to the naked eye that there exists doubt on the genuineness of these payrolls.

While it is true that entries in the payrolls enjoy the presumption of regularity,[18] it is merely a *disputable* presumption that may be overthrown by clear and convincing evidence to the contrary.

Section 43 of Rule 143 of the Rules of Court provides:

Section 43. *Entries in the course of business.* — Entries made at, or near the time of transactions to which they refer, by a person deceased,

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

[18] Section 43, Rule 130, Rules of Court.

or unable to testify, who was in a position to know the facts therein stated, **may be received as *prima facie* evidence,** if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business or duty. (Emphasis supplied)

A presumption is merely an assumption of fact that the law requires to be made based on another fact or group of facts. It is an inference as to the existence of a fact that is not actually known, but arises from its usual connection with another fact, or a conjecture based on past experience as to what the ordinary human affairs take.[19] A presumption has the effect of shifting the burden of proof to the party who would be disadvantaged by a finding of the presumed fact.[20] Moreover, *prima facie* evidence is defined as evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue it supports, but which may be contradicted by other evidence.[21] Thus, *prima facie* evidence is not conclusive or absolute— evidence to the contrary may be presented by the party disputing the assumption of fact made by inference of law and the court may validly consider such.

In this case, we find that the CA did not err when it found that the inconsistencies in the signatures of respondents are so questionable to the naked eye that there exists doubt on their genuineness. Respondents vehemently deny and refute the payrolls submitted as being incomplete, irregular, and forged. They allege that they were never given copies of these payrolls. The allegation that their signatures were forged or signed by unauthorized persons can hardly be overlooked. The CA, after a painstaking scrutiny of the voluminous records, found inconsistencies in the signatures and even signatures of unknown or unauthorized persons. Indeed, the CA, after a careful review, found the payrolls submitted as self-serving, unreliable, and unsubstantial.

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[19] *Mabunga v. People,* 473 Phil. 555 (2004).

[20] *Id*.

[21] *Wa-acon v. People,* 539 Phil. 485 (2006).

Thus, while the payrolls in question enjoyed the presumption of regularity as entries made in the course of business, this presumption of regularity was effectively overthrown by evidence to the contrary.

Application of Policy of Social Justice in Labor Laws

Another argument that petitioners present is that the CA gravely erred in applying the policy of social justice in labor laws in favor of respondents. Petitioners argue that not one of the respondents rendered service for more than six months a year, and that 21 out of the 30 respondents did not even render service for one month in a year. We find these allegations baseless and unconvincing.

It has already been settled by this Court that respondents herein were regular seasonal workers. The CA Decision which was affirmed with finality by this Court held:

> Third. Anent their complaint for illegal dismissal. Although petitioners do not work throughout the year and their employment depends upon a specific season, like for instance, milling seasons; and for only a specific task like, weeding, plowing, fertilizing, to name a few, inasmuch as they have been performing services necessary and desirable to private respondents' business, **serve as badges of regular employment.**
>
> The fact that petitioners "do not work continuously for one whole year but **only for the duration a season does not detract from considering them regular employees.** It is well-entrenched in our jurisprudence that seasonal workers who are called from time to time and are temporarily laid off during off-season are not separated from service in said period, but are merely considered on leave until re-employed.[22] (Emphasis supplied)

The CA Decision considered all respondents regular seasonal workers, paid on a *pakyaw* basis, who were entitled to their backwages and reinstatement. Thus, the status of all the respondents has been settled with finality and this Court will no longer review the character of their employment. The only

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[22] *Rollo,* p. 147.

issue to be determined, therefore, was the amount of backwages to be paid to respondents.

A distinguishing characteristic of a task basis engagement or *pakyaw,* as opposed to straight-hour wage payment, is the non-consideration of the time spent in working.[23] In a payment by *pakyaw* basis, the emphasis is on the task itself, in the sense that payment is reckoned in terms of completion of the work, not in terms of the number of hours spent in the completion of the work.[24]

To determine the amount of backwages for piece-rate or *pakyaw* workers, there is a need to determine the varying degrees of production and days worked by each worker.[25] In *Velasco v. NLRC,*[26] the Court held that since the workers were paid on a piece-rate basis, there was a need for the NLRC to determine the varying degrees of production and the number of days worked by each worker:

> However, the Court recognizes that there may be some difficulty in ascertaining the proper amount of backwages, considering that the Tayags were apparently paid on a piece-rate basis. In *Labor Congress of the Philippines v. NLRC,* the Court was confronted with a situation wherein several workers paid on a piece-rate basis were entitled to back wages by reason of illegal dismissal. However, the Court noted that as the piece-rate workers had been paid by the piece, "there [was] a need to determine the varying degrees of production and days worked by each worker," and that "this issue is best left to the [NLRC]." We believe the same result should obtain in this case, and the NLRC be tasked to conduct the proper determination of the appropriate amount of backwages due to each of the Tayags.[27]

In the present case, the NLRC relied on the payrolls submitted by petitioners to determine the amount of backwages. This was,

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[23] *David v. Macasio,* 738 Phil. 293 (2014).

[24] *Id*.

[25] *Labor Congress of the Philippines v. NLRC,* 352 Phil. 1118 (1998).

[26] 525 Phil. 749 (2006).

[27] *Id*. at 763.

however, reversed by the CA, which agreed with the Labor Arbiter who determined that respondents have been working for at least six months. We agree with the CA and the Labor Arbiter. It has been recognized by jurisprudence that the season of sugar cane industries lasts for periods of six to eight months.[28] The payrolls submitted by the petitioners show that most of the respondents rendered service for less than one month per year. As earlier discussed, the submitted payrolls lacked credibility and their genuineness was doubtful. Moreover, as the presumption is that the season of sugar cane industries lasts for six to eight months, the burden was on the petitioners to prove otherwise. The evidence submitted by the petitioners failed to discharge this presumption.

Thus, when the CA adopted the method used by the Labor Arbiter which granted respondents' backwages based on the mandated rates provided by law for the period from 2000 to December 2009, and limited the computation of the amount to a period of six months of work per year, it was not baseless and arbitrary. This was based on applicable law and jurisprudence. Article 124 of the Labor Code of the Philippines provides, in part:

> Art. 124. *Standards/Criteria for minimum wage fixing.*
>
> x x x x x x x x x
>
> All workers paid by result, including those who are paid on piecework, takay, *pakyaw* or task basis, **shall receive not less than the prescribed wage rates per eight (8) hours of work a day, or a proportion thereof for working less than eight (8) hours.**
>
> x x x x x x x x x (Boldfacing and underscoring supplied)

Moreover, in *Pulp and Paper, Inc. v. NLRC,*[29] the Court held that in the absence of wage rates approved by the Secretary of Labor in accordance with the appropriate time and motion studies,

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[28] *Custodio v. The Workmen's Compensation Commission,* 176 Phil. 450 (1978).

[29] 344 Phil. 821 (1997).

the ordinary minimum wage rates are applicable to piece-rate workers. The Court held:

> In the absence of wage rates based on time and motion studies determined by the labor secretary or submitted by the employer to the labor secretary for his approval, wage rates of piece-rate workers must be based on the applicable daily minimum wage determined by the Regional Tripartite Wages and Productivity Commission. To ensure the payment of fair and reasonable wage rates, **Article 101 of the Labor Code provides that "the Secretary of Labor shall regulate the payment of wages by results, including *pakya[w]*, piecework and other non-time work."** The same statutory provision also states that the wage rates should be based, preferably, on time and motion studies, or those arrived at in consultation with representatives of workers' and employers' organizations. **In the absence of such prescribed wage rates for piece-rate workers, the ordinary minimum wage rates prescribed by the Regional Tripartite Wages and Productivity Boards should apply**.[30] (Boldfacing and underscoring supplied)

Similarly, petitioners herein failed to adduce any evidence on the agreed amount of payment for work based on *pakyaw* basis, and whether such amount was determined and approved by the Secretary of Labor. Thus, the Labor Arbiter was correct in applying the minimum wage rates based on the applicable Wage Orders to determine the amount of backwages due to respondents. Consequently, we find that the amount awarded to respondents was not based on social justice but rather was in accordance with law.

CA's Finding of Grave Abuse of Discretion

Finally, petitioners argue that the CA did not make a finding and discussion that the NLRC committed grave abuse of discretion amounting to lack of jurisdiction and therefore gravely erred in reversing and setting aside the NLRC Decision.

We disagree.

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[30] *Id*. at 830-831.

By finding merit in the petition filed by respondents, the CA obviously found that there was indeed grave abuse of discretion amounting to lack of jurisdiction committed by the NLRC. Grave abuse of discretion has been described as such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.[31] The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[32]

Under such definition, it must be proven that the CA found that the NLRC gravely abused its discretion in the appreciation of the evidence. We find that the CA precisely did so, when it found that the NLRC based its computation on the payrolls submitted by petitioners, which were self-serving, unreliable, and unsubstantial evidence. Through a painstaking scrutiny of the payrolls, the CA found that the inconsistent signatures of respondents were so questionable that their genuineness is doubtful. Thus, the CA found that the NLRC based its computation of backwages on pieces of evidence which were extremely doubtful; and thus, the NLRC gravely abused its discretion. While the decision of the CA did not explicitly state such words or use such phrase, a reading of the *ratio* and the discussion in the body of the decision would show that the CA found that the NLRC committed grave abuse of discretion.

Based on the foregoing, we find no reversible error on the part of the CA. Finally, we note that the Resolution of this Court affirming the finding of illegal dismissal of the respondents attained finality on 17 November 2009.[33] Thus, in accordance with *Nacar v. Gallery Frames*,[34] the monetary awards shall earn

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[31] *United Coconut Planters Bank v. Looyuko,* 560 Phil. 581, 591-592 (2007).

[32] *Id*.

[33] *Rollo,* p. 164.

[34] 716 Phil. 267 (2013).

legal interest of twelve percent (12%) *per annum* computed from 17 November 2009 until 30 June 2013, and legal interest of six percent (6%) *per annum* from 1 July 2013 until full satisfaction thereof.

WHEREFORE, the petition is **DENIED.** The assailed Decision dated 16 April 2015 and the Resolution dated 9 November 2015 of the Court of Appeals in CA-G.R. CEB-SP No. 06044, which reinstated the Order of the Labor Arbiter dated 29 March 2010, are **AFFIRMED WITH MODIFICATION** to include legal interest of twelve percent (12%) *per annum* on the total sum of the monetary awards computed from 17 November 2009 to 30 June 2013 and legal interest of six percent (6%) *per annum* from 1 July 2013 until full satisfaction thereof.

SO ORDERED.

Perlas-Bernabe, Caguioa, and *Hernando,*[*] *JJ.,* concur.

Reyes, J. Jr., J. on official leave.

SECOND DIVISION

[G.R. No. 227184. February 6, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BRYAN LABSAN *y* NALA and CLENIO DANTE *y* PEREZ,** *accused-appellants.*

SYLLABUS

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

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[*] Designated additional member per Special Order No. 2630 dated 18 December 2018.

THAT MUST BE FOLLOWED TO PRESERVE THE INTEGRITY OF THE CONFISCATED DRUGS AND/OR PARAPHERNALIA USED AS EVIDENCE.— In cases involving dangerous drugs, it is essential to establish with moral certainty the identity and integrity of the seized drug, for the same constitutes the very *corpus delicti* of the offense. Thus, in order to obviate any unnecessary doubt on its identity, it is imperative for the prosecution to show that the prohibited drug confiscated or recovered from the accused is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that required to make a finding of guilt. This resonates even more in buy-bust operations because by the very nature of anti-narcotics operations, the ease with which illegal drugs can be planted in hands of unsuspecting individuals and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. In this regard, Section 21, Article II of RA 9165, the applicable law at the time of the commission of the alleged crimes, outlines the procedure which the police officers must strictly follow to preserve the integrity of the confiscated drugs and/or paraphernalia used as evidence. Said provision requires that: (1) the seized items must be inventoried and photographed **immediately after seizure or confiscation;** (2) the physical inventory and photographing must be done **in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ),** all of whom shall be required to sign the copies of the inventory and be given a copy of the same; and (3) the seized drugs must be turned over to the Philippine National Police (PNP) Crime Laboratory within twenty-four (24) hours from confiscation for examination.

2. ID.; ID.; ID.; FAILURE OF THE APPREHENDING TEAM TO STRICTLY COMPLY WITH THE PROCEDURE DOES NOT *IPSO FACTO* RENDER THE SEIZURE AND CUSTODY OVER THE ITEMS VOID AND INVALID; THE PROSECUTION MUST PROVE THAT THERE IS A JUSTIFIABLE GROUND FOR NON-COMPLIANCE AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED; CASE AT BAR.— The Court, however, has clarified that under varied

field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible; and, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid. However, this is with the caveat that the prosecution still needs to satisfactorily prove that: **(a) there is justifiable ground for non-compliance; *and* (b) the integrity and evidentiary value of the seized items are properly preserved.** Therefore, contrary to the ruling of the courts *a quo,* it is not enough for the prosecution to merely establish a chain of custody through the testimonies of the apprehending officers. The prosecution must also provide a justifiable explanation why the police officers failed to comply with the mandatory requirements of Section 21. To be sure, the Court has repeatedly emphasized that the prosecution has the positive duty to explain the reasons behind the procedural lapses. Without any justifiable explanation, which must be proven as a fact, the evidence of the *corpus delicti* is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt.

3. ID.; ID.; ID.; PRESENCE OF THE REQUIRED WITNESSES AT THE TIME OF APPREHENSION AND INVENTORY IS MANDATORY TO ENSURE THE SOURCE, IDENTITY, AND INTEGRITY OF THE SEIZED DRUG; CASE AT BAR.— More importantly, there was no compliance with the three (3)-witness rule. **None** of the required witnesses was present at the place of apprehension and even at the police station where the inventory and photography of the seized drugs were made. As admitted by P03 Baillo, there was no other civilian at the police station except the accused-appellants when the inventory was made. They also did not invite any barangay official of Brgy. Nazareth to witness the inventory. The Court has repeatedly emphasized that the presence of the required witnesses at the time of the apprehension and inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. It is essential to secure the presence of the three (3) witnesses not only during inventory but more importantly at the time or near the place of the buy-bust arrest, because it is at this point when their presence is most needed to ensure the source, identity, and integrity of the

seized drug. Thus, if the buy-bust operation was legitimately conducted, the presence of the insulating witnesses would controvert the usual defense of frame-up, extortion and civilian harassment. Conversely, without the presence of any of the required witnesses at the time of apprehension or during inventory, as in this case, then, doubt exists whether there was actually a buy-bust operation as there are no unbiased witnesses to prove the source, identity and integrity of the *corpus delicti*.

4. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY IN PERFORMANCE OF OFFICIAL DUTIES CANNOT OVERCOME THE STRONGER PRESUMPTION OF INNOCENCE OF THE ACCUSED; LAPSES IN PROCEDURES UNDERTAKEN BY THE BUY-BUST TEAM ARE AFFIRMATIVE PROOFS OF IRREGULARITY; CASE AT BAR.— The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right. The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein. Here, the RTC and the CA erroneously relied on the presumption of regularity in the performance of official duty because the lapses in the procedures undertaken by the buy-bust team, which the courts *a quo* even acknowledged, are affirmative proofs of irregularity. x x x The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent. The Court has consistently directed the trial courts to apply this differentiation. **In this case, the presumption of regularity does not even arise because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165.** What further militates against according the police officers in this case the presumption of regularity is the fact that the 2010 PNP Manual on Anti-Illegal Drugs Operation and Investigation (2010 AIDSOTF Manual), which mandates strict compliance with Section 21, was also disregarded.

5. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF

2002); BUY-BUST OPERATION; A FORM OF ENTRAPMENT IN WHICH THE VIOLATOR IS CAUGHT *IN FLAGRANTE DELICTO* AND THE POLICE OFFICERS CONDUCTING THE OPERATION ARE NOT ONLY AUTHORIZED BUT DUTY-BOUND TO APPREHEND THE VIOLATOR AND TO SEARCH HIM FOR ANYTHING THAT MAY HAVE BEEN PART OF OR USED IN THE COMMISSION OF THE CRIME; CASE AT BAR.— The Court also cannot agree with the finding of both the RTC and the CA that a legitimate buy-bust operation was conducted in this case. A buy-bust operation is a form of entrapment in which the violator is caught *in flagrante delicto* and the police officers conducting the operation are not only authorized but duty-bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime. However, where there really was no buy-bust operation conducted, the elements of illegal sale of prohibited drugs cannot be proved and the indictment against the accused will have no leg to stand on. This is the situation in this case. What puts in doubt the conduct of the buy-bust operation is the police officers' **deliberate disregard** of the requirements of the law, which leads the Court to believe that the buy-bust against accused-appellants was a mere pretense, a sham.

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

CAGUIOA, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellants Bryan Labsan y Nala (Labsan) and Clenio Dante y Perez (Dante) (collectively, accused-appellants) assailing the Decision[2]

[1] See Notice of Appeal dated August 2, 2016; CA *rollo*, pp. 119-121.

[2] CA *rollo*, pp. 88-118. Penned by Associate Justice Rafael Antonio M. Santos, with Associate Justices Edgardo T. Lloren and Ruben Reynaldo G. Roxas concurring.

dated July 21, 2016 of the Court of Appeals, Twenty-Third Division, Cagayan de Oro City (CA), in CA-G.R. CR HC No. 01355-MIN, which affirmed the Judgment[3] dated October 14, 2014 of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 25, in Criminal Case Nos. 2012-948, 2012-949 and 2012-950, finding accused-appellants guilty beyond reasonable doubt of the crimes punished under Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

Three (3) Informations[5] were filed against accused-appellants, two of which are for Illegal Possession of Dangerous Drugs and one for Illegal Sale of Dangerous Drugs, before the RTC of Cagayan de Oro City. The Informations read as follows:

[Criminal Case No. 2012-948]

x x x x x x x x x

That on September 29, 2012, at more or less one thirty in the early dawn, at Nazareth, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, without lawful authority to sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, for a consideration of Two Hundred Pesos, Philippine Currency, (Php200.00), did then and there, willfully, unlawfully and criminally, sell and give away to a poseur-buyer, a white crystalline substance believed to be methamphetamine hydrochloride locally known as shabu, contained in a heat-sealed transparent cellophane sachet, which substance weighing 0.02 gram, after laboratory

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[3] *Id*. at 43-54. Penned by Presiding Judge Arthur L. Abundiente.

[4] AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES (2002).

[5] Records (Crim. Case No. 2012-948), pp. 4-5; records (Crim. Case No. 2012-949), pp. 4-5; records (Crim. Case No. 2012-950), pp. 1-2.

qualitative examination before the Philippine National Police Regional Crime Laboratory Office 10, tested positive for the presence of methamphetamine hydrochloride, a dangerous drug, with the accused knowing the substance to be dangerous drug.

Contrary to law.[6]

[Criminal Case No. 2012-949]

x x x x x x x x x

That on September 29, 2012, at more or less one thirty in the early dawn, at Nazareth, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess or use any dangerous drugs, did then and there, willfully, unlawfully and criminally have in his possession, control and custody, two (2) heat-sealed transparent plastic sachets, containing white crystalline substance believed to be dangerous drug locally known as shabu, with an aggregate weight of 0.06 gram, which substance tested positive for the presence of x x x methamphetamine hydrochloride, a dangerous drug locally known as shabu, after confirmatory test conducted by the Philippine National Police, Regional Crime Laboratory Office No. 10, Camp Evangelista, Patag, Cagayan de Oro City, with the said accused knowing the substance to be dangerous drug.

Contrary to law.[7]

[Criminal Case No. 2012-950]

x x x x x x x x x

That on September 29, 2012, at more or less one thirty in the early dawn, at Nazareth, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess or use any dangerous drugs, did then and there, willfully, unlawfully and criminally have in his possession, control and custody, one (1) heat-sealed transparent plastic sachet, containing white crystalline substance believed to be dangerous drug locally known as shabu, weighing 0.03 gram, which substance tested positive for the presence of x x x methamphetamine

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[6] *Id.* at 4.

[7] Records (Crim. Case No. 2012-949), p. 4.

hydrochloride, a dangerous drug locally known as shabu, after confirmatory test conducted by the Philippine National Police, Regional Crime Laboratory Office No. 10, Camp Evangelista, Patag, Cagayan de Oro City, with the said accused knowing the substance to be dangerous drug.

Contrary to law.[8]

When arraigned, accused-appellants individually pleaded not guilty to the offenses charged against them.[9]

Thereafter, joint trial on the merits of the three (3) criminal cases ensued. The prosecution presented four (4) witnesses, namely: Police Inspector Kinthur[10] Estaniel Tandog (PI Tandog), PO3 Jimmy Vicente (PO3 Vicente), PO3 Cyrus Baillo (PO3 Baillo), and SPO1 Joel Tarre (SPO1 Tarre).[11]

The RTC dispensed with the testimony of PI Tandog after the defense admitted to the following facts but subject to the stipulation that PI Tandog does not know the source of the specimens which he examined as well as the admissibility of the evidence:

1. That PI Estaniel Tandog is an expert witness being the forensic chemist of the PNP Crime Lab stationed at Camp Evangelista, Cagayan de Oro City;

2. That he received two letters request for the laboratory examination of the specimen attached thereto as well as for the drug examination of the accused.

3. That he conducted laboratory examination as requested and reduced his finding into writing denominated as Chemistry Report No. D-202-2012 and Chemistry Report No. DTCRIM 189 & 190-2012.

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[8] Records (Crim. Case No. 2012-950), p. 1.

[9] CA *rollo*, p. 92.

[10] Also spelled as "Kinhur" in some parts of the records.

[11] CA *rollo*, pp. 92-93.

4. That he brought with him the chemistry Reports and the specimen which he examined for marking and identification.[12]

The facts established by the prosecution from the testimonies of its witnesses and documentary evidence submitted before the RTC were summarized by the CA as follows:

In the early morning of 29 September 2012, while the police officers assigned at City Anti-Illegal Drugs Task Force (CAIDTF), Cagayan de Oro City Police Office led by PCI Cacdac were having their tour of duty at the night cafe in Divisoria, Cagayan de Oro City, a Confidential Informant (CI) arrived and informed PCI Cacdac that a certain "Opaw" and "Bryan" were selling illicit drugs at Barangay Nazareth, Cagayan de Oro City. A short briefing was thereafter conducted by the team together with the CI for a possible buy-bust operation.

After the briefing, the team, composed of PO3 Vicente, SPO1 Tarre, PO3 Daleon, SPO1 Tagam, PO3 Baillo and PO3 Aguala, proceeded to Barangay Nazareth. PCI Cacdac, PO3 Vicente, and PO3 Aguala rode a taxi in going thereat while the rest of the team used their service motorcycle in going to the target place. The team used ordinary marked money consisting of two (2) One Hundred Peso (₱100.00) bills with initials of "JPV" on it as buy-bust money.

Before the team arrived at the target area, the CI disembarked first from the taxi and approached the two (2) suspects at the side of the road. The CI and the suspects knew each other. PO3 Baillo likewise positioned himself at about 10-15 meters from where the CI transacted with the suspects. PO3 Baillo saw the actual transaction of the CI and the suspects as there was a light coming from the lamp post. He saw the CI give the ordinary marked money to "Opaw" while "Bryan" gave one (1) heat-sealed sachet plastic cellophane to the CI.

Immediately after the exchange, the CI removed his bull cap as the agreed pre-arranged signal to show that the transaction was already consummated. Hence, the buy-bust team rushed towards the suspects and the CI and introduced themselves to them and informed them of their constitutional rights. PO3 Vicente bodily searched the suspects and he recovered from "Bryan" two (2) sachets of suspected shabu. Likewise, PO3 Vicente recovered from "Opaw" one (1) sachet of

[12] *Id.* at 93.

suspected shabu, the two (2) ₱100.00 bills used as buy-bust money, and an improvised hand gun. Also, the sachet of suspected shabu subject of the buy-bust operation was turned over by the CI to PO3 Vicente. Then, the buy-bust team took pictures of the items recovered from the suspects at the area.

The suspects, who were later known as appellants Labsan and Dante, were then brought to the CAIDTF office for proper documentation. Upon their arrival thereat, PO3 Vicente turned over to SPO1 Tarre the seized items. SPO1 Tarre then marked the seized items with the following initials: "A-l, 09-29-12, 'BB' CAIDTF, BRAYAN/CLENIO", "A-2, 09-29-12, CAIDTF, BRAYAN", "A-3, 09-29-12, CAIDTF, BRAYAN", and "A-4, 09-29-12, CAIDTF, CLENIO". The markings were done in the presence of PO3 Vicente, the other members of the team, and also the accused-appellants.

Thereafter, SPO1 Tarre turned over the marked items together with the crime laboratory requests for the examination thereof to the PNP Crime Laboratory, and the living body of the two (2) appellants to PO3 Vicente and PO3 Baillo for drug testing.

The qualitative examination conducted on the specimens and urine sample taken from appellants Labsan and Dante gave positive result to the presence of methamphetamine hydrochloride or shabu.[13]

For the defense, Labsan and Dante were presented in court. Their testimonies are summarized as follows:

In the early dawn of 29 September 2012, appellant Labsan was sleeping in their house at Nazareth, Cagayan de Oro City when he was awakened by the barking of a dog outside. When he looked outside the house, he saw a multicab parked with appellant Dante at the driver's seat. Appellant Dante is the sweetheart of the cousin of appellant Labsan's live-in-partner. Appellant Dante was looking for his sweetheart at that time.

While appellants Labsan and Dante were conversing outside the house, a taxi stopped at the rear portion of the multicab and a person came out and approached them. Then, two (2) motor vehicles stopped in front of the multicab while another taxi stopped beside it. Armed men in civilian attire disembarked from the vehicles and poked their

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[13] *Id*. at 93-95.

guns at appellant Labsan. Appellants Labsan and Dante were then handcuffed and the armed men asked appellant Labsan where his house is.

Appellant Labsan pointed to the armed men his house and he and appellant Dante were brought inside the house. The armed men opened all the bedrooms as if they were looking for something, but they found nothing. [They then asked Dante and Labsan if it is true that the two of them are selling shabu in that area which they denied outright. Appellant Labsan protested his arrest asking what offense had he committed but he was told to shut up so that he and appellant Dante will not be harmed.[14]] The appellants were then brought outside the house and were later boarded in the multicab. Pictures were also taken of the appellants inside the house.

Appellants Labsan and Dante were brought by the armed men to Maharlika Detention Center. On their way to Maharlika, the armed men introduced themselves as policemen. x x x[15]

At the Maharlika, [appellant] Labsan spotted his cellphone and he pleaded to the policemen to give him his cellphone so that he could contact his father, but they denied his plea. [Appellant] Labsan was instead put inside the detention cell in the company of other detainees, while [appellant] Dante was taken somewhere by the police. Later[,] [appellant] Labsan was taken out from the cell and brought to the office.

At the office, the policemen told [appellants] [L]absan and Dante to just admit the allegations against them, but [appellant] Labsan refuse[d] telling the police that they have not committed any wrongdoings. The policemen x x x bargained with them asking to reveal someone who is engage[d] in dealing illegal drugs, but [appellants Labsan and Dante] told the police that they do not know of anyone engaged in illegal drugs. [Appellants] Labsan and Dante were then taken to the crime laboratory, and upon their return to the Maharlika, Baillo asked [appellant] Labsan of his relationship with a former police officer, and [appellant] Labsan revealed to the police that his father is retired police officer Captain Benito Labsan.

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[14] *Id*. at 48.

[15] *Id*. at 96.

x x x After he revealed the name of his father, Baillo discreetly revealed to him ([appellant] Labsan) that they ([appellant] Labsan and Baillo) are "igso" (god-brothers), and that Baillo had served under his ([appellant] Labsan['s]) father when the latter was still in active service. Baillo further told [appellant] Labsan that the latter should have revealed to him his relationship with retired officer Labsan much earlier.[16]

Ruling of the RTC

In its Judgment[17] dated October 14, 2014, the RTC found accused-appellants guilty beyond reasonable doubt for illegal sale and illegal possession of dangerous drugs, the dispositive portion of which reads:

WHEREFORE, premises considered, this Court hereby finds that:

1. In Criminal Case No. 2012-948, accused **BRYAN LABSAN y NALA and CLENIO DANTE y PEREZ are both GUILTY BEYOND REASONABLE DOUBT of the offense defined and penalized under Section 5, Article II of R.A. 9165 and each is hereby sentenced to the penalty of LIFE IMPRISONMENT and for each to pay a Fine in the amount of ₱500,000.00 without subsidiary imprisonment in case of non-payment of Fine;**

2. **In Criminal Case No. 2012-949, accused BRYAN LABSAN y NALA is GUILTY BEYOND REASONABLE DOUBT** of the crime defined and penalized under Section 11, Article II of R.A. 9165, and hereby sentences him to a penalty of **IMPRISONMENT ranging from twelve [12] years and one [1] day to thirteen [13] years and to pay a Fine in the amount of Three Hundred Thousand Pesos [₱300,000.00] without subsidiary imprisonment in case of non-payment of Fine.**

3. **In Criminal Case No. 2012-950, accused CLENIO DANTE y PEREZ is GUILTY BEYOND REASONABLE DOUBT** of the crime defined and penalized under Section 11, Article II of R.A. 9165, and hereby sentences him to a penalty of

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[16] *Id*. at 48.

[17] *Id*. at 43-54.

IMPRISONMENT ranging from twelve [12] years and one [1] day to thirteen [13] years and to pay a Fine in the amount of Three Hundred Thousand Pesos [₱300,000.00] without subsidiary imprisonment in case of non-payment of Fine.

x x x x x x x x x

SO ORDERED.[18]

The RTC held that based on the unequivocal testimonies of the prosecution witnesses, it is convinced of the occurrence of the buy-bust operation, and that accused-appellants were apprehended as a consequence thereof.[19] Thus, the two (2) sachets of *shabu* which were seized from Labsan and the sachet of *shabu* taken from Dante are admissible against them as they were the result of a valid search as a consequence of a valid warrantless arrest.[20] The RTC further held that while the police officers merely paid lip service to the procedural requirements under Section 21 of RA 9165, they were able to preserve the integrity and probative value of the drugs seized from both accused-appellants.[21]

Moreover, the RTC found no merit in accused-appellants' defense of denial, which cannot overturn the relative weight and probative value of the affirmative assertions of the prosecution.[22] The RTC explained that in cases involving the Dangerous Drugs Act, credence is given to the prosecution witnesses who are police officers for they are presumed to have performed their duties in regular manner, unless there is convincing evidence that they are not properly performing their duty or they were motivated by bad faith, which according to the RTC is absent in this case.[23]

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[18] *Id*. at 53.

[19] *Id*. at 51.

[20] *Id*.

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

[22] *Id*. at 52.

[23] *Id*.

Ruling of the CA

On appeal, the CA, in the assailed Decision,[24] sustained accused-appellants' conviction. The CA agreed with the RTC that accused-appellants were legally arrested in a legitimate buy-bust operation and the items recovered from them are admissible in evidence.[25] The CA further held that the failure of the police officers to strictly comply with the provisions of Section 21 of RA 9165 is of no moment since the integrity and evidentiary value of the drugs seized from accused-appellants were preserved.[26]

Hence, the instant appeal.

Issue

Whether the CA erred in sustaining accused-appellants' conviction for violation of Sections 5 and 11, Article II of RA 9165.

The Court's Ruling

The appeal is meritorious. Accused-appellants Labsan and Dante accordingly acquitted.

In cases involving dangerous drugs, it is essential to establish with moral certainty the identity and integrity of the seized drug, for the same constitutes the very *corpus delicti* of the offense.[27] Thus, in order to obviate any unnecessary doubt on its identity, it is imperative for the prosecution to show that the prohibited drug confiscated or recovered from the accused is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that required to make a finding of guilt.[28]

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[24] *Id*. at 88-118.

[25] See *id*. at 98-104.

[26] See *id*. at 105-115.

[27] *People v. De Leon*, G.R. No. 214472, November 28, 2018, p. 6.

[28] *People v. Reyes*, G.R. No. 225736, October 15, 2018, p. 7.

This resonates even more in buy-bust operations because by the very nature of anti-narcotics operations, the ease with which illegal drugs can be planted in hands of unsuspecting individuals and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great.[29] In this regard, Section 21,[30] Article II of RA 9165, the applicable law at the time of the commission of the alleged crimes, outlines the procedure which the police officers must strictly follow to preserve the integrity of the confiscated drugs and/or paraphernalia used as evidence. Said provision requires that: (1) the seized items must be inventoried and photographed **immediately after seizure or confiscation**; (2) the physical inventory and photographing must be done **in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ)**, all of whom shall be required to sign the copies of the inventory and be given a copy of the same; and (3) the seized drugs must be turned over to the Philippine National Police (PNP) Crime Laboratory within twenty-four (24) hours from confiscation for examination.[31]

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[29] *People v. Fatallo*, G.R. No. 218805, November 7, 2018, p. 6, citing *People v. Saragena*, G.R. No. 210677, August 23, 2017, 837 SCRA 529, 543-544.

[30] The said Section reads as follows:

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

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

[31] See RA 9165, Art. II, Sec. 21(1) and (2).

In *People v. Supat*,[32] the Court explained that the phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. This also means that the three (3) required witnesses should already be physically present at the time of apprehension — **a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity**.[33] In other words, a buy-bust team normally has enough time to gather and bring with them the said witnesses.[34]

The Court, however, has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible; and, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid.[35] However, this is with the caveat that the prosecution still needs to satisfactorily prove that: **(a) there is justifiable ground for non-compliance; *and* (b) the integrity and evidentiary value of the seized items are properly preserved**.[36]

Therefore, contrary to the ruling of the courts *a quo*, it is not enough for the prosecution to merely establish a chain of custody through the testimonies of the apprehending officers. The prosecution must also provide a justifiable explanation why the police officers failed to comply with the mandatory

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[32] G.R. No. 217027, June 6, 2018.

[33] *Id*. at 9-10.

[34] *People v. Casco*, G.R. No. 212819, November 28, 2018, p. 6.

[35] *Id*.

[36] *Id*.

requirements of Section 21. To be sure, the Court has repeatedly emphasized that the prosecution has the positive duty to explain the reasons behind the procedural lapses.[37] Without any justifiable explanation, which must be proven as a fact,[38] the evidence of the *corpus delicti* is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt.[39]

The police officers failed to comply with the mandatory requirements under Section 21.

In this case, the Court finds that the police officers utterly failed to comply with the mandatory requirements of Section 21, which put into question the identity and evidentiary value of the items purportedly seized from accused-appellants.

To start with, the illegal drugs seized from accused-appellants were not marked immediately upon seizure and confiscation. Records show that three (3) plastic sachets were recovered from accused-appellants: one (1) sachet was bought by the confidential informant and two (2) sachets were confiscated by PO3 Vicente; but the markings were made not in the place of seizure and not by the police officer who recovered the seized drugs.[40] The person who marked the seized drugs, SPO1 Tarre, was not even part of the buy-bust team who conducted the operation.[41]

In *People v. De Leon*,[42] the Court reiterated that:

x x x "Marking" means the placing **by the apprehending officer or the poseur-buyer** of his/her initials and signature on the items seized. Marking after seizure is the starting point in the custodial

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[37] *Id*., citing *People v. Almorfe*, 631 Phil. 51, 60 (2010).

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

[39] *People v. Gonzales*, 708 Phil. 121, 123 (2013).

[40] See TSN, April 30, 2013, pp. 14-15.

[41] See TSN, August 20, 2013, pp. 3-4.

[42] *Supra* note 27.

link; hence, **it is vital that the seized contraband be immediately marked** because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, **thus, preventing switching, planting or contamination of evidence.**

It must be noted that marking is not found in R.A. No. 9165 and is different from the inventory-taking and photography under Section 21 of the said law. Long before Congress passed R.A. No. 9165, however, **this Court had consistently held that failure of the authorities to immediately mark the seized drugs would cast reasonable doubt on the authenticity of the *corpus delicti***.[43] (Additional emphasis and underscoring supplied)

More importantly, there was no compliance with the three (3)-witness rule. **None** of the required witnesses was present at the place of apprehension and even at the police station where the inventory and photography of the seized drugs were made. As admitted by PO3 Baillo, there was no other civilian at the police station except the accused-appellants when the inventory was made.[44] They also did not invite any barangay official of Brgy. Nazareth to witness the inventory.[45]

The Court has repeatedly emphasized that the presence of the required witnesses at the time of the apprehension and inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. It is essential to secure the presence of the three (3) witnesses not only during inventory but more importantly at the time or near the place of the buy-bust arrest, because it is at this point when their presence is most needed to ensure the source, identity, and integrity of the seized drug.[46] Thus, if the buy-bust operation

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[43] *Id*. at 8, citing *People v. Dahil*, 750 Phil. 212, 232 (2015).

[44] TSN, May 7, 2013, p. 14.

[45] *Id*.

[46] *People v. Callejo*, G.R. No. 227427, June 6, 2018, p. 13.

was legitimately conducted, the presence of the insulating witnesses would controvert the usual defense of frame-up, extortion and civilian harassment. Conversely, without the presence of any of the required witnesses at the time of apprehension or during inventory, as in this case, then, doubt exists whether there was actually a buy-bust operation as there are no unbiased witnesses to prove the source, identity and integrity of the *corpus delicti*.[47]

Indeed, Section 21, Article II of **RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects**.[48] For however noble the purpose or necessary the exigencies of the campaign against illegal drugs may be, it is still a governmental action that must always be executed within the boundaries of law.[49]

Moreover, records do not show that the prosecution was able to establish a justifiable ground as to why the police officers were not able to secure the presence of the witnesses. In *People v. Gamboa*,[50] the Court held that the prosecution must show that earnest efforts were employed in contacting the witnesses required under the law. Considering that buy-bust is a planned operation, "police officers are x x x given sufficient time x x x to prepare x x x and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21, Article II of RA 9165."[51] They are therefore compelled "not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply

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[47] See *People v. Casco*, *supra* note 34, at 7.

[48] *Gamboa v. People*, 799 Phil. 584, 597 (2016), citing *People v. Umipang*, 686 Phil. 1024, 1038-1039 (2012).

[49] *Id*. at 597.

[50] G.R. No. 233702, June 20, 2018.

[51] *Id*. at 9.

with the mandated procedure, and that under the given circumstance, their actions were reasonable."[52]

In this case, PO3 Vicente admitted that despite knowledge of the mandatory requirements of Section 21, the buy-bust team did not exert any effort to secure the presence of the required witnesses, *viz.*:

Q This Exhibit "E" [referring to the Inventory], this was prepared by Officer Tarre?

A Yes, Sir.

Q But the arresting officer indicated here was PO3 Vicente?

A Yes, Sir.

Q You have read this one, is that correct?

A Yes, Sir.

Q And despite having read this document you did not affix your signature in this document, is that correct?

A I forgot, Sir.

Q Your office exactly prepared this document and Inventory Receipt because this is required by law, is that correct?

A Yes, Sir.

Q **But despite knowing that this is required by law, you did not initiate or try to secure the witnesses to witness the making of this Inventory particularly the representative from the media or the barangay official of Nazareth, is that correct?**

A **Yes, Sir.**[53] (Emphasis supplied)

The Court emphasizes that while it is laudable that the drug enforcement agencies exert relentless efforts in eradicating the proliferation of prohibited drugs in the country, they must always be advised to do so within the bounds of the law.[54] Without the

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[52] *Id*.

[53] TSN, April 30, 2013, pp. 15-16.

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

insulating presence of the three (3) witnesses during the seizure, marking and physical inventory of the sachets of *shabu*, the evils of switching, "planting" or contamination of the evidence again rear their ugly heads as to negate the integrity and credibility of the seized drugs that were evidence herein of the *corpus delicti*.[55] Thus, accused-appellants must perforce be acquitted.

The presumption of innocence of the accused vis-à-vis the presumption of regularity in performance of official duties.

The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right.[56] The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein.[57]

Here, the RTC and the CA erroneously relied on the presumption of regularity in the performance of official duty because the lapses in the procedures undertaken by the buy-bust team, which the courts *a quo* even acknowledged, are affirmative proofs of irregularity.[58] In *People v. Enriquez*,[59] the Court held that "any divergence from the prescribed procedure must be justified and should not affect the integrity and evidentiary value of the confiscated contraband. Absent any of the said conditions, the **non-compliance is an irregularity**, a red flag, that casts reasonable doubt on the identity of the *corpus delicti*."[60]

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[55] See *People v. Tomawis*, G.R. No. 228890, April 18, 2018, p. 11, citing *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[56] 1987 CONSTITUTION, Art. III, Sec. 14(2). "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

[57] *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

[58] See *People v. Mendoza*, *supra* note 55, at 770.

[59] 718 Phil. 352 (2013).

[60] *Id*. at 366. Emphasis supplied.

The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.[61] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[62] The Court has consistently directed the trial courts to apply this differentiation.[63]

In this case, the presumption of regularity does not even arise because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165. What further militates against according the police officers in this case the presumption of regularity is the fact that the 2010 PNP Manual on Anti-Illegal Drugs Operation and Investigation[64] (2010 AIDSOTF Manual), which mandates strict compliance with Section 21, was also disregarded. The 2010 AIDSOTF Manual echoes the requirement of marking at the place of seizure, photography of the seized items upon discovery, the presence of the required witnesses during inventory and the justifiable explanation for non-observance, to wit:

Section 13. Handling, Custody and Disposition of Drug Evidence

a. In the handling, custody and disposition of the evidence, the provision of Section 21, RA 9165 and its IRR shall be strictly observed.

b. Photographs of the pieces of evidence must be taken upon discovery without moving or altering its position in the place where it is situated, kept or hidden, including the process of recording the inventory and the weighing of dangerous drugs, and if possible under existing conditions, with the registered weight of the evidence on the scale focused by the camera, in the presence of persons required, as provided under Section 21, Art II, RA 9165.

c. The seizing officer must mark the evidence with his initials indicating therein the date, time and place where the evidence was

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[61] *People v. Mendoza*, *supra* note 55, at 770.

[62] See *People v. Catalan*, 699 Phil. 603, 621 (2012).

[63] *People v. Callejo*, *supra* note 46, at 20.

[64] Pursuant to National Police Commission Resolution No. 2010-094, February 26, 2010.

found and seized. The seizing officer shall secure and preserve the evidence in a suitable evidence bag or in an appropriate container for further laboratory examinations.

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A - Drug Evidence

a. Upon seizure or confiscation of the dangerous drugs or controlled precursors and/or essential chemicals (CPECs), laboratory equipment, apparatus and paraphernalia, the operating unit's seizing officer/ inventory officer must conduct the physical inventory, markings and photograph the same in the place of operation in the presence of:

a. The suspect/s or the person/s from whom such items were confiscated and/or seized or his/her representative or counsel.

b. A representative from the media.

c. A representative from the Department of Justice; and

d. Any elected public official who shall affix their signatures and who shall be given copies of the inventory.

x x x x x x x x x

d. If the said procedures in the inventory, markings and taking of photographs of the seized items were not observed, (Section 21, RA 9165), the law enforcers must present an explanation to justify non-observance of prescribed procedures and "must prove that the integrity and evidentiary value of the seized items are not tainted."[65]

All told, the prosecution failed to prove the *corpus delicti* of the offenses of sale and possession of illegal drugs due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody, and handling of the seized drugs. In other words, the prosecution was not able to overcome the presumption of innocence of accused-appellants.

The buy-bust operation was merely fabricated.

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[65] 2010 AIDSOTF Manual, Rule II, Sec. 13.

The Court also cannot agree with the finding of both the RTC and the CA that a legitimate buy-bust operation was conducted in this case. A buy-bust operation is a form of entrapment in which the violator is caught *in flagrante delicto* and the police officers conducting the operation are not only authorized but duty-bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime.[66] However, where there really was no buy-bust operation conducted, the elements of illegal sale of prohibited drugs cannot be proved and the indictment against the accused will have no leg to stand on.[67]

This is the situation in this case.

What puts in doubt the conduct of the buy-bust operation is the police officers' **deliberate disregard** of the requirements of the law, which leads the Court to believe that the buy-bust against accused-appellants was a mere pretense, a sham. It bears to reiterate that none of the required witnesses was present at the time the alleged drugs were seized from accused-appellants; hence, there was no unbiased witness to prove the veracity of the events that transpired on the day of the incident or whether a legitimate buy-bust operation actually took place. Moreover, the police officers unjustifiably failed to mark the seized drugs at the place of arrest and to inventory and photograph the same in the presence of the witnesses which, again, are required under the law to prevent planting, switching and contamination of evidence. These circumstances lend credence to accused-appellants' claim that they were arrested by armed men and brought in a detention center without any clue on what offense they have committed; that they were told by the police officers to admit to selling *shabu* or reveal someone who was engaged in dealing illegal drugs; and when they denied selling *shabu* and told the police officers that they did not know anyone engaged in illegal drugs, they were then brought to the crime laboratory

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[66] *People v. Mateo*, 582 Phil. 390, 410 (2008), citing *People v. Ong*, 476 Phil. 553, 571 (2004) and *People v. Juatan*, 329 Phil. 331, 337-338 (1996).

[67] *People v. De la Cruz*, 666 Phil. 593, 605 (2011).

for examination; and charges for illegal sale and possession of dangerous drugs were filed against them.[68]

Indeed, the Court is not unaware that, in some instances, law enforcers resort to the practice of planting evidence to extract information or even to harass civilians.[69] This is despicable. Thus, the Court reminds the trial courts to exercise extra vigilance in trying drug cases; and directs the PNP to conduct an investigation on this incident and other similar cases, lest an innocent person is made to suffer the unusually severe penalties for drug offenses.

As a final note, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended, and its IRR, which is fundamental in preserving the integrity and evidentiary value of the *corpus delicti*. **To the mind of the Court, the procedure outlined in Section 21 is straightforward and easy to comply with.** In the presentation of evidence to prove compliance therewith, the prosecutors are enjoined to recognize any deviation from the prescribed procedure and provide the explanation therefor as dictated by available evidence. Compliance with Section 21 being integral to every conviction, the appellate court, this Court included, is at liberty to review the records of the case to satisfy itself that the required proof has been adduced by the prosecution whether the accused has raised, before the trial or appellate court, any issue of non-compliance. If deviations are observed and no justifiable reasons are provided, the conviction must be overturned, and the innocence of the accused affirmed.[70]

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated July 21, 2016 of the Court of Appeals, Twenty-Third Division, Cagayan de Oro City in CA-

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[68] See CA *rollo*, pp. 85-87.

[69] *People v. Daria, Jr.*, 615 Phil. 744, 767 (2009).

[70] *People v. Otico*, G.R. No. 231133, June 6, 2018, p. 23, citing *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 10.

G.R. CR HC No. 01355-MIN is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants BRYAN LABSAN *y* NALA and CLENIO DANTE *y* PEREZ are **ACQUITTED** of the crimes charged on the ground of reasonable doubt, and are **ORDERED IMMEDIATELY RELEASED** from detention unless they are being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be sent to the Superintendent of the Davao Prison and Penal Farm, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken. A copy shall also be furnished to the Director General of the Philippine National Police for his information.

Further, the National Police Commission is hereby **DIRECTED** to **CONDUCT AN INVESTIGATION** on the police officers involved in the buy-bust operation conducted in this case.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe,* and *Hernando,*[*] *JJ.*, concur.

Reyes, J. Jr., J., on wellness leave.

SECOND DIVISION

[G.R. No. 228881. February 6, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DONDON GUERRERO *y* ELING,** *accused-appellant.*

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[*] Designated additional Member per Special Order No. 2630 dated December 18, 2018.

SYLLABUS

1. CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; THE PROSECUTION MUST PROVE, BEYOND REASONABLE DOUBT, THAT THE SUBSTANCE SEIZED FROM THE ACCUSED IS EXACTLY THE SAME SUBSTANCE OFFERED IN COURT AS PROOF OF THE CRIME.— Guerrero was charged with illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of RA 9165. For a successful prosecution for the crime of illegal sale of drugs, the following must be proven: (a) the identities of the buyer, seller, object, and consideration; and (b) the delivery of the thing sold and the payment for it. The confiscated drug constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction. It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty. The prosecution must prove, beyond reasonable doubt, that the substance seized from the accused is exactly the same substance offered in court as proof of the crime. Each link to the chain of custody must be accounted for.

2. ID.; ID.; SECTION 21 ARTICLE II THEREOF AND ITS IMPLEMENTING RULES AND REGULATIONS; PROCEDURES TO BE FOLLOWED BY THE POLICE OPERATIVES TO MAINTAIN THE INTEGRITY OF THE CONFISCATED DRUGS USED AS EVIDENCE; MUST BE STRICTLY COMPLIED WITH.— This resonates even more in buy-bust operations because "by the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great." Thus, while it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors, the law nevertheless also requires **strict** compliance with procedures laid down by it to ensure that rights are safeguarded. In this connection, Section 21, Article II of RA 9165 and its Implementing Rules and

Regulations (IRR), the applicable law at the time of the commission of the alleged crime, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires: (1) that the seized items be inventoried and photographed immediately after seizure or confiscation; (2) that the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof; and (3) that such conduct of the physical inventory and photograph shall be done at the (a) place where the search warrant is served; (b) nearest police station; or (c) nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure.

3. **ID.; ID.; ID.; PHYSICAL INVENTORY AND PHOTOGRAPHING OF THE SEIZED ITEMS MUST BE MADE IMMEDIATELY AFTER, OR AT THE PLACE OF APPREHENSION, EXCEPT WHEN THE SAME IS NOT PRACTICABLE THAT THE INVENTORY AND PHOTOGRAPHING MAY BE DONE AS SOON AS THE BUY-BUST TEAM REACHES THE NEAREST POLICE STATION OR THE NEAREST OFFICE OF THE APPREHENDING OFFICER/TEAM.—** Section 21 of RA 9165 requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation**. The said inventory must be done **in the presence of the aforementioned required witnesses**, all of whom shall be required to sign the copies of the inventory and be given a copy thereof. The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the IRR of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. In this connection, this also means that the three required witnesses should already be physically present at the time of apprehension — **a requirement that can easily be complied with by the buy-**

bust team considering that the buy-bust operation is, by its nature, a planned activity. Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses. Moreover, while the IRR allows alternative places for the conduct of the inventory and photographing of the seized drugs, the requirement of having the three required witnesses to be physically present at the time or near the place of apprehension is not dispensed with. The reason is simple: it is at the time of arrest — or at the time of the drugs' "seizure and confiscation" — that the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.

4. ID.; ID.; ID.; ID.; THE PHYSICAL INVENTORY AND PHOTOGRAPHING OF THE SEIZED ITEMS MUST BE MADE BEFORE THE THREE REQUIRED WITNESSES; RATIONALE FOR THE REQUIREMENT; NOT COMPLIED WITH.— In the present case, the records clearly show that the physical inventory and photographing were not made before the three required witnesses. x x x. It bears emphasis that the presence of the required witnesses at the time of the inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*, the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows: The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*, without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.

5. ID.; ID.; ID.; ID.; THE FAILURE OF THE APPREHENDING TEAM TO STRICTLY COMPLY WITH THE MANDATORY PROCEDURE DOES NOT *IPSO FACTO*

RENDER THE SEIZURE AND CUSTODY OVER THE ITEMS VOID AND INVALID, PROVIDED THE PROSECUTIONS SATISFACTORILY PROVE THAT THERE IS JUSTIFIABLE GROUND FOR NON-COMPLIANCE, AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.— While there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. The Court has **repeatedly** emphasized that the prosecution should explain the reasons behind the procedural lapses.

6. ID.; ID.; ID.; ID.; JUSTIFIABLE GROUNDS FOR NON-COMPLIANCE WITH THE THREE-WITNESS RULE.— As the Court held in *People v. De Guzman*, "[t]he justifiable ground for non-compliance must be proven as a fact. The court cannot presume what these grounds are or that they even exist." The prosecution has the burden of (1) proving their compliance with Section 21, RA 9165, and (2) providing a sufficient explanation in case of non-compliance. As the Court *en banc* unanimously held in the recent case of *People v. Lim*, It must be **alleged** and **proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as: (1) **their attendance was impossible because the place of arrest was a remote area;** (2) **their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf;** (3) **the elected official themselves were involved in the punishable acts sought to be apprehended;** (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention;** or (5) **time constraints and urgency of the anti-drug operations, which often rely on tips of**

confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.

7. ID.; ID.; ID.; ID.; BREACHES OF THE MANDATORY PROCEDURE COMMITTED BY THE POLICE OFFICERS, LEFT UNACKNOWLEDGED AND UNEXPLAINED BY THE STATE, MILITATE AGAINST A FINDING OF GUILT BEYOND REASONABLE DOUBT AGAINST THE ACCUSED AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE *CORPUS DELICTI* HAD BEEN COMPROMISED.— [T]he prosecution neither recognized, much less tried to justify, its deviation from the procedure contained in Section 21, RA 9165. The prosecution did not offer any plausible explanation as to why they did not contact the representative from the DOJ. Breaches of the procedure outlined in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised. As the Court explained in *People v. Reyes*, to warrant the application of this saving mechanism, the prosecution must recognize the lapse or lapses, and justify or explain them, and failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti*.

8. ID.; ID.; ID.; PATENT PROCEDURAL LAPSES COMMITTED BY THE BUY-BUST TEAM CREATE REASONABLE DOUBT AS TO THE IDENTITY AND INTEGRITY OF THE DRUG AND, CONSEQUENTLY, REASONABLE DOUBT AS TO THE GUILT OF THE ACCUSED.— The Court is not unaware of the drug menace that besets the country and the direct link of certain crimes to drug abuse. The unrelenting drive of our law enforcers against trafficking and use of illegal drugs and other substance is indeed commendable. Those who engage in the illicit trade of dangerous drugs and prey on the misguided members of the society, especially the susceptible youth, must be caught and properly prosecuted. Nonetheless, the Court acknowledges that this campaign against drug addiction is highly susceptible to police abuse and that there have been cases of false arrests and wrongful incriminations. The Court has recognized, in a number of cases,

that law enforcers resort to the practice of planting evidence to extract information from or even to harass civilians. Thus, to the Court's mind, the allegation of Guerrero that he was a victim of *palit-ulo*, has the ring of truth to it. Nevertheless, even if the Court were to believe the version of the prosecution, the buy-bust team committed patent procedural lapses which thus created reasonable doubt as to the identity and integrity of the drug and, consequently, reasonable doubt as to the guilt of Guerrero.

9. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; PROOF BEYOND REASONABLE DOUBT; A CONVICTION CAN ONLY BE OBTAINED AFTER THE PROSECUTION DISCHARGES ITS CONSTITUTIONAL BURDEN TO PROVE GUILT BEYOND REASONABLE DOUBT. OTHERWISE, THE COURT IS DUTY-BOUND TO UPHOLD THE CONSTITUTIONAL RIGHT OF PRESUMPTION OF INNOCENCE .— The overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt. In order to convict an accused, the circumstances of the case must exclude all and every hypothesis consistent with his innocence. What is required is that there be proof beyond reasonable doubt that the crime was committed and that the accused committed the crime. It is only when the conscience is satisfied that the crime has indeed been committed by the person on trial that the judgment will be for conviction. In light of this, Guerrero must perforce be acquitted. x x x. [T]he Court reiterates that it is committed to assist the government in its campaign against illegal drugs; however, a conviction can only be obtained after the prosecution discharges its constitutional burden to prove guilt beyond reasonable doubt. Otherwise, this Court is duty-bound to uphold the constitutional right of presumption of innocence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is an ordinary appeal[1] filed by Dondon Guerrero y Eling (Guerrero) assailing the Decision[2] dated May 27, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07423, which affirmed the Decision[3] dated March 10, 2015 of the Regional Trial Court of La Union, San Fernando City, Branch 29 (RTC) in Criminal Case No. 9984, finding Guerrero guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[4] otherwise known as "The Comprehensive Dangerous Drugs Act of 2002," as amended.

The Facts

Guerrero was charged with violation of Section 5, Article II of RA 9165. The accusatory portion of the Information[5] reads as follows:

> That on or about the 31st day of August, 2013, in the City of San Fernando, (La Union), Philippines, and within the jurisdiction of this Honorable Court, the above named accused, conspiring, confederating, and mutually helping one another did then and there willfully, unlawfully, and feloniously for and in consideration of a sum of money in the amount of five thousand pesos (₱5,000.00), Philippine currency, sell and deliver methamphetamine hydrochloride, commonly known as "shabu", a dangerous drug, with total weight

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[1] See Notice of Appeal dated June 21, 2016, *rollo*, pp. 21-23.

[2] *Rollo*, pp. 2-20. Penned by Associate Justice Magdangal M. De Leon with Associate Justices Jhosep Y. Lopez and Henri Jean Paul B. Inting, concurring.

[3] CA *rollo*, pp. 65-71. Penned by Presiding Judge Asuncion F. Mandia.

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

[5] Records, p. 1.

of .1953 gram to SPO1 Arnulfo Rosario who posed as [a] buyer thereof using five pieces of one-thousand peso bill boodle money with serial numbers TE964331, TE964331, JU147643, JU147643, and NP429483, without first securing the necessary permit, license or prescription from the proper government agency or authority. CONTRARY TO LAW.[6]

Upon arraignment, Guerrero pleaded not guilty to the crime charged. Thereafter, trial ensued. The prosecution's version, summarized by the CA is as follows:

The prosecution called on Maximiano Valentin as its first witness. However, his testimony was dispensed with after the defense admitted the facts he will be testifying on. Both parties stipulated that (1) he is the resident Chemist of PDEA Region 1; (2) the Chemistry Report No. PDEARO1-DD013-0022 exists and was duly executed; and (3) the specimen subject of the examination conducted by the witness is the same specimen turned over to him by SPO1 Arnulfo Rosario.

The circumstances of how the buy bust operation was conducted were culled from the testimonies of SPO1 Arnulfo Rosario and SPO1 Grant Bitabit who were members of the Regional Anti-Illegal Drug Special Operations Task Group (RAIDSOTG). Their testimonies show that on August 31, 2013, at about 4:30 p.m., a confidential informant ("CI") came to the office of RAIDSOTG Region I and reported to SPO1 Rosario that appellant and Marian Dagium were looking for buyers of shabu. SPO1 Rosario reported this to PO3 Allan Abang, their team leader, who in turn ordered SPO1 Rosario to transact with appellant and Marian Dagium. Using the CI's cellphone, SPO1 Rosario contacted appellant and informed him that he was interested in buying Php5,000.00 worth of shabu. They agreed to meet near the RITZ Apartelle.

Thereafter, PO3 Abang coordinated with the PDEA. Members of the PDEA and PNP San Fernando City arrived at the office of RAIDSOTG for a briefing on a joint operation against appellant and Marian Dagium. In this meeting, SPO1 Rosario was designated as the poseur buyer, SPO1 Bitabit as the arresting officer while the rest of the team were to serve as back up. SPO1 Rosario prepared the buy-bust money consisting of five pieces of Phpl,000.00 bills marked with his initials "AMR[.]"

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[6] *Id*.

Around 5:30 to 6:00 p.m., the team proceeded to the RITZ Apartelle in Canaoay, San Fernando City to familiarize themselves with the place and returned to the RAIDSOTG office thereafter. The CI then contacted appellant again to confirm the time of their meeting. Appellant informed the CI that he's already on his way and so the back-up team went to RITZ Apartelle in a Toyota Revo, positioning themselves on the side of the road in front of the apartelle. On the other hand, SPO1 Rosario and the CI rode a tricycle to the apartelle at around 12:20 am of September 1, 2013 and positioned themselves in front of RITZ Apartelle.

The CI informed appellant that they were already in front of the apartelle. Four individuals came out from the building: appellant, Melchor Lorenzo, Jerry Salingbay and Marian Dagium. Appellant approached SPO1 Rosario and the CI. Appellant then asked SPO1 Rosario if he has the money and SPO1 Rosario likewise asked if appellant has the "stuff with him. Appellant answered in the affirmative and instructed Melchor Lorenzo to receive the marked money. Melchor Lorenzo took the marked money while appellant handed over to SPO1 Rosario a transparent plastic sachet containing white crystalline substance. SPO1 Rosario confirmed that the contents of the sachet as shabu and then executed a pre-arranged signal by lighting a cigarette. This signal prompted arresting officer SPO1 Bitabit and the rest of the back-up team to approach the group and arrest the four individuals, including appellant.

SPO1 Bitabit apprised appellant and his three companions of their constitutional rights, after which, each person under arrest was frisked, resulting in the seizure of another plastic sachet from the wallet of Jerry Salingbay and another sachet from Marian Dagium. The marked money was recovered from Melchor Lorenzo. The recovered items were marked by SPO1 Rosario in the place of arrest, in the presence of other members of the team, Dominador Dacanay of DZNL and barangay official Americo Flores of Canaoay. However, because it was dark in that place, the team leader ordered that they continue the inventory in their office at Camp Florendo Parian, San Fernando City.

The team, together with appellant and his three other companions, went to Camp Florendo, Parian, San Fernando City. In their office, the inventory of the seized items was continued. Pictures were taken during the inventory. After the Certificate of Inventory was signed, SPO1 Rosario prepared the Request for Laboratory Examination which was signed by their Action Officer P/Supt. Bersola. SPO1 Rosario delivered the request and the three plastic sachets of suspected shabu

which were received by the Forensic Chemist of PDEA Maximiano Valentin.

The laboratory examination confirmed that the three sachets contained methamphetamine hydrochloride or shabu. The sachet that SPO1 Rosario received from appellant was marked with "A-AMR[.]" SPO1 Bitabit and SPO1 Rosario positively identified appellant as the person who gave SPO1 Rosario the sachet of shabu while Melchor Lorenzo was identified as the person who received the mark[ed] money.

The prosecution also presented Americo Flores, a barangay kagawad of Barangay Canaoay, San Fernando City. He testified that in the early morning of September 1, 2013, he was at home when a PDEA member called him to witness the marking of shabu, cellphones and marked money which were confiscated from a person under arrest. Around 12:20 a.m. of September 1, 2013, Americo Flores went to the RITZ Apartelle and he was shown three sachets of shabu, money bills and cellphones. There was also a media representative with them. When Americo Flores was asked to identify the persons under arrest whom he saw the morning of September 1, 2013, he pointed at Bienvenido Arquitola (an accused from a different case) and at Melchor Lorenzo. He confirmed that they had to continue the marking at the office because it was a bit dark in the place of arrest. Americo Flores identified the Receipt/Inventory of Property Seized which he signed as well as his signature thereon. He also identified the three plastic sachets which he claims to have been marked in his presence. He explained that he can identify the said sachets because of the markings placed thereon showing the date.

Other pieces of evidence submitted by the prosecution include: (1) Request for Laboratory Examination; (2) Chemistry Report; (3) Receipt/Inventory of Property Seized; (4) Photographs (taken during inventory); (5) Five pieces of marked (boodle) money; and (6) one heat sealed sachet containing shabu which was marked "A-AMR[.]"[7] (Emphasis omitted)

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

The defense presented appellant, Melchor Lorenzo, and Jonathan Galvan, who is allegedly an employee of the RITZ Apartelle[,] as witnesses.

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[7] *Rollo*, pp. 4-7.

According to appellant's testimony on August 31, 2013, around 4:30 p.m., he was in front of the RITZ Apartelle with Marian Dagium, waiting for a tricycle. Dexter Ramos, Oga, and alias "Ittip[,]" who were detainees at the City Jail, arrived on board a tricycle. Dexter Ramos pointed a knife at appellant's back and asked him to ride the tricycle while Marian Dagium was dragged by Oga and forced her to board the tricycle as well. Melchor Lorenzo and Jerry Salingbay were left at the RITZ Apartelle.

Appellant was brought to a basketball court in Barangay Canaoay where he met PO3 Abang, SPO1 Rosario and SPO1 Bitabit. After Dexter Ramos alighted from the tricycle, SPO1 Bitabit rode the tricycle and brought them to RAIDSOTG. PO3 Abang forced appellant and Marian Dagium to admit that the shabu that was shown to them were theirs. Thereafter, appellant was brought to a restroom by a police officer who boxed him in his stomach several times. PO3 Abang then told him "palit ulo kami" so that he may be released and asked appellant if he had other companions. Appellant answered in the affirmative so they returned to the apartelle with SPO1 Rosario, SPO1 Bitabit and two other policemen.

At the RITZ Apartelle, PO3 Abang made appellant knock on the door of Melchor Lorenzo's room, who in turn opened the door. PO3 Abang, PO1 Rosario and PO1 Bitabit barged into the room and asked the occupants to bring out their wallets. The police officers also turned over the beds and conducted a search but failed to recover anything.

At 7:30 p.m., appellant, Marian Dagium and Melchor Lorenzo were brought to RAIDSOTG. PO3 Abang brought out their cellphones, wallets and two sachets of shabu and asked them if they were his. Appellant answered in the negative. By 11:30 p.m., appellant, Marian Dagium, Melchor Lorenzo and Jerry Salingbay were brought back to the front of the RITZ Apartelle. The police officers then brought out the shabu and took pictures [sic] their pictures with the seized items. This was done without a media representative or a barangay official.

Thereafter, appellant and his companions were brought to the Marcos Building where they underwent medical examination. They were then brought to the Tangui Police Station and stayed there until the morning of September 1, 2013. At 9:30 a.m., PO3 Abang, SPO1 Rosario and SPO1 Bitabit and two other persons took them to the RAIDSOTG office. Around 10:30 a.m., two males arrived and the police officers brought out the pieces of evidence and took pictures

of the barangay kagawad signing a document. Appellant does not know what the document contains because he was not furnished a copy. Thereafter, during inquest, appellant and his companions were assisted by a PAO lawyer. While they informed her of their story, they were told to forego the filing of counter-affidavits because even if they execute said affidavits, a case shall still be filed against them.

During cross-examination, appellant also testified that Dexter Ramos was detained at the City Jail for physical injuries while Oga was detained for violation of RA 9165. Appellant narrated that he only met Dexter Ramos, Oga and Ittip for the first time on August 31, 2013. When he asked Dexter Ramos why he pointed a knife at him, the former answered that it was because PO3 Abang told him that he will be detained if he is unable to get another person as a "palit ulo[.]" Appellant also told the court that he did not tell the doctor who examined him that he had been boxed in the stomach and furthermore affirmed that he did not file any case against the persons whom he claims to have falsely accused him.

Appellant's co-accused, Melchor Lorenzo, also took the witness stand. He confirmed the narration of appellant and added the events and circumstances which brought them to the RITZ Apartelle in the afternoon of August 31, 2013. He testified that on said date, he and appellant (his nephew) went to eat at the market in San Ferna[n]do City, after which they fetched Jerry Salingbay at the plaza. The three of them went to RITZ Apartelle and checked in at Rm. 7 where they had a drinking spree. At about 3:30 p.m., Marian Dagium joined them. At 4:30 p.m.[,] Marian Dagium and appellant left to buy food but when they returned to the room at 6:30 p.m., they were already handcuffed and accompanied by police officers. Melcho[r] Lorenzo's account of the events that followed were the same as appellant's recollection.

The defense also presented Jonathan Galvan, a roomboy of the RITZ Apartelle on duty in the afternoon of August 31, 2013. He testified that appellant and his two companions occupied two rooms in the apartelle. At about 4:30 p.m., while he was at the counter, he saw appellant accompanied by a woman, exit the apartelle. Appellant, who was accompanied by four persons, returned to the apartelle around 6:00 p.m. They went inside a room and after about twenty minutes, appellant and his companions went out of the room, with appellant already in handcuffs. During cross-examination, Jonathan Galvan also confirmed that it was only appellant that he saw in handcuffs.

He did not notice that any other person in the group was restrained. Thereafter, appellant with his companions left the apartelle and boarded a vehicle.[8]

Ruling of the RTC

After trial on the merits, in its Decision dated March 10, 2015, the RTC convicted Guerrero of the crime charged. The RTC found the testimonies of the prosecution witnesses more credible.[9] It ruled that the evidence on record sufficiently established the presence of the elements of illegal sale of dangerous drugs and that the chain of custody of *shabu* was likewise duly established.[10] The dispositive portion of the said Decision reads:

> **WHEREFORE**, premises duly considered, this Court finds the accused Dondon Guerrero y Eling, **GUILTY** beyond reasonable doubt of the crime of violation of Section 5, Article II of R.A. 9165 and is hereby sentenced to suffer the penalty of Life Imprisonment and to pay a fine of ₱500,000. The period of his preventive imprisonment shall be credited in his favor. The accused Melchor Lorenzo is **ACQUITTED** on the ground of reasonable doubt. He is therefore ordered released immediately from the custody of the City Jail Warden unless detained for some other lawful cause.
>
> The shabu subject of the case is confiscated in favor of the government and is ordered transmitted to the PDEA for proper disposition.
>
> SO ORDERED.[11]

Aggrieved, Guerrero appealed to the CA.

Ruling of the CA

In the questioned Decision dated May 27, 2016, the CA affirmed the RTC's conviction of Guerrero, holding that the

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[8] *Id*. at 7-10.

[9] CA *rollo*, p. 69.

[10] *Id*. at 70.

[11] *Id*. at 71.

prosecution was able to prove the elements of the crime charged. SPO1 Arnulfo Rosario (SPO1 Rosario) positively identified Guerrero as the seller, with himself acting as the poseur buyer.[12] The sachet of *shabu*, which tested positive for methamphetamine hydrochloride, and the marked money were identified and submitted in evidence.[13]

The CA also declared that there was substantial compliance in ensuring the integrity of the drug seized from Guerrero was preserved. The CA explained:

> We are not convinced that the commingling of the three sachets of drugs has compromised the identity of the corpus delicti. In ruling on this matter, We are constrained to apply the rule on chain of custody based on Section 21 of RA 9165, its Implementing Rules and prevailing jurisprudence on the matter. The prevailing rule is that failure to strictly comply with the requirements of Section 21 paragraph 1 under justifiable grounds shall not render the seizure and custody over confiscated items invalid for as long as the integrity and evidentiary value of the seized items have been properly preserved by the apprehending officer or team. In the instant case, even with the alleged possibility of commingling of the three sachets of drugs, the corpus delicti was still presented in court and validly identified by SPO1 Rosario as the one he seized from appellant during the buy-bust operation. It was identified by its marking "A-AMR" as the subject of the sale and was marked immediately after being confiscated from appellant.[14]

For that reason, the CA disposed as follows:

> **WHEREFORE**, the appeal is **DISMISSED**. The *Decision* of the Regional Trial Court, Branch 39, San Fernando City, La Union dated March 10, 2015, which found appellant guilty beyond reasonable doubt of illegal sale of dangerous drugs under Section 5 of RA 9165, as amended, is hereby **AFFIRMED**.
>
> **SO ORDERED**.[15]

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[12] *Rollo*, p. 18.

[13] *Id*.

[14] *Id*. at 17.

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

Hence, the instant appeal.

Issue

For resolution of the Court is the issue of whether the RTC and the CA erred in convicting Guerrero of the crime charged.

The Court's Ruling

The appeal is meritorious. The Court acquits Guerrero for failure of the prosecution to prove his guilt beyond reasonable doubt.

Guerrero was charged with illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of RA 9165. For a successful prosecution for the crime of illegal sale of drugs, the following must be proven: (a) the identities of the buyer, seller, object, and consideration; and (b) the delivery of the thing sold and the payment for it.[16]

The confiscated drug constitutes the very *corpus delicti* of the offense[17] and the fact of its existence is vital to sustain a judgment of conviction.[18] It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty.[19] The prosecution must prove, beyond reasonable doubt, that the substance seized from the accused is exactly the same substance offered in court as proof of the crime.[20] Each link to the chain of custody must be accounted for.[21]

This resonates even more in buy-bust operations because "by the very nature of anti-narcotics operations, the need for

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[16] *People v. Tomawis*, G.R. No. 228890, April 18, 2018, pp. 5-6, citing *People v. Goco*, 797 Phil. 433, 442 (2016).

[17] *People v. Supat*, G.R. No. 217027, June 6, 2018, p. 6, citing *People v. Sagana*, G.R. No. 208471, August 2, 2017, 834 SCRA 225, 240.

[18] *Id*., citing *Derilo v. People*, 784 Phil. 679, 686 (2016).

[19] *Id.* at 6-7, citing *People v. Alvaro*, G.R. No. 225596, January 10, 2018, p. 6.

[20] *Id*. at 7.

[21] *Id*., citing *People v. Viterbo*, 793 Phil. 593, 601 (2014).

entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great."[22] Thus, while it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors,[23] the law nevertheless also requires **strict** compliance with procedures laid down by it to ensure that rights are safeguarded.

In this connection, Section 21, Article II of RA 9165 and its Implementing Rules and Regulations (IRR), the applicable law at the time of the commission of the alleged crime, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires: (1) that the seized items be inventoried and photographed immediately after seizure or confiscation; (2) that the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof; and (3) that such conduct of the physical inventory and photograph shall be done at the (a) place where the search warrant is served; (b) nearest police station; or (c) nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure.[24]

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

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[22] *Id*., citing *People v. Saragena*, G.R. No. 210677, August 23, 2017, 837 SCRA 529, 543-544.

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

[24] *People v. Supat*, *supra* note 17.

be required to sign the copies of the inventory and be given a copy thereof.

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension.[25] It is only when the same is not practicable that the IRR of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.[26] In this connection, this also means that the three required witnesses should already be physically present at the time of apprehension — **a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity**.[27] Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses.[28]

Moreover, while the IRR allows alternative places for the conduct of the inventory and photographing of the seized drugs, the requirement of having the three required witnesses to be physically present at the time or near the place of apprehension is not dispensed with.[29] The reason is simple: it is at the time of arrest — or at the time of the drugs' "seizure and confiscation" — that the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.[30]

The buy-bust team failed to comply with the mandatory requirements under Section 21.

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[25] *Id*. at 9.

[26] IRR of RA 9165, Article II, Section 21 (a).

[27] *People v. Supat*, *supra* note 17, at 10.

[28] *Id*.

[29] *Id*.

[30] *Id*.

In the present case, the records clearly show that the physical inventory and photographing were not made before the three required witnesses. The Certificate of Inventory[31] dated September 1, 2013 was signed only by Americo Flores (Flores), the barangay kagawad, and Dominador Dacanay (Dacanay), the representative from the media. The two witnesses present — a barangay official and a media representative — do not suffice in the face of the explicit requirement of the law that mandates the presence of three witnesses. Neither did the police officers or the prosecution — during the trial — offer any viable or acceptable explanation for their deviation from the law. As SPO1 Rosario, part of the apprehending team, himself testified:

> [Cross-examination by Atty. Armi-lynn Agtarap:]
>
> Q: You received the information at around 4:30 in the afternoon of August 31, 2013?
>
> A: Yes ma'am.
>
> Q: Until 4:30 until such time that you went at the area of the transaction at 12:30 A.M. of September 1, 2013, none of you coordinated with the DOJ?
>
> A: Yes ma'am.
>
> x x x x x x x x x
>
> [Re-direct examination by Pros. Alexander Andres:]
>
> Q: Why did you not coordinate with any personnel of the DOJ to act as your witness during the conduct of the inventory?
>
> A: Our team leader will answer that sir, I was only designated as the poseur-buyer.
>
> Q: You mean to say that it was not you who was responsible with the coordination with the supposed witnesses in the conduct of inventory?
>
> A: We coordinated with the PDEA.[32]

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[31] Records, pp. 19-20.

[32] TSN, April 7, 2014, p. 10.

Of equal importance, the testimony of Brgy. Kagawad Flores reveals that he was not yet at the place of apprehension when the arrest of Guerrero happened. His testimony shows that he was at the place of apprehension after the arrest had already allegedly been made, and to witness the marking of items that had already been allegedly confiscated.

> Q: You don't know also if the persons you identified earlier are the persons who were persons [sic] arrested on September 1, 2013 at around 12:20 A.M. were really arrested on that particular time.
>
> A: Yes, sir.
>
> x x x x x x x x x
>
> Q: You were present when SPO1 Rosario was making the markings on those confiscated items from the persons arrested during that time?
>
> A: Yes ma'am.[33]

Evidently, the manner on how the buy-bust operation was conducted creates doubt as to the source, identity, and integrity of the seized drug. Nowhere in the records does it show that the apprehending officers have any difficulty contacting a DOJ representative. As a matter of fact, they had sufficient time to find a DOJ representative given that the information regarding the illegal transaction of Guerrero was known to them as early as 4:30 p.m. of August 31, 2013 and the buy-bust allegedly happened at midnight.

It bears emphasis that the presence of the required witnesses at the time of the inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*,[34] the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility

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[33] TSN, July 14, 2014, pp. 10-11.

[34] *Supra* note 16.

of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*,[35] without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.

The presence of the three witnesses must be secured not only during the inventory but more importantly **at the time of the warrantless arrest**. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

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

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."[36] (Emphasis supplied and underscoring in the original)

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[35] 736 Phil. 749 (2014).

[36] *People v. Tomawis*, *supra* note 16, at 11-12.

All told, even if the Court were to believe the version of the prosecution, the buy-bust team committed patent procedural lapses in the conduct of the seizure, initial custody, and handling of the seized drug — which thus created reasonable doubt as to the identity and integrity of the drug and, consequently, reasonable doubt as to the guilt of Guerrero.

The prosecution failed to prove justifiable ground for non-compliance.

While there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.[37] The Court has **repeatedly** emphasized that the prosecution should explain the reasons behind the procedural lapses.[38]

As the Court held in *People v. De Guzman*,[39] "[t]he justifiable ground for non-compliance must be proven as a fact. The court cannot presume what these grounds are or that they even exist."[40]

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

[38] *People v. Dela Victoria*, G.R. No. 233325, April 16, 2018, p. 6.; *People v. Descalso*, G.R. No. 230065, March 14, 2018, p. 8; *People v. Año*, G.R. No. 230070, March 14, 2018, p. 6; *People v. Lumaya*, G.R. No. 231983, March 7, 2018, p. 8; *People v. Sagauinit*, G.R. No. 231050, February 28, 2018, p. 7; *People v. Ramos*, G.R. No. 233744, February 28, 2018, p. 9; *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 7; *People v. Dionisio*, G.R. No. 229512, January 31, 2018, p. 9; *People v. Miranda*, G.R. No. 229671, January 31, 2018, p. 7; *People v. Mamangon*, G.R. No. 229102, January 29, 2018, p. 7; *People v. Villanueva*, G.R. No. 231792, January 29, 2018, p. 7; *People v. Alvaro*, *supra* note 19, at 7; *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[39] 630 Phil. 637 (2010).

[40] *Id*. at 649.

The prosecution has the burden of (1) proving their compliance with Section 21, RA 9165, and (2) providing a sufficient explanation in case of non-compliance. As the Court *en banc* unanimously held in the recent case of *People v. Lim*,[41]

> It must be **alleged** and **proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:
>
> (1) **their attendance was impossible because the place of arrest was a remote area;** (2) **their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf;** (3) **the elected official themselves were involved in the punishable acts sought to be apprehended;** (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention;** or (5) **time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape**.[42] (Emphasis in the original and underscoring supplied)

In this case, the prosecution neither recognized, much less tried to justify, its deviation from the procedure contained in Section 21, RA 9165. The prosecution did not offer any plausible explanation as to why they did not contact the representative from the DOJ. Breaches of the procedure outlined in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised.[43] As the Court explained in

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

[42] *Id.* at 13, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17.

[43] See *People v. Sumili*, 753 Phil. 342, 352 (2015).

People v. Reyes,[44] to warrant the application of this saving mechanism, the prosecution must recognize the lapse or lapses, and justify or explain them, and failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti*.

The Court is not unaware of the drug menace that besets the country and the direct link of certain crimes to drug abuse.[45] The unrelenting drive of our law enforcers against trafficking and use of illegal drugs and other substance is indeed commendable.[46] Those who engage in the illicit trade of dangerous drugs and prey on the misguided members of the society, especially the susceptible youth, must be caught and properly prosecuted.[47] Nonetheless, the Court acknowledges that this campaign against drug addiction is highly susceptible to police abuse and that there have been cases of false arrests and wrongful incriminations.

The Court has recognized, in a number of cases, that law enforcers resort to the practice of planting evidence to extract information from or even to harass civilians.[48] Thus, to the Court's mind, the allegation of Guerrero that he was a victim of *palit-ulo*, has the ring of truth to it. Nevertheless, even if the Court were to believe the version of the prosecution, the buy-bust team committed patent procedural lapses which thus created reasonable doubt as to the identity and integrity of the drug and, consequently, reasonable doubt as to the guilt of Guerrero.

The overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt.[49] In order to convict an accused, the circumstances of the case must exclude all and every hypothesis

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[44] 797 Phil. 671, 690(2016).

[45] *People v. Gatlabayan*, 669 Phil. 240, 261 (2011).

[46] *Id*.

[47] *Id*.

[48] *People v. Dela Cruz*, 666 Phil. 593, 610 (2011).

[49] *People v. Gatlabayan*, *supra* note 45 at 260.

consistent with his innocence.[50] What is required is that there be proof beyond reasonable doubt that the crime was committed and that the accused committed the crime.[51] It is only when the conscience is satisfied that the crime has indeed been committed by the person on trial that the judgment will be for conviction.[52] In light of this, Guerrero must perforce be acquitted.

As a final note, the Court reiterates that it is committed to assist the government in its campaign against illegal drugs; however, a conviction can only be obtained after the prosecution discharges its constitutional burden to prove guilt beyond reasonable doubt. Otherwise, this Court is duty-bound to uphold the constitutional right of presumption of innocence.[53]

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated May 27, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07423 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Dondon Guerrero y Eling is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

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

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe*, and *Hernando,*[*] *JJ.*, concur.

Reyes, J. Jr., J., on wellness leave.

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[50] *Id*.

[51] *Id*., citing *People v. Mangat*, 369 Phil. 347, 359 (1999).

[52] *Id*.

[53] See *id*. at 261; *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 10.

[*] Designated additional Member per Special Order No. 2630 dated December 18, 2018.

THIRD DIVISION

[G.R. No. 234240. February 6, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NOEL NAVASERO, SR.** ***y*** **HUGO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; QUALIFIED RAPE; ELEMENTS; ESTABLISHED.— Article 266-A of the Revised Penal Code (*RPC*) provides that rape is committed: "1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: a) Through force, threat or intimidation; b) When the offended party is deprived of reason or otherwise unconscious; c) By means of fraudulent machination or grave abuse of authority; and d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present." In this relation, Article 266-B of the RPC provides that "[t]he death penalty shall x x x be imposed if the crime of rape is committed with any of the following aggravating/ qualifying circumstances: 1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim[.]" Thus, "[t]o raise the crime of rape to qualified rape under Article 266-B, paragraph 1 of the RPC, the twin circumstances of minority of the victim and her relationship to the offender must concur." In the instant case, AAA was under twelve (12), as well as below eighteen (18) years of age, when the alleged crimes occurred. In both cases, there need not be actual force, threat or intimidation because in the former, the absence of free consent is conclusively presumed when the victim is below the age of twelve (12), while in the latter, the fact that Navasero was AAA's father is enough because his moral ascendancy or influence over her substitutes for violence and intimidation. In view of the fact that the prosecution was able to discharge its burden of proving that Navasero had carnal knowledge of his own minor daughter, AAA, at the times when she was ten (10), eleven (11), twelve (12), and thirteen (13)

years of age, the courts *a quo* committed no error in convicting him of fifteen (15) counts of qualified rape.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHEN THE DECISION HINGES ON THE CREDIBILITY OF WITNESSES AND THEIR RESPECTIVE TESTIMONIES, THE TRIAL COURT'S OBSERVATIONS AND CONCLUSIONS DESERVE GREAT RESPECT AND ARE ACCORDED FINALITY, UNLESS THE RECORDS SHOW FACTS OR CIRCUMSTANCES OF MATERIAL WEIGHT AND SUBSTANCE THAT THE LOWER COURT OVERLOOKED, MISUNDERSTOOD OR MISAPPRECIATED, AND WHICH, IF PROPERLY CONSIDERED, WOULD ALTER THE RESULT OF THE CASE; RATIONALE.— In rape cases, the credibility of the victim is almost always the single most important issue. If the testimony of the victim passes the test of credibility, which means it is credible, natural, convincing and consistent with human nature and the normal course of things, the accused may be convicted solely on that basis. The rule is settled that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are accorded finality, unless the records show facts or circumstances of material weight and substance that the lower court overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case. This is so because trial courts are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and their behavior in court. Trial judges, therefore, can better determine if such witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. The rule finds an even more stringent application where the said findings are sustained by the CA. Here, both the trial court and appellate court found AAA's testimony to be straight, candid, spontaneous and steadfast, even on cross-examination.

3. ID.; ID.; ID.; THERE IS NO UNIFORM BEHAVIOR THAT CAN BE EXPECTED FROM THOSE WHO HAD THE MISFORTUNE OF BEING SEXUALLY MOLESTED. WHILE THERE ARE SOME WHO MAY HAVE FOUND THE COURAGE EARLY ON TO REVEAL THE ABUSE

THEY EXPERIENCED, THERE ARE THOSE WHO HAVE OPTED TO INITIALLY KEEP THE HARROWING ORDEAL TO THEMSELVES AND ATTEMPT TO MOVE ON WITH THEIR LIVES; REASONS.— Neither can we give credit to Navasero's contention that if AAA's allegations were true, the matter should have reached her mother and siblings even before the fifteenth (15th) rape incident. But since it took AAA an unacceptable length of time before she finally reported the so-called incidents of abuse, then it is doubtful whether the same even occurred at all. Time and again, the Court has held that there is no uniform behavior that can be expected from those who had the misfortune of being sexually molested. While there are some who may have found the courage early on to reveal the abuse they experienced, there are those who have opted to initially keep the harrowing ordeal to themselves and attempt to move on with their lives. This is because a rape victim's actions are oftentimes overwhelmed by fear rather than by reason. The perpetrator of the rape hopes to build a climate of extreme psychological terror, which would numb his victim into silence and submissiveness. In fact, incestuous rape further magnifies this terror, for the perpetrator in these cases, such as the victim's father, is a person normally expected to give solace and protection to the victim. Moreover, in incest, access to the victim is guaranteed by the blood relationship, magnifying the sense of helplessness and the degree of fear. Thus, the fact that it took AAA years before she was able to muster up the courage to confide in her mother does not make her story untrue, especially in view of Navasero's threats and physical abuse.

4. **CRIMINAL LAW; REVISED PENAL CODE; QUALIFIED RAPE; PROPER IMPOSABLE PENALTY.—** As to the penalty imposed, the RTC was correct in imposing the penalty of *reclusion perpetua* for each count of rape, without eligibility for parole, pursuant to A.M. No. 15-08-02-SC and in lieu of death because of its suspension under Republic Act No. 9346.

5. **ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.—** As to the award of damages, the CA was correct in modifying the RTC's ruling such that Navasero is now ordered to pay, for each count of rape, civil indemnity in the amount of ₱100,000.00, moral damages in the amount of ₱100,000.00, and exemplary damages in the amount of ₱100,000.00, pursuant to *People v. Jugueta*, as well as a six percent (6%) interest per

annum on all the amounts awarded reckoned from the date of finality of this Decision until the damages are fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

For consideration of this Court is the appeal of the Decision[1] dated June 23, 2017 of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 08340 which affirmed, with modification, the Consolidated Decision[2] dated July 20, 2015 of the Regional Trial Court (*RTC*) of Calamba City, Branch 35, finding accused-appellant Noel Navasero, Sr. y Hugo guilty beyond reasonable doubt of fifteen (15) counts of qualified rape.

The antecedent facts are as follows.

In fifteen (15) separate Informations, Navasero was charged with fifteen (15) counts of qualified rape. Except for the dates of the commission of the crime and the age of the victim, AAA,[3]

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[1] *Rollo,* pp. 2-32. Penned by Associate Justice Priscilla J. Baltazar-Padilla, with the concurrence of Presiding Justice Andres B. Reyes, Jr. (now a member of the Court) and Associate Justice Myra V. Garcia-Fernandez.

[2] CA *rollo,* pp. 53-60. Penned by Judge Gregorio M. Velasquez.

[3] 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 Republic Act No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; 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,

the Informations were similarly worded as follows:[4]

> That on or about [date], in the Municipality of [redacted], and within the jurisdiction of [the] Honorable Court, the accused, through force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of his biological daughter AAA,[redacted],against her will and without her consent, to the damage and prejudice of the latter.
>
> Contrary to law.[5]

During arraignment, Navasero pleaded not guilty to the charges. Subsequently, trial on the merits ensued. Only AAA testified for the prosecution, while the defense presented Navasero himself.

According to AAA, Navasero, who is her biological father, raped her from 2010 to 2013 for fifteen (15) times when she was still a minor, having been born on December 27, 1999. The first ten (10) rapes were committed in their house in [redacted] on October 31, 2010, November 12, 2010, December 10, 2010, January 2, 2011, March 21, 2011, May 24,

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Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

[4] Criminal Case No. 21351-13-C, September 17, 2013, AAA was 13 years old; Criminal Case No. 23566-14-C, October 31, 2010, AAA was 10 years old; Criminal Case No. 23567-14-C, December 28, 2012, AAA was 13 years old; Criminal Case No. 23568-14-C, March 21, 2013, AAA was 13 years old; Criminal Case No. 23569-14-C, October 10, 2011, AAA was 11 years old; Criminal Case No. 23570-14-C, December 26, 2011, AAA was 11 years old; Criminal Case No. 23571-14-C, February 14, 2012, AAA was 12 years old; Criminal Case No. 23572-14-C, March 21, 2012, AAA was 12 years old; Criminal Case No. 23573-14-C, March 21, 2011, AAA was 11 years old; Criminal Case No. 23574-14-C, May 24, 2011, AAA was 11 years old; Criminal Case No. 23575-14-C, June 1, 2011, AAA was 11 years old; Criminal Case No. 23576-14-C, January 2, 2011, AAA was 11 years old; Criminal Case No. 23577-14-C, November 12, 2010, AAA was 10 years old; Criminal Case No. 23578-14-C, July 20, 2013, AAA was 13 years old; and Criminal Case No. 23579-14-C, December 10, 2010, AAA was 10 years old. See *rollo,* pp. 2-3.

[5] RTC records in Criminal Case No. 21351-13-C, p. 1.

2011, June 1, 2011, October 10, 2011, December 26, 2011, and February 14, 2012, while remaining five (5) rapes happened in their new house in [redacted] on March 21, 2012, December 28, 2012, March 21, 2013, July 20, 2013, and September 17, 2013. AAA recalled that after the last rape on September 17, 2013, she finally mustered enough courage to inform her mother about the ordeal she went through in the hands of her own father. As a result, her mother accompanied her to the Department of Social Welfare and Development and eventually to the police in order to file a case against Navasero. In the course of her testimony, AAA explained why she specifically remembered the respective dates when her father had carnal knowledge of her.[6]

For his part, Navasero invoked denial as a defense. According to him, all the alleged incidents of rape were merely fabricated by her daughter as a retaliation for the physical and corporal punishments he had inflicted upon her. He claimed that he loved his children, although he punished them at times in order to instill discipline in them.[7]

On July 20, 2015, the RTC rendered its Consolidated Decision finding Navasero guilty of the crime charged, disposing of the case as follows:

> WHEREFORE, this Court finds the accused, Noel H. Navasero, GUILTY of fifteen (15) counts of qualified rape and hereby sentences him to suffer the penalty of reclusion perpetua for each count without eligibility of parole. Accused is ordered to pay the victim the total amount of Php50,000.00 as moral damages.
>
> SO ORDERED.[8]

In a Decision dated June 23, 2017, the CA affirmed with modification the RTC Consolidated Decision, increasing the amount of moral damages to ₱100,000.00 for each count of rape, and ordering Navasero to pay civil indemnity in the amount

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[6] *Rollo,* pp. 3-4.

[7] *Id.* at 4.

[8] CA *rollo,* p. 60.

of ₱100,000.00, exemplary damages in the amount of ₱100,000.00, and a six percent (6%) interest per annum on all the amounts awarded reckoned from the date of finality of this judgment until the damages are fully paid. According to the appellate court, matters concerning the credibility of a witness are best addressed to the sound judgment of the trial court. As such, appellate courts will generally not interfere with the trial court's assessment in this regard, absent any indication that the trial court has overlooked some material facts. Accordingly, the CA rendered its assailed judgment, the *fallo* of which reads:

> WHEREFORE, the Decision of the Regional Trial Court, Branch 35, City of Calamba in Criminal Cases Nos. 21351-13-C, 23566-14-C, 23567-14-C, 23568-14-C, 23569-14-C, 23570-14-C, 23571-14-C, 23572-14-C, 23573-14-C, 23574-14-C, 23575-14-C, 23576-14-C, 23577-14-C, 23578-14-C, and 23579-14-C finding appellant [Noel H. Navasero] guilty beyond reasonable doubt of fifteen (15) counts of the crime of Qualified Rape is hereby AFFIRMED with MODIFICATION in that the amount of moral damages is increased from ₱50,000.00 to ₱100,000.00 for each count of rape and appellant is further ordered to pay private complainant civil indemnity in the amount of ₱100,000.00 and another ₱100,000.00 as exemplary damages for each count of rape.
>
> The monetary damages awarded shall earn interest at the rate of 6% per annum from the date of finality of the judgment until fully paid.
>
> SO ORDERED.[9]

Now before us, Navasero manifested that he would no longer file a Supplemental Brief as he has exhaustively discussed the assigned errors in his Appellant's Brief.[10] The Office of the Solicitor General similarly manifested that it had already discussed its arguments in its Appellee's Brief.[11]

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

[10] *Rollo,* p. 40.

[11] *Id*. at 45.

According to Navasero, AAA's testimony should not be given weight for being too generalized and incredible. He maintains that the rape incidents narrated by AAA were almost identical that in all occasions, he would isolate her from her siblings, forcibly remove her clothes, kiss and touch her body, and insert his penis inside her vagina. Thus, he should be acquitted since the prosecution failed to prove that each rape instance is different from the other. Navasero also finds unbelievable the fact that AAA's mother and other siblings had no idea of the ordeals she had been experiencing despite their presence in the family home.

After a careful review of the records of this case, the Court finds no cogent reason to reverse the rulings of the RTC and CA, finding Navasero guilty of fifteen (15) counts of qualified rape for having carnal knowledge of his own minor daughter from 2010, when she was merely ten (10) years old, and every year thereafter, up until 2013, when she was thirteen (13) years old.

Article 266-A of the Revised Penal Code (*RPC*) provides that rape is committed: "1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: a) Through force, threat or intimidation; b) When the offended party is deprived of reason or otherwise unconscious; c) By means of fraudulent machination or grave abuse of authority; and d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present." In this relation, Article 266-B of the RPC provides that "[t]he death penalty shall x x x be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances: 1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim[.]" Thus, "[t]o raise the crime of rape to qualified rape under Article 266-B, paragraph 1 of the RPC, the twin circumstances of minority of the victim and her relationship to the offender must concur."[12]

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[12] *People v. Descartin, Jr.*, G.R. No. 215195, June 7, 2017, 826 SCRA 650, 659.

In the instant case, AAA was under twelve (12), as well as below eighteen (18) years of age, when the alleged crimes occurred. In both cases, there need not be actual force, threat or intimidation because in the former, the absence of free consent is conclusively presumed when the victim is below the age of twelve (12),[13] while in the latter, the fact that Navasero was AAA's father is enough because his moral ascendancy or influence over her substitutes for violence and intimidation.[14] In view of the fact that the prosecution was able to discharge its burden of proving that Navasero had carnal knowledge of his own minor daughter, AAA, at the times when she was ten (10), eleven (11), twelve (12), and thirteen (13) years of age, the courts *a quo* committed no error in convicting him of fifteen (15) counts of qualified rape.

In rape cases, the credibility of the victim is almost always the single most important issue. If the testimony of the victim passes the test of credibility, which means it is credible, natural, convincing and consistent with human nature and the normal course of things, the accused may be convicted solely on that basis. The rule is settled that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are accorded finality, unless the records show facts or circumstances of material weight and substance that the lower court overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case. This is so because trial courts are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and their behavior in court. Trial judges, therefore, can better determine if such witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. The rule

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[13] *Id*. at 658.

[14] *People v. CCC*, G.R. No. 231925, November 19, 2018.

finds an even more stringent application where the said findings are sustained by the CA.[15]

Here, both the trial court and appellate court found AAA's testimony to be straight, candid, spontaneous and steadfast, even on cross-examination. But despite said findings, Navasero criticizes the testimony to be unworthy of belief for being too generalized and almost identical in all fifteen (15) occasions. The Court, however, cannot subscribe to Navasero's contention. While it is true that AAA's narrations would always include the fact that Navasero forcibly removed her clothes and inserted his penis inside her vagina, said fact alone does not necessarily belie her testimony for AAA was merely recounting the very acts that constitute the crime itself. But even if we assume that AAA's repeated and almost identical narration of the fifteen (15) times Navasero penetrated her casts doubt on her credibility, a judicious review of her testimony reveals that she was able to describe not just the sexual intercourse but also the precise circumstances surrounding each rape incident. To the Court, AAA's recollection of the unique and notable details before, during, and even after each act of abuse cannot simply be dismissed as fabricated. We reproduce her testimony below:

1st rape — October 31, 2010
Criminal Case No. 23566-14-C

Q: [redacted], would you kindly tell the Court where were you on October 31, 2010 at around 10:00 o'clock (sic) in the evening?

A: Yes, ma'am, I was at home in x[redacted].

Q: And what were you doing then at your house?

A: I was sleeping then, ma'am.

Q: While you were then sleeping, will you kindly tell the Court what happened?

A: I was then sleeping and I was awakened when I felt that somebody was touching my thigh, ma'am.

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[15] *People v. Descartin, Jr., supra* note 12, at 656-657.

Q: And what did you do if any when you feel (sic) that somebody was touching your thigh?

A: Yes, ma'am.

Q: What did you find out?

A: I saw my Papa lying sidewise in the bed with me, ma'am.

Q: What happened next?

A: He covered my mouth and I was so surprised, ma'am.

Q: What did you do when he covered your mouth?

A: Wala na po akong nagawa kasi [n]agulat po ako. Sinabihan po niya ako "wag kang mag-iingay, kundi papatayin kita, papatayin ko kayo, lahat kayo, pati na Mama mo at mga kapatid mo."

Q: What was your reaction when you hear (sic) those utterances from your father?

A: I was scared, ma'am.

Q: Afterwards, what did the accused do if any?

A: I tried to fight back but he box (sic) me in (sic) the right side of my abdomen, ma'am.

Q: What happened when you were boxed by your father?

A: Ramdam na ramdam ko po yong mabibigat na kamao na sumuntok sa aking tagiliran na naging sanhi po ng aking pagkaiyak. Bigla po siyang tumayo kumuha po siya ng lubid plastic straw po, at wala pong awang sinakal sa aking leeg.

Q: What did you feel, [redacted] ,when he tied your neck using plastic straw?

A: It was painful and I had difficulty in breathing, kasi po mahigpit din po ang pagkakatali niya ng straw, ma'am.

Q: Afterwards, what did the accused do?

A: After that, he removed his dress, short[s] and his brief.

Q: After he removed his shorts and his brief, what happened next?

A: Ako naman po ang sinunod niyang hinubaran. He removed my pajama, panty, and dress.

Q: What did you do if any while he was undressing you?

A: I could not do anything because he was holding me tightly and because of fear.

Q: What happened next afterwards?

WITNESS:

A: Walang awa po niya akong pinaghahalikan sa labi. Hinawakan po niya ang dede ko. Tapos po, pwersahan po niyang pinasok yong ari niya sa ari ko. Napakasakit po ng naramdaman ko. Akala ko po ikamamatay ko na.

FISCAL MANCIA:

We put on record, your honor, that the witness is crying while testifying.

Q: For how long a time did he insert his penis into your vagina?

A: I cannot recall. I could only recall the pain that I felt and I was so afraid. Halo-halo na po.

Q: And after he inserted his penis to your vagina, what transpired next, Madame Witness?

A: Parang wala po siyang ginawa. Parang wala po siyang ginawang masama. Inayos lang po niya ang sarili niya. Hinayaan lang po niya ako. Ang ginawa ko po nagbihis po akong mag-isa. Takot na takot po ako noon. Tinanggal ko po ang nakatali sa leeg ko. Umiyak na lang po ako magdamag.

FISCAL MANCIA:

We request that the answer of the witness be quoted in the vernacular.

Q: After that incident [redacted], did you tell anyone what happened to you?

A: None, ma'am.

Q: Why did you not tell anyone?

A: Dahil po sa takot, napangunahan po ako ng takot dahil po sa mga banta niya.

Q: Afterwards, what happened next?

A: The next day, November 1, All Saints' Day, [i]naaya po ako ng mga kapatid ko na lumabas. Pero di ko na po kayang lumabas gawa po ng sakit na naramdaman ko. Hinayaan ko na lang po sila. Naiwan na lang po akong mag-isa.[16]

2nd rape — November 12, 2010
Criminal Case No. 23577-14-C

Q: What about on November 12, 2010, would you recall of any unusual incident?

A: Yes, ma'am, it was the birthday of my younger sister.

Q: Would you recall of any unusual incident that transpired on November 12, 2010?

A: Yes, ma'am.

Q: What is that unusual incident?

A: It was also night time I was already sleeping.

Q: While you were then sleeping, what happened?

A: I was awakened because I felt that something was moving in my room and I saw that it was my father.

Q: Aside from you, Madame Witness, who were inside that room?

A: My younger sister, ma'am.

Q: What happened when you notice (sic) the presence of your father?

A: I was surprised because he was holding a kitchen knife, ma'am.

Q: What did you do when you notice (sic) that he was then holding a kitchen knife?

A: Nothing ma'am, because I was afraid he would stab my sister who was then sleeping beside me.

Q: What did the accused do afterwards?

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[16] RTC records in Criminal Case No. 21351-13-C, pp. 85-87.

A: He removed his shirts (sic), short[s] and brief.

Q: And what transpired next?

A: He also undress (sic) me, my short[s], panty and dress.

Q: What did you do when he was undressing you?

A: None. He said "wag kang mag-ingay, wag kang sisigaw kundi papatayin ko [itong] kapatid mo na nasa tabi mo."

Q: What transpired next after that?

A: I did not do anything and I just cried because I was afraid. What he did, he kissed me, he touched my breast. He forcibly inserted again his penis to my vagina.

Q: What did you feel, [redacted], when he inserted his penis to your vagina?

A: Very painful, ma'am.

Q: And after he inserted his penis to your vagina, what happened next?

A: He stood up and and (sic) he dress (sic) up and he left as if nothing happened.

Q: What about you, what did you do?

A: Wala po nagbihis na rin po ako. Hindi ko na rin po alam kung ano ang gagawin ko dahil wala na po ako sa sarili ko.[17]

3rd rape—December 10, 2010
Criminal Case No. 23579-14-C

Q: What about on December 10, 2010, could you recall of any incident that transpired on this date?

A: One week before my birthday, December 27, we were then playing in our house together with my brothers and sisters.

Q: What happened next while you were then playing with your brothers and sisters?

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

A: My father asked my brothers and sisters to go to the house of my Lola. I was left alone together with my father.

Q: What happened next when you were left alone with your father?

A: I was ordered by my father to go to our room.

Q: What did you do if any?

A: Ayaw ko po sanang sumama noon kay Papa kasi kinukutuban na rin po ako non. Gusto ko po sanang sumama sa mga kapatid ko noon kina Lola pero pinagpipilitan po ako ni Papa. Tingin pa lamang po niya ay takot na ako.

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Q: After your siblings left your house, what happened next Madame Witness?

A: I could not do anything I was left alone in the house together with my father and he raped me again.

Q: You said that your father raped you again?

A: Yes, sir (sic).

Q: How did he rape you?

A: I was ordered to go to the room and he pushed me in (sic) the bed.

Q: What happened after you were pushed in (sic) the bed?

A: Naghubad na po siya. Nakapantalon po siya noon at pinaghuhubad po niya ako. Ayaw ko po tapos sinampiga po niya ako.

[FISCAL MANCIA:]

May I request, your honor, that the answer of the witness be quoted in the vernacular.

Q: For how many times did he slap you?

A: Two times, ma'am.

Q: What did you do if any after your father slapped you?

A: I was crying and I was begging. Pero para po siyang walang awa. Pwersahan po niya akong hinubaran ng damit.

FISCAL MANCIA:

At this juncture, you honor, we would like to manifest that the complainant has been continuously crying while testifying.

Q: What happened next afterwards?

A: He started kissing me in (sic) my lips and breast tapos tinulak po niya ako sa kama, dinaganan po niya ako tapos pinasok po ang ari niya sa ari ko.

x x x x x x x x x

Q: You said that he was able to successfully insert his penis into your vagina. What did you do?

A: Wala po akong magawa.

Q: [For how] long a time could you still recall that the accused inserted his penis to your vagina?

A: I could no longer remember anymore wala na po ako sa sarili ko.

Q: What happened next, Mr. (sic) Witness?

A: He stoop (sic) up and dress (sic) himself as if nothing happened.

Q: What about you what did you do afterwards?

A: I fixed myself because I could not do anything. I just cried.[18]

4th rape— January 2, 2011
Criminal Case No. 23576-14-C

Q: Aside from the incident that transpired on December 10, 2010, could you also recall the incident that happened on January 2, 2011?

A: Yes, ma'am.

Q: What is that incident, Madame Witness?

A: Katatapos lang po noon ng New Year. Naki-New Year po kami noon kina Lola. Kami pong lahat. Dalawang gabi po

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[18] *Id*. at 89-91.

kaming natulog doon. Si Papa po naiwan po doon sa may shop namin sa Anos nag-aayos po ng harap namin. May inayos po siya. Tapos pinapauwi po niya ako. Kailangan daw po niya ng katulong, magwawalis daw po sa bahay. Sumama po ako.

Q: You said that you go (sic) with your father?

A: Yes, ma'am.

Q: What happened next after you go (sic) with him?

A: Tumulong po ako sa paggagawa niya. Winalisan ko po ang pinag-lagarian niya ng mga kahoy. After po non[,] tanghali na po yon tapos na kaming kumain ni Papa he called me in his room and he said "[redacted], halika dito" and I said "Bakit po, Papa." ["]Hilutin mo nga itong likod ko.["] Masakit daw napagod daw. Hinilot ko yong likod niya. After po non sabi po niya ["]hubarin mo yang damit mo[."] "[A]yoko ko po["] sabi ko, ["]wag ka ngang umarte-arte diyan hubarin mo yang damit mo.["]

Q: What transpired next after you were commanded by your father to remove your dress?

A: He stood up. He remove (sic) his shirt, his short[s], his brief and then he asked me to undress.

Q: Then what happened afterwards?

A: I removed my dress out of fear.

Q: What happened next after you removed your dress?

A: He kissed me again and he inserted his penis again in my vagina.

Q: What happened next afterwards?

A: Umiiyak na po ako noon. Lagi ko na lang pong tinitiis ang mga sakit na binibigay niya. Wala po akong magawa.[19]

5th rape – March 21, 2011
Criminal Case No. 23573-14-C

[19] *Id*. at 92-93.

Q: Aside from the incident that transpired on January 2, 2011, could you still recall what happened to you on March 21[,] 2011?

A: That was then the birthday of my mother.

Q: Would you kindly tell us what happened on this day?

A: I was sleeping. I was alone in my room because my younger sister slept in the other room together with my older brother when suddenly my father entered my room. Nagulat po ako kasi naglagatok po yong pinto.

Q: What happened next after your father entered the room?

A: I smells (sic) liquor, ma'am.

Q: What happened next after he entered the room?

A: He lay down beside me then he removed his dress, his pants[,] and brief. Sabi po niya sa akin, "[redacted], halika dito lumapit ka.["] Ayoko ko pong lumapit sa kaniya kasi galit na galit po ako sa kaniya noon. Takot na takot pero pinilit po niya ako. Hinila po niya ako.

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Q: What happened next afterwards?

A: He pulled my dress. He forcibly undress (sic) me.

Q: What did you do if any while he was forcibly removing your clothes?

A: I could not do anything. Hindi po ako makapalag sobrang lakas po niya.

Q: What transpired next, Madame Witness?

A: He raped me again. He kissed me in (sic) my lips then my breast. He inserted his penis into my vagina.

Q: What did you feel [redacted] whe[n] your father inserted his penis to your vagina?

A: Halo-halo na po, galit, sakit. Lahat na po. Wala naman po akong magawa umiiyak na lang po.

Q: Afterwards, what did you[r] father do?

A: He left, nagbihis. [H]e sleeps (sic). As if he had not done anything wrong. Wala po akong magawa umiiyak na lang po.[20]

6th rape— May 24, 2011
Criminal Case No. 23574-14-C

Q: What about on May 24, 2011, would you recall where were you?

A: Nasa bahay po sa [redacted], ma'am.

Q: What happened on May 24, 2011 at your house?

A: Birthday po yan ng demonyo kong ama, ma'am.

Q: What else transpired [redacted]?

A: He was so drunk during that night. Nakipag-inuman po siya sa barkada niya.

Q: What transpired thereafter?

A: Ako na lang po ang gising non. Tulog na po [kasi] ang mga kapatid ko. Tinawag niya po ako kasi nagsuka po siya sa banyo.

Q: What happened after your father called you?

A: Nilinis ko po ang suka niya. Pinulot po niya ang mga damit niya. Kumuha po ako ng towel. Pinupunasan po niya ng bas[a]ng towel yong katawan niya.

Q: What happened next afterwards?

A: He undress (sic), he removed his pants, his briefs (sic). Tapos sabi niya humiga ka d[i]yan. Wala po akong magawa noon, ["]Papa, ayoko na po, maawa na po kayo["] pero para siyang walang puso. Para siyang hayop pero hindi, ang hayop may konsensiya siya wala. Demonyo siya.

Q: What did you do if any?

A: Nothing, ma'am. He just undress (sic) me and he kissed me. He inserted again his penis into my vagina.

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

Q: Afterwards, what happened?

A: I felt the weight of his body.[21]

7th rape— June 1, 2011
Criminal Case No. 23575-14-C

Q: What about on June 1, 2011, would you recall, Madame Witness?

A: Yes, ma'am. Doon pa rin po sa bahay namin sa [redacted] .

Q: What happened while you were at your house?

A: June 1, 2011. Tandang-tanda ko po yon kasi magpapasukan. We were so happy because my father bought us school supplies. We were so excited. It is the start of school year. He bought me shoes, uniform. But at night, the excitement was gone. I was again molested by my father that night.

Q: How did your father [molest] you?

A: Gabi po yon. Natutulog na po kami. My father approached me and he said "[redacted], hubarin mo yang damit mo."

Q: What was your reaction when you were commanded to remove your dress?

A: Nagalit po siya. Akala ko po tumigil na po siya. Hindi pa pala. ["]Maawa naman po kayo. Hindi na po makatao yang ginagawa niyo.["] Wala siyang puso. Naghubad po siya. He also undress (sic) me.

Q: What happened next after he removed your clothes?

A: He kissed me again, dinaganan niya ako. He inserted his penis into my vagina. Sobran[g] galit ko po sa kanya.[22]

8th rape— October 10, 2011
Criminal Case No. 23569-14-C

Q: What about on October 10, 2011 would you recall where were you?

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

[22] *Id*. at 95-96.

A: I was still at [redacted]. I remember that date because that is Loyalty Day at UPLB. Lagi pong umaalis ang Papa ko kasi ginagawa po ang bahay namin sa [redacted]. Lagi po siyang galit, kami po ang napagbubuntunan niya ng galit.

Q: Would you kindly tell us what happened on October 10, 2011?

A: I was already sleeping when my father entered the room and he approached me.

Q: What happened after your father entered the room?

A: I was surprised because I saw my father removing his clothes.

Q: What did you do if any when you see (sic) your father removing his clothes?

A: Natakot na naman. Sabi ko ito na naman, ito na naman ang demonyo.

Q: What did your father do afterwards?

A: He approached me.

Q: What happened after he approached you?

A: ["][redacted], halika dito hubarin mo yang damit mo.["] Ulit na naman. Nagmamakaawa na naman po ako. Pero para pong wala siyang tainga. Para pong wala siyang naririnig. Di man lang niya maisip na anak niya ako.

Q: What did you do?

A: Wala po. I only cried.

Q: Afterwards, what did your father do?

A: He forcibly removed my dress, my short[s], my panty. Hindi po ako makapalag. Sobra pong lakas niya.

Q: What happened next?

A: Inulit na naman po niya ang pananamantala. Dinaganan na naman po niya ako. Ramdam na ramdam ko po yong bigat ng katawan niya na nagpapahirap ng paghinga ko ko (sic) dahil sa bigat niya. Hinalikan na naman niya ang labi ko. Pwersahan na naman niyang pinasok ang ari niya sa ari ko.

Q: What were you doing then during that time?

A: I was crying. I was so scared. Paulit-ulit niya akong pinagbabantaan. Subukan mong magsumbong. Wag kang mag- iingay. Wag kang magsusumbong papatayin ko kayong lahat. Alam mo naman pag sinabi ko gagawin ko.[23]

9th rape — December 26, 2011
Criminal Case No. 23570-14-C

Q: What about on December 26, 2011, where were you?

A: That was before my birthday, December 27, my birthday. I was still in our house in [redacted], that is (sic) night time again.

Q: Would you kindly tell us what happened?

A: My father was sleeping in his room. Maaga po siyang natulog noon. Ewan ko po alam (sic) kung saan siya nanggaling. Pagod na pagod daw po siya. Tapos tinawag niya po kaming tatlong magkakapatid noon. Pinaghilot niya po kami ng paa niya. Nagalit pa [n]ga po siya sa amin noon kasi di po namin makuha ang hilot na gusto niya. Sabi po niya, ["]tatanga-tanga kayo, ayusin niyo naman.["] Tapos sinuntok niya ang Kuya ko. Nahulog ang kuya ko sa kama. Tapos kami ni [redacted] sinabunutan niya, pinag-untog.

Q: After your father inflicted physical harm on your (sic) and [your] siblings, what transpired next?

A: Sabi po niya, umalis na nga kayo. Mga tatanga-tanga kayo. After one hour my brother and sisters were already sleeping and I was about to sleep when "may [kumalabit] sa akin" pagtingin ko po si Papa.

Q: What happened afterwards?

A: Nakikita ko po yong mga mata niya. Mga mata palang niya alam ko na. Natatakot ako. Hindi po ako tumayo ng gabing yon kasi alam ko pong may gagawin na naman siya. Pero sabi po niya sa akin, ["]wag ka nang mag-i-narte.["] Pabulong po niyang sinabi sa akin kasi natutulog na po ang mga kapatid

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[23] *Id*. at 96-98.

ko. Tumayo ka dyan. Putang ina niyo, papatayin ko kayo sabi niya.

Q: What did you do?

A: Tumayo po ako at pumunta doon sa kwarto na tinulugan niya.

Q: What happened when you went to the room where your father was?

A: He removed his brief, his shirt, his short[s]. Dinala po niya ako sa kama. He forcibly removed my dress.

Q: What did you do when your father forcibly removed your clothes?

A: Wala na naman po syempre. Wala naman po akong magawa kundi umiyak na lang. I was afraid. Tapos ng mahubaran na po niya ako dumagan na naman po siya sa akin. He kissed me again on my lips and on my breast. He inserted his penis into my vagina.

Q: Afterwards, what transpired next?

A: Iyon na naman, parang wala siyang ginawang masama. Parang normal lang sa kaniya. Ewan ko ba kung anong klaseng tao yan parang wala siyang awa. I fix (sic) myself and I sleep (sic). Umiiyak, ang sama-sama ng loob ko puno ng galit. Matagal kong tinimpi yon.[24]

10th rape— February 14, 2012
Criminal Case No. 23571-14-C

Q: What about on February 14, 2012, would you kindly tell us where were you?

A: Yes, ma'am[.] I was still in [redacted] Valentine's Day, I cannot forget that day. My father was drunk again.

Q: What happened?

A: I cannot remember whether it was madaling araw na yan basta gabing-gabi na pong umuwi yan. Mag-isa po akong natutulog sa kwarto po namin ng kapatid kong mas bata.

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[24] *Id*. at 98-99.

Doon po siya tumabi sa Kuya ko. Kasi di naman po kami kasya sa isang kwarto. Pinagpipilitan ko pong tabihan niya ako pero ayaw po niya. Kaya mag-isa na naman po akong natulog don sa kwarto namin. Natatakot na naman po ako kasi baka ulitin na naman sa akin ni Papa yon. Di po ako makatulog. Sabi ko darating na naman ang demonyo. Ano ang gagawin ko. Gusto kong umalis. Wala ako magawa[.]

Q: What happened when your father arrive (sic)?

A: Sabi ko andiyan na ang demonyo. Naririnig ko na ang pagbukas ng pinto. Nagtulog-tul[u]gan ako non kasi naamoy ko amoy alak, lasing siya. Tapas nakita ko na siya nagbibihis. Tapos sabi niya, "[redacted] " di po ako gumagalaw. Sabi niya, "[redacted]" tapos nagulat po ako kasi binato po niya ang sinturon niya sa akin.

Q: What happened after your father throw (sic) his belt on you?

A: Masakit po. Tumama po yon sa may ganito ko, nagulat po ako, napasigaw po ako ng "Ah," gising ka pa pala, halika dito. Ayaw kong lumapit noon[,] natatakot ako. Tapos sabi niya, ["]lumapit ka dito.["] Natatakot po ako sa boses niya. Boses pa lang niya takot na ako. Hinubad niya yong pantalon niya, tapos yung brief niya. Pinilit na naman niyang hubarin ang mga damit ko.

Q: What happened after your father was able to remove your clothes?

A: Inulit na naman po niya ang ginawa niya sa akin. Dinaganan na naman po niya ako. Hinipo niya ang dede ko. He inserted again his penis into my vagina. Iniisip ko na lang noon sana namatay na lang ako at hindi ko na naranasan ang ganitong sakit. Oo nga pinapakain niya kami. Pinag-aaral niya kami pero bakit ganito kung kami ay ituring. Mas maige pa ang naging palaboy na lang, walang tirahan, walang makain kaysa binaboy ka ng ganon.

Q: And afterwards, what transpired next?

A: He just dress (sic) up as if nothing happened. I fix (sic) myself and I was crying again. Ang sakit-sakit. Wala akong magawa. Wala akong maiyakan. Wala akong masabihan ng

problema kundi ako lang. Natatakot ako. Panay ang banta niya sa akin. Kaya niya kasing pumatay.[25]

11th rape — March 21, 2012
Criminal Case No. 23572-14-C

Q: What about on March 21, 2012, where were you?

A: We were already in our new house, ma'am.

Q: And where is that new house of yours[?]

A: Sa [redacted]k. We transferred there in December 2012 (sic).

Q: What happened on March 21, 2012?

A: My father was drunk again.

Q: What happened when you said that your father was then drunk during that time?

A: We were sleeping upstairs then naglagabag po yong pinto namin kasi bakal po ang ginawa niyang pinto kaya dinig na dinig po. Natatakot na naman po ako ng gabing yon.

Q: And what happened after your father arrive[d]?

A: He was drunk. He was removing his clothes then.

Q: What did you do when he removed his clothes?

A: I was still awake during that time watching tv. [T]hen he said "[redacted], halika dito.["]

Q: What did you do when your father called you?

A: I approached him.

Q: And after you approached him what happened when you approached him?

A: He ordered me to remove his shoes. I removed his shoes. Ganon po yon pati sapatos niya pinatatanggal sa amin.

Q: What happened after you removed his shoes?

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[25] *Id*. at 99-100.

A: I put his shoes away at pinabalik po niya ako sa tabi niya. Bakit po and he said maghubad ka. I said, ["]Papa maawa naman kayo. Ayoko na po.["] Umiiyak na po ako non pero bakit ganon parang di siya naaawa. Pwersahan niyang hinubad ang damit ko na naman. Paulit-ulit niya akong ginaganon.

Q: What happened after he removed your clothes?

A: Dinaganan na naman niya ako. He kissed me. Hinipo na naman niya ang dede ko. He inserted again his penis into my vagina.[26]

12th rape — December 28, 2012
Criminal Case No. 23567-14-C

Q: What about on December 28, 2012?

A: The day after my birthday. Nong December 27[,] I was so happy kasi pinaghanda ako ni Papa ng spaghetti. Kahit papano may handa ako.

Q: Then what happened on that day?

x x x x x x x x x

A: He was cleaning his gun and he was asking for a rag and I gave him a wet rag. Tuyo po dapat yon. Sabi niya sa akin, ["]tatanga-tanga ka aanhin ko to tutuyuin ko nga to bakit basa ang binigay mo[?"]

Q: Then what happened?

A: Nagulat po ako non kasi may binato po siya sa akin bakal po yata, tumama sa tagiliran ko. Nagsugat po. Umiyak po ako kasi ang laki. Nagulat din po ang mga kapatid ko na naglalaro sa labas. Tapos si Papa ang ginawa po niya tinawag niya po ako at sabi "[redacted], halika dito, tatang[a]-tanga ka.["] Tapos hinila niya ako pataas, kinaladkad niya ako ng walang awa. Tapos ni-lock niya ang pinto. Binalibag niya ako sa kama. Tapos kumuha siya ng sinturon.

Q: What happened after your father got his belt?

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[26] *Id*. at 100-101.

A: Hinampas po niya ako ng hinampas. Ang dami pong hampas. Ang dami pong latay ng katawan ko non. Wala po siyang awa. Halos malagot na po yong sinturon non.

Q: And after your father hit you with his belt several times, what happened?

A: Kala ko po titigilan na niya ako kasi tinabi na niya yong sinturon. Akala ko magso-sorry siya yon mas lalo palang dinemonyo ang utak niya. Naisipan pa pala niyang samantalahin ako non. He removed his dress, his brief, his pants, then he forcibly remove (sic) my dress, my panty and my short[s]. Biruin niyo yon ang sakit na ng katawan ko non naisipan pa niyang gawin yon. Wala talaga siyang awa.

Q: What did you do?

A: Wala. I just cried and cried. Tapos dinaganan po ako ni Papa. Sobrang sakit na ng katawan ko non hindi na nga ako makagalaw dinaganan pa niya ako ng napakabigat niyang katawan. Hinalikan na naman po niya ako sa labi ko. Tapos pinasok na naman po niya ang ari niya sa ari ko. Tulad rin po ng naramdaman ko non sabi ko sa sarili ko sobrang parusa na. Diyos ko, ano pa ba, ano pa ba. Mabuti pang mamatay na lang ako. Ang hirap ang hirap. Ayoko na.

Q: What transpired next after you[r] father inserted his penis to your vagina?

A: Then he stood up, he dress (sic) up as if nothing happened. Ganon naman lagi yan walang puso walang pakialam sa pakiramdam ng iba. Tapos ako pinilit kong tumayo bumangon kahit sobrang sakit ng katawan ko na inabot ko sa kaniya. Inayos ko ang mga damit ko. Tapas bumaba ako tinanong ako ng mga kapatid ko, ["]Ate, ano ang nangyari sa yo bakit puro latay ka.["] ["]Si Papa kasi inutusan ako nagkamali ako ng abot ayon sininturon ako.["] Wala namang magagawa ang mga kapatid ko kasi syempre sinasaktan din sila ni Papa.[27]

13th rape — March 21, 2013
Criminal Case No. 23568-14-C

Q: What about on March 21, 2013, would you still recall where were you?

[27] *Id*. at 102-103.

A: Nagtataka ako kasi lagi niya ng inuulit yon sa tuwing birthday ni Mama. March 21 is the birthday of my mother. Minsan naiisip ko ginagawa niya akong si Mama.

Q: Where were you on March 21, 2013?

A: I was at home.

Q: What were you then doing at your home?

A: I was watching tv.

Q: What happened after you were then watching tv?

A: I was so happy then during that time because my mother arrive[d] from Isabela. Naiisip ko di na niya gagawin yon kasi andito na sila Mama. Kompleto na ulit kami pero hindi pala nagkamali pala ako.

Q: What happened then?

A: Nanono[o]d po ako ng tv non. Si Mama po mamamalengke ng panghanda niya para sa birthday niya para po may mapagsalo-saluhan kami.

Q: What happened after your mother went to the market?

A: Sumama po ako noon kay Mama pero hindi na po niya ako pinasama kasi kasama na po niya yong isang kapatid ko. Bale tatlo po kaming naiwan sa bahay saka si Papa, si Kuya at yong isa ko pong kapatid. Pinababa po ni Papa yong dalawa kong kapatid naglaro po sila sa may labas namin.

Q: What transpired next after your siblings went out of the house?

A: Si Papa po umakyat po sa taas.

Q: Then what happened when your father went upstairs?

A: He locked the door.

Q: Where were you when your father locked the door?

A: Andon po sa kwarto kasi don po kwarto namin andon na rin po yong tv namin.

Q: Then what happened after your father lock (sic) the door?

A: He pushed me in (sic) the bed.

Q: Then what happened next after your father pushed you in (sic) [the] bed?

A: Sabi niya, "[redacted], maghubad ka ng damit mo."

Q: What did you do?

A: Nagmamakaawa na naman. ["]Papa maawa naman po kayo. Ayoko na. ["]

Q: Did he listen to your pleas?

A: No, ma'am.

Q: Then what happened next?

A: He forcibly remove (sic) my dress and he removed his dress, his brief, his short[s].

Q: What happened next after your father removed his clothes?

A: Pwersahan po niya akong tinulak sa kama.

Q: What happened next after he pushed you in (sic) the bed?

A: Dinaganan po niya ako. Hinipo niya ang dede ko. Hinalikan niya ang labi ko.

Q: What happened next after he kissed your lips?

A: Pwersahan na naman po niyang pinasok ang ari niya sa ari ko.

Q: What were you doing then when your father inserted his penis into your vagina?

A: Nothing I just cried. Akala ko matatapos na ang lahat ng hirap na nararanasan ko hirap ko dahil andiyan na sila Mama. Pero hindi pala.[28]

14th rape — July 20, 2013
Criminal Case No. 23578-14-C

Q: What about on July 20, 2013, would you kindly tell us where were you?

A: Yes, ma'am. I was in [redacted] in our new house.

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[28] *Id*. at 103-106.

Q: What happened while you were at your house?

COURT:

Q: Why do you remember July 20, 2013?

x x x x x x x x x

A: Because it was Nutrition Month in our school, your honor. Katatapos lang po ng Miss Intrams.

FISCAL MANCIA:

Q: What happened next?

A: Namamalengke po si Mama. Sumasama po ako sa kaniya kasi naiisip ko baka gawin na naman po ni Papa yon sa akin. Pero ayaw po akong isama ni Mama kasi marami daw po siyang bibitbitin mahirapan land (sic) daw po ako.

Q: What happened when your mother did not allow you to go to the market with her?

A: Andon lang po ako sa taas. Then my father asked my siblings to go downstairs at maglaro daw po muna sa labas.

Q: Did your siblings obey your father?

A: Opo naglaro po sila doon sa may labas.

Q: Then what happened next afterwards?

A: My father was in the bathroom, he was taking a bath. Kasi aalis po siya noon may pupuntahan. Tuwang-tuwa po ako sabi ko "Yehey, aalis na naman ang demonyo." Mawawala na naman. Ang saya-saya namin pag wala siya.

Q: What happened next afterwards?

A: The[n] he suddenly called me "[redacted]." Bumaba po ako kasi inisip ko baka po may iuutos siya, baka twalya o toothbrush niya. Eh hind pala pinapasok niya ako sa banyo.

Q: What happened next after he asked you to go inside the comfort room?

A: He locked the door.

Q: Then what happened afterwards?

A: I saw that he was wearing only a towel pero may brief pa po siya. He removed his brief then he undress (sic) me.

Q: Then what happened after he remove (sic) your dress?

A: Naupo po siya doon sa may bowl.

Q: Then afterwards?

A: Tapos pinaupo po niya ako para po pumasok ang ari niya sa ari ko.

Q: Did he succeed in inserting his penis into your vagina?

A: Yes, ma'am.

Q: And what transpired next?

A: He kissed my lips. He touched my breast. I was crying. Talagang wala siyang awa. Nanghihina na ako non.[29]

15th rape — September 17, 2013
Criminal Case No. 21351-13-C

Q: What about on September 17, 2013?

A: That was the last time that he molested me.

Q: Where were you on September 17, 2013?

A: I was at our house at x[redacted].

Q: What happened while you were at x[redacted]?

x x x x x x x x x

A: May kama po kasi sa baba namin. Double deck po siya. Sa baba po sila Mama. Don po ako sa double deck katabi ko po yong younger sister ko. Si Papa po andon po siya sa may taas nanonood ng tv. Gabi na po siyang natulog noon kasi may pinapanood po siya hindi ko po alam kung ano. Nararamdaman ko po siya. May kumakaloskos po na gising pa siya. Ako natutulog na. Akala ko mahimbing na ang tulog ko noon, payapa, masaya. Hindi pala kasi maya-maya may kumulbit (sic) sa akin. Hindi ko po matingnan kasi alam kong si Papa yon. Malalaki ang daliri niya, magagaspang.

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

Alam kong si Papa yon. Sabi ko, hala dedemonyohin na naman kaya ako nito. Natatakot ako nonkaya (sic) nagtulog-tulugan na lang ako.

Q: What transpired next afterwards?

A: Nagulat ako kasi bigla niyang pinisil ang paa ko, pinisil niya ang hita ko. Napatayo ako sa sakit.

Q: What did you do next?

A: Mata pa lang niya takot na ako alam ko na ang ibig sabihin niya.

Q: What did you do?

A: I went down from the double deck.

Q: After you went down from the double deck, what happened?

A: He asked me to go upstairs doon sa may tv. may kama n (sic) po kasing maliit doon tapos may maitim na upuan po doon na mahaba tapos ni-lock niya ang pinto.

Q: What happened after he locked the door?

A: Tinulak po niya ako doon sa may upuang itim.

Q: Then afterwards what happened?

A: Walang awa po niyang hinubad ang mga damit ko, ang pajama ko, ang panty ko.

Q: What happened after he removed your clothes?

A: He then removed his clothes, his brief. Walang awa po niya akong pinagsamantalahan noong gabing yon. Hinalikan niya yong labi ko, hinipo niya yong dede ko. Tapos pinasok na naman niya ang ari niya sa ari ko.

Q: What did you do during that time?

A: Umiiyak po. Tapos natapos na po siya nakita ko po na may lumalabas po na puti don sa ari niya. Pinupunasan po niya ng damit. Naiisip ko po na natatakot ito na mabuntis ako. Sabi ko matalino talaga tong amang ito. Demonyo talaga[.]

Q: And what transpired next afterwards?

A: Nagbihis na lang po ako. Di na po ako nakatulog ng gabing yon. Nilakasan ko na po yong loob ko. Sinabi ko na po kay Mama kinabukasan ang totoo.[30]

Thus, the Court deems the foregoing as an original and realistic account of AAA's harrowing experience in the hands of her own father. This authenticity is further strengthened by the findings of the trial court insofar as its delivery in open court is concerned. In the words of the RTC, AAA's demeanor while testifying evinced "the anguish of a very young woman seeking justice for the wrong done to her."[31] In the course of her testimony, she expressed how she came to regard Navasero as "demonyo," "walang konsensya," "hindi na po yata tao," and "walang puso," after the attacks on her became a habit. In fact, the trial court specifically noted the fact that AAA was weeping and crying almost the entire time she was relating "convincingly her pitiful situation and utter helplessness in the hands of her own father."[32] In view of these observations directly witnessed by the trial court, therefore, the Court cannot accede to Navasero's bare and unsubstantiated assertions.

Neither can we give credit to Navasero's contention that if AAA's allegations were true, the matter should have reached her mother and siblings even before the fifteenth (15th) rape incident. But since it took AAA an unacceptable length of time before she finally reported the so-called incidents of abuse, then it is doubtful whether the same even occurred at all. Time and again, the Court has held that there is no uniform behavior that can be expected from those who had the misfortune of being sexually molested. While there are some who may have found the courage early on to reveal the abuse they experienced, there are those who have opted to initially keep the harrowing ordeal to themselves and attempt to move on with their lives. This is because a rape victim's actions are oftentimes overwhelmed by fear rather than by reason. The perpetrator of

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

[31] CA *rollo*, p. 57.

[32] *Id.* at 58.

the rape hopes to build a climate of extreme psychological terror, which would numb his victim into silence and submissiveness. In fact, incestuous rape further magnifies this terror, for the perpetrator in these cases, such as the victim's father, is a person normally expected to give solace and protection to the victim. Moreover, in incest, access to the victim is guaranteed by the blood relationship, magnifying the sense of helplessness and the degree of fear.[33] Thus, the fact that it took AAA years before she was able to muster up the courage to confide in her mother does not make her story untrue, especially in view of Navasero's threats and physical abuse.

As to the penalty imposed, the RTC was correct in imposing the penalty of *reclusion perpetua* for each count of rape, without eligibility for parole, pursuant to A.M. No. 15-08-02-SC[34] and in lieu of death because of its suspension under Republic Act No. 9346.[35] As to the award of damages, the CA was correct in modifying the RTC's ruling such that Navasero is now ordered

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[33] *People v. Descartin, Jr., supra* note 12, at 662-663.

[34] II.

In these lights, the following guidelines shall be observed in the imposition of penalties and in the use of the phrase "without eligibility for parole":

(1) x x x; and

(2) When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. 9346, the qualification of "without eligibility for parole" shall be used to qualify *reclusion perpetua* in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.

[35] RPC, Article 266-B:

Art. 266-B, Penalty. 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) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim[.]

to pay, for each count of rape, civil indemnity in the amount of ₱100,000.00, moral damages in the amount of ₱100,000.00, and exemplary damages in the amount of ₱100,000.00, pursuant to *People v. Jugueta*,[36] as well as a six percent (6%) interest per annum on all the amounts awarded reckoned from the date of finality of this Decision until the damages are fully paid.

WHEREFORE, premises considered, the instant appeal is **DISMISSED** for lack of merit. The Decision dated June 23, 2017 of the Court of Appeals affirming, with modification, the Consolidated Decision dated July 20, 2015 of the Regional Trial Court of Calamba City, Branch 35, finding appellant Noel Navasero, Sr. y Hugo guilty beyond reasonable doubt of fifteen (15) counts of qualified rape, is **AFFIRMED.** Thus, appellant Navasero is hereby sentenced to suffer the penalty of *reclusion perpetua* for each count of rape, without eligibility for parole, and to pay, for each count of rape, civil indemnity in the amount of ₱100,000.00, moral damages in the amount of ₱100,000.00, and exemplary damages in the amount of ₱100,000.00, as well as a six percent (6%) interest per annum on all the amounts awarded reckoned from the date of finality of this Decision until the damages are fully paid.

SO ORDERED.

Perlas-Bernabe,[*] *Leonen, Hernando*, and *Carandang,*[**] *JJ.,* concur.

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[36] 783 Phil. 806 (2016).

[*] Designated as additional member, in lieu of Justice Andres B. Reyes, Jr., per raffle dated February 4, 2019.

[**] Designated as additional member per Special Order No. 2624 dated November 28, 2018.

THIRD DIVISION

[G.R. No. 237324. February 6, 2019]

REPUBLIC OF THE PHILIPPINES, represented by the Department of Public Works and Highways, *petitioner, vs.* **SPOUSES AURORA SILVESTRE and ROGELIO SILVESTRE, AND NATIVIDAD GOZO (formerly known as "QQQQ"),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE ISSUES PERTAINING TO THE VALUE OF THE PROPERTY EXPROPRIATED ARE QUESTIONS OF FACT WHICH ARE GENERALLY BEYOND THE SCOPE OF A JUDICIAL REVIEW; CASE AT BAR.— [T]he Court notes that only questions of law should be raised in a petition for review on *certiorari* under Rule 45. Factual findings of the lower courts will generally not be disturbed. Thus, the issues pertaining to the value of the property expropriated are questions of fact which are generally beyond the scope of the judicial review of this Court under Rule 45. Here, in claiming that the courts *a quo* should have pegged the just compensation between ₱600.00 and ₱1,200.00 per square meter and not at ₱5,000.00, the Republic-DPWH is asking the Court to recalibrate and weigh anew the evidence already passed upon by the courts below. But unfortunately for the Republic-DPWH, it has not alleged, much less proven, the presence of any of the exceptional circumstances that would warrant a deviation from the rule that the Court is not a trier of facts.

2. ID.; SPECIAL CIVIL ACTIONS; EXPROPRIATION; JUST COMPENSATION, DEFINED; THE RECOMMENDATIONS OF THE BOARD OF COMMISSIONERS (BOC) CARRY WITH IT GREAT WEIGHT AND VALUE INSOFAR AS THE DETERMINATION OF JUST COMPENSATION IS CONCERNED.— Just compensation, in expropriation cases, is defined as the full and fair equivalent of the loss of the property taken from its owner by the expropriator. Its true measure is not the taker's gain, but the owner's loss. The word "just" is

used to modify the meaning of the word "compensation" to convey the idea that the equivalent to be given for the property to be taken shall be real, substantial, full and ample. It has been consistently held, moreover, that though the determination of just compensation in expropriation proceedings is essentially a judicial prerogative, the appointment of commissioners to ascertain just compensation for the property sought to be taken is a mandatory requirement nonetheless. Thus, while it is true that the findings of commissioners may be disregarded and the trial court may substitute its own estimate of the value, it may only do so for valid reasons; that is, where the commissioners have applied illegal principles to the evidence submitted to them, where they have disregarded a clear preponderance of evidence, or where the amount allowed is either grossly inadequate or excessive. As such, "trial with the aid of the commissioners is a substantial right that may not be done away with capriciously or for no reason at all." Evidently, the recommendations of the BOC carry with it great weight and value insofar as the determination of just compensation is concerned.

3. ID.; ID.; ID.; ID.; THE DELAY IN THE PAYMENT OF JUST COMPENSATION IS A FORBEARANCE OF MONEY AND, AS SUCH, IS NECESSARILY ENTITLED TO EARN INTEREST; CASE AT BAR.— Indeed, the delay in the payment of just compensation is a forbearance of money and, as such, is necessarily entitled to earn interest. Thus, the difference in the amount between the final amount as adjudged by the Court, which in this case is ₱15,225,000.00, and the initial payment made by the government, in the amount of ₱3,654,000.00 — which is part and parcel of the just compensation due to the property owner — should earn legal interest as a forbearance of money. Moreover, with respect to the amount of interest on this difference between the initial payment and the final amount of just compensation, as adjudged by the Court, we have upheld, in recent pronouncements, the imposition of 12% interest rate from the time of taking, when the property owner was deprived of the property, until July 1, 2013, when the legal interest on loans and forbearance of money was reduced from 12% to 6% per annum by Bangko Sentral ng Pilipinas Circular No. 799. Accordingly, from July 1, 2013 onwards, the legal interest on the difference between the final amount and initial payment is 6% per annum.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Andeza & Segundera Law Office for respondents.

D E C I S I O N

PERALTA *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated August 12, 2016 of the Court of Appeals (*CA*) in CA-G.R. CV No. 105144 which affirmed, with modification, the Decision[2] dated March 6, 2015 of the Regional Trial Court (*RTC*) of Valenzuela City.

The antecedent facts are as follows:

The instant case stemmed from an action for expropriation filed by the petitioner Republic of the Philippines, represented by the Department of Public Works and Highways (*Republic-DPWH*), in the exercise of its power of eminent domain under Republic Act (*R.A.*) No. 8974. In its original complaint dated October 11, 2007, the Republic-DPWH sought to expropriate a 3,856-square meter lot located in Barangay Ugong, Valenzuela City, the real owner of which was originally unknown (designated as "QQQQ"). The lot was to be used for the construction of the C-5 Northern Link Project, Segment 8.1, from Mindanao Avenue in Quezon City to the North Luzon Expressway, Valenzuela City. Pursuant to said project, the motoring public would supposedly have a faster and more comfortable travel going to and coming from the North thru Metro Manila.[3]

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[1] *Rollo*, pp. 24-39. Penned by Associate Justice Renato C. Francisco, with the concurrence of Associate Justices Apolinario D. Bruselas, Jr. and Danton Q. Bueser.

[2] *Id*. at 40-44. Penned by Judge Nancy Rivas-Palmones.

[3] *Id*. at 25.

Since the owner of the property was unknown, the RTC of Valenzuela City resorted to summons by publication in a newspaper of general circulation. Subsequently, on May 5, 2008, the RTC issued the writ of possession prayed for by the Republic-DPWH following its ability and readiness to pay ₱4,627,200.00, the amount equivalent to 100% of the property's zonal value. Next, on September 9, 2008, the trial court ordered the Republic-DPWH to issue a check payable to the order of its Clerk of Court.[4] Discovering, thereafter, that an 811-square meter portion of the 3,856-square meter property sought to be expropriated was owned by Spouses Quintin, Victoriano Galguierra, Victoria Galguierra, Elisa Galguierra, Eñña Galguierra, and Ma. Belen Manalaysay (*Quintin, et al.*), the Republic-DPWH filed an Omnibus Motion (for Leave to File and Admit Attached Amended Complaint and for Replacement of Check) seeking to implead Quintin, et al. as defendants of the case. Accordingly, the RTC admitted Republic-DPWH's amended complaint and ordered it to issue a manager's check payable to Quintin, et al. in the amount of ₱973,200.00, the equivalent of the zonal value of the 811-square meter portion.[5]

On July 2, 2012, herein respondents, spouses Aurora and Rogelio Silvestre, and Natividad Gozo (*Silvestre, et al.*), filed a Manifestation (In Lieu of Answer to Amended Complaint) alleging that they are the registered owners of Lot No. 1-D-9-A-3, covered by Transfer Certificate of Title No. V-99470, located along Gen. T. De Leon, Valenzuela City, consisting of 6,629 square meters. Upon verification, they discovered that 4,367 square meters of the 6,629-square meter property was affected by the expropriation. Thus, they prayed that the Republic-DPWH be directed to pay them ₱9,389,050.00 (computed as follows: 4,367 square meters x ₱2,150.00 zonal value).[6] On November 21, 2012, the Republic-DPWH filed a second amended complaint impleading Silvestre, et al., as

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[4] *Id*.

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

[6] *Id.* at 26.

additional defendants, and alleging that contrary to their claims, the area affected by the sought expropriation covered only 3,045 square meters of their property with a zonal value of ₱1,200.00 per square meter or a total zonal value of ₱3,654,000.00, which the Republic-DPWH already deposited with the court.

On January 14, 2014, the RTC issued a partial decision insofar as Quintin, et al. are concerned as they no longer pursued the second stage of the expropriation proceedings, receiving from the Republic-DPWH the amounts of ₱973,200.00, representing the zonal value of the lot, and ₱208,060.82, for the cost of the fence thereof. Accordingly, the RTC condemned the 811-square meter portion of the property in favor of the Republic-DPWH. As for the portion of Silvestre, et al., however, the RTC proceeded with the second stage of the expropriation and directed the appointed Board of Commissioners (*BOC*) to submit a report on just compensation.[7]

On September 30, 2014, the BOC recommended the amount of ₱5,000.00 per square meter as the reasonable, just, and fair market value of the 4,367-square meter portion owned by Silvestre, et al. It relied on a Certification dated August 15, 2012 issued by Project Director Patrick Gatan finding that the project would affect 4,367 square meters of Silvestre, et al.'s property. Moreover, in arriving at the recommended amount, the BOC took into consideration the following:

> [T]the size, location, accessibility, the BIR Zonal Valuation, the previously decided expropriation case of DPWH v. Mapalad Serrano, where the fair market value was fixed at Php5,000.00 per square meter x x x; the Opinion Value conducted by the Assessor's Office personnel on February 21, 2007, in the properties within the vicinity of the property of defendants where 10 disinterested persons [were] interviewed as to the fair market value of the property within the vicinity which yielded a weighted average fair market value at Php5,150 per square meter x x x; the Deed of Absolute [S]ale executed by and between PBCOM FINANCE CORPORATION and FRANCISCO ERWIN & IMELDA F. BERNARDO over the property situated at Ge. T. De Leon, Valenzuela City where the fair market value of the

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

property was pegged at Php8,484.85 per square meter; the pictures of the existing subdivision within the vicinity of the property x x x; the pictures of Foton Motor Philippines, an industrial corporation involved in the manufacture of motor vehicles[.][8]

On October 17, 2014, however, the Republic-DPWH filed a Comment, assailing the recommendation of the BOC, arguing that said board erroneously considered the August 15, 2012 Certification issued by Project Director Gatan when there exists a more recent Certification dated October 4, 2012 issued by Geodetic Engineer Efipanio Lopez which was, thereafter, affirmed by Project Director Gatan in his Certification dated October 11, 2012. These recent certifications indicate that only 3,045 square meters of Silvestre, et al.'s property was to be affected by the project and not 4,367 square meters as they allege. As regards the basis for just compensation, the Republic-DPWH faulted the BOC in valuing the property at ₱5,000.00, making reference to the Mapalad Serrano property and disregarding the actual characteristics thereof. The Republic-DPWH added that since the zonal value of the property is ₱1,200.00 per square meter, it cannot command a price higher than said value.[9]

On March 6, 2015, the RTC partially adopted the recommendation of the BOC and pegged the just compensation at ₱5,000.00 per square meter, but found the total affected property to be only 3,045 square meters. The *fallo* of the Decision reads:

> WHEREFORE, judgment is hereby rendered fixing the just compensation of the total area of 3,045 square meters lot (TCT No. T- 799470) at Php15,225,000.00 (3,045 square meters x Php5,000.00) and authorizing the payment thereof by the plaintiff to the defendants for the property condemned deducting the provisional deposits of Php3,654,000.00 previously made and subject to the payment of all unpaid real property taxes and other relevant taxes by the defendants up to the taking of the property by plaintiff, if there be any.

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[8] *Id*. at 27.

[9] *Id*. at 28.

The plaintiff is directed to pay interest at the rate of 12% per annum in the unpaid balance of just compensation of Php11,571,000.00 (Php15,225,000.00 - Php3,654,000.00) computed from the time of the filing of the complaint until the plaintiff pays the balance.

The plaintiff is also directed to pay the defendants the amount of Php50,000 as attorney's fees; and the members of the Board as commissioner's fee the amount of Php3,000.00 each.

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SO ORDERED.[10]

In a Decision dated August 12, 2016, the CA affirmed, with modification, the RTC ruling, and disposed of the case as follows:

WHEREFORE, premises considered, the appeal is PARTIALLY GRANTED insofar as the legal interest imposed on the amount of just compensation. The assailed 30 April 2014 Decision of the Regional Trial Court in Civil Case No. 153-V-10 is AFFIRMED with MODIFICATION as regards interest which shall accrue as follows:

(a) The difference between the principal amount of just compensation (Php15,225,000.00) and the provisional deposit of Php3,654,000.00, shall earn legal interest of 12% per annum from the date of taking of the property until June 30, 2013; and

(b) The difference between the principal amount of just compensation (Php15,225,000.00) and the provisional deposit of Php3,654,000.00, shall earn legal interest of 6% per annum from July 1, 2013, until the finality of this Court's decision;

The sum of the above-mentioned amounts and the unpaid balance of just compensation of Php11,571,000.00 (Php15,225,000.00 less Php3,654,000.00) shall earn legal interest of 6% per annum from the finality of the Court's ruling until full payment.

Further, the order directing appellant to pay commissioner's fee and the award of attorney's fees are DELETED for lack of factual and legal basis.

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

SO ORDERED.[11] (Citations omitted.)

Aggrieved, the Republic-DPWH filed the instant petition on April 13, 2018, invoking the following argument:

I.

THE HONORABLE COURT OF APPEALS ERRED IN FIXING THE AMOUNT OF JUST COMPENSATION FOR THE SUBJECT LOT AT FIVE THOUSAND PESOS (₱5,000.00) PER SQUARE METER. INSTEAD, THE JUST COMPENSATION FOR THE SUBJECT LOT SHOULD BE FIXED BETWEEN SIX HUNDRED PESOS (₱600.00) AND ONE THOUSAND TWO HUNDRED PESOS (₱1,200.00) PER SQUARE METER.[12]

In its petition, the Republic-DPWH submits that because of several factors that diminish the value of the subject lot, the just compensation for the same must be pegged only between ₱600.00 and ₱1,200.00 per square meter and not at ₱5,000.00 as held by the courts *a quo*. First, the subject lot is occupied by 3,347 informal settler families as revealed by the census and tagging operations conducted by the National Housing Authority from November 2006 to January 2007. Second, according to a certain Fe Pesebre, the over-all supervisor, the subject area is located within a depressed, low-income, and substandard residential community, its surroundings being filthy, muddy, and polluted. Third, Tax Declaration No. C-018-28698 states that the subject lot is classified as a residential lot and carries a unit value of only ₱600.00 per square meter or a total market value of ₱3,977,400.00. Thus, such amount should be controlling for in the ordinary scheme of things, tax declarations carry a high evidentiary value, being, as to the tax declaring respondents, in the nature of admissions against self-interest. Fourth, the Republic-DPWH asserts that the current and relevant zonal valuation of the Bureau of Internal Revenue (*BIR*) for the subject lot is only ₱1,200.00 per square meter. The just compensation, therefore, should not exceed this amount since

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[11] *Id*. at 38-39.

[12] *Id*. at 16.

it has been held that the BIR Zonal Value is reflective of the fair market value of the real property within a given area. Just because it is the government that is purchasing the property, which is an entity whose financial resources are supposed to be inexhaustible, does not mean that the fair market value thereof must be higher.[13]

At the outset, the Court notes that only questions of law should be raised in a petition for review on *certiorari* under Rule 45. Factual findings of the lower courts will generally not be disturbed. Thus, the issues pertaining to the value of the property expropriated are questions of fact which are generally beyond the scope of the judicial review of this Court under Rule 45.[14] Here, in claiming that the courts *a quo* should have pegged the just compensation between ₱600.00 and ₱1,200.00 per square meter and not at ₱5,000.00, the Republic-DPWH is asking the Court to recalibrate and weigh anew the evidence already passed upon by the courts below. But unfortunately for the Republic-DPWH, it has not alleged, much less proven, the presence of any of the exceptional circumstances that would warrant a deviation from the rule that the Court is not a trier of facts. On this ground alone, the denial of the petition is warranted. Nevertheless, even if the propriety of the instant petition is assumed, we still resolve to deny the same.

Just compensation, in expropriation cases, is defined as the full and fair equivalent of the loss of the property taken from its owner by the expropriator. Its true measure is not the taker's gain, but the owner's loss. The word "just" is used to modify the meaning of the word "compensation" to convey the idea that the equivalent to be given for the property to be taken shall be real, substantial, full and ample.[15] It has been consistently held, moreover, that though the determination of just

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[13] *Id*. at 17-21.

[14] *Evergreen Manufacturing Corporation v. Republic,* G.R. Nos. 218628 and 218631, September 6, 2017, 839 SCRA 200, 215.

[15] *Id*. at 216, citing *Rep. of the Phils., et al. v. Judge Mupas, et al*., 785 Phil. 40 (2016).

compensation in expropriation proceedings is essentially a judicial prerogative, the appointment of commissioners to ascertain just compensation for the property sought to be taken is a mandatory requirement nonetheless. Thus, while it is true that the findings of commissioners may be disregarded and the trial court may substitute its own estimate of the value, it may only do so for valid reasons; that is, where the commissioners have applied illegal principles to the evidence submitted to them, where they have disregarded a clear preponderance of evidence, or where the amount allowed is either grossly inadequate or excessive. As such, "trial with the aid of the commissioners is a substantial right that may not be done away with capriciously or for no reason at all."[16] Evidently, the recommendations of the BOC carry with it great weight and value insofar as the determination of just compensation is concerned.

Here, it was precisely the findings of the BOC that the courts below adopted. In its assailed Decision, the CA affirmed the RTC ruling when it held that the BOC properly took into consideration the relevant factors in arriving at its recommendation of just compensation. In fact, these relevant factors were based not on mere conjectures and plain guesswork of the BOC, but on the statutory guidelines set forth in Section 5 of R.A. No. 8974, to *wit*:

> Section 5. Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale. — In order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards:
>
> (a) The classification and use for which the property is suited;
>
> (b) The developmental costs for improving the land;
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> (c) The value declared by the owners;
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> (d) The current selling price of similar lands in the vicinity;

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[16] *Id*. at 217, citing *Spouses Ortega v. City of Cebu*, 617 Phil. 817 (2009).

(e) The reasonable disturbance compensation for the removal and/or demolition of certain improvement on the land and for the value of improvements thereon;

(f) [The] size, shape or location, tax declaration and zonal valuation of the land;

(g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and

(h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.

In view of the foregoing, the Court finds no error on the part of the courts below in finding that there was nothing arbitrary about the pegged amount of ₱5,000.00 per square meter, recommended by the BOC, as it was reached in consideration of the property's size, location, accessibility, as well as the BIR zonal valuation, among other things. We quote, with approval, the words of the appellate court:

Firstly, the BOC significantly noted that the subject property has a residential classification and is similarly situated [within] the *Mapalad Serrano* property (similarly affected by the Northern Link Road Project), which was earlier expropriated by the government in Civil Case No. 52-V-08. The Decision dated 22 August 2012, the RTC-Branch 172 fixed the amount of just compensation at ₱5,000.00 per square meter. Per Entry of Judgment, such Decision became final and executory on 08 March 2013. In the said Decision, the *Mapalad Serrano* property was described as having mixed residential and industrial use. In conformity with the standards set forth in Section 5, the two properties can be said to be similarly-situated as would reasonably lead to the conclusion that they have the same market value.

Secondly, the BOC took note of the existing business establishments (Foton Philippines, Inc., Shell gasoline station, Seven Eleven Convenient Store, Banco de Oro, Allied Bank and Eastwest Bank), educational institutions (St. Mary's School, Gen. T. de Leon National High School, Our Lady of Lourdes School), Parish of the Holy Cross

Church, subdivisions (Bernardino Homes and Miguelito Subdivision) near the vicinity of appellee's property.

Thirdly, as reasonable basis for comparison, the BOC took into consideration the Deed of Absolute Sale executed by and between PBCOM Finance Corporation and Francisco Erwin D. & Imelda F[.] Bernardo covering a property similarly situated with the subject property where the fair market value was pegged at ₱8,484.85 per square meter. This comparison made by the BOC finds support in Section 5 (d) which provides that "[t]he current selling price of similar lands in the vicinity" may [be] considered as a factor in determining just compensation.[17] (Citations omitted.)

Thus, the Court cannot subscribe to the Republic-DPWH's plain and simplistic assertions that the subject property must be valued at a significantly lower price due to the presence of informal settlers, as well as the opinion of a certain Fe Pesebre. It is clear, from the records, that the BOC endeavored painstaking efforts in determining just compensation. From court promulgations on similarly situated lands to the numerous commercial establishments within the property's vicinity and even sales contracts covering nearby lots, the BOC obviously took the statutory guidelines to heart and considered several factors in arriving at its recommendation.

As for the contention of the Republic-DPWH that it is the value indicated in the property's tax declaration, as well as its zonal valuation that must govern, the Court adopts the findings of the BOC, the RTC, and the CA in ruling that the same are not truly reflective of the value of the subject property, but is just one of the several factors to be considered under Section 5 of R.A. No. 8974. Time and again, the Court has held that zonal valuation, although one of the indices of the fair market value of real estate, cannot, by itself, be the sole basis of just compensation in expropriation cases.[18]

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[17] *Rollo*, pp. 32-33.

[18] *Evergreen Manufacturing Corporation v. Republic, supra* note 14, at 221.

In fine, the Court finds no cogent reason to reverse the findings of the CA, insofar as the amount of just compensation is concerned. In the absence, moreover, of any legal basis to the contrary, or any objection from the parties, the Court further affirms the appellate court's imposition of legal interest, as well as its deletion of the payment of commissioner's fee and the award of attorney's fees for being in accord with applicable law and recent jurisprudence.

Indeed, the delay in the payment of just compensation is a forbearance of money and, as such, is necessarily entitled to earn interest. Thus, the difference in the amount between the final amount as adjudged by the Court, which in this case is ₱15,225,000.00, and the initial payment made by the government, in the amount of ₱3,654,000.00 — which is part and parcel of the just compensation due to the property owner — should earn legal interest as a forbearance of money. Moreover, with respect to the amount of interest on this difference between the initial payment and the final amount of just compensation, as adjudged by the Court, we have upheld, in recent pronouncements, the imposition of 12% interest rate from the time of taking, when the property owner was deprived of the property, until July 1, 2013, when the legal interest on loans and forbearance of money was reduced from 12% to 6% per annum by Bangko Sentral ng Pilipinas Circular No. 799. Accordingly, from July 1, 2013 onwards, the legal interest on the difference between the final amount and initial payment is 6% per annum.[19]

Here, the Republic-DPWH filed the expropriation complaint on October 11, 2007. But it was able to take possession of the property on May 5, 2008, when the RTC issued the writ of possession prayed for by the Republic-DPWH following its ability and readiness to pay 100% of the property's zonal value. Thus, a legal interest of 12% per annum shall accrue from May 5, 2008 until June 30, 2013 on the difference between the final amount adjudged by the Court and the initial payment made. From July 1, 2013 until the finality of the Decision of the Court,

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[19] *Id*. at 230.

the difference between the initial payment and the final amount adjudged by the Court shall earn interest at the rate of 6% per annum. Thereafter, the total amount of just compensation shall earn legal interest of 6% per annum from the finality of this Decision until full payment thereof.

WHEREFORE, premises considered, the instant petition is **DENIED**. The assailed Decision dated August 12, 2016 of the Court of Appeals is **AFFIRMED** such that the just compensation for the 3,045-square meter of the expropriated property is ₱5,000.00 per square meter, or a total of ₱15,225,000.00. Hence, the following amounts are due to the respondents, Spouses Aurora Silvestre and Rogelio Silvestre, and Natividad Gozo:

1. The unpaid portion of the just compensation which shall be the difference between the principal amount of just compensation, or ₱15,225,000.00, and the amount of initial deposit made by petitioner Republic of the Philippines, represented by the Department of Public Works and Highways, or ₱3,654,000.00; and
2. Interest, which shall accrue as follows:
    i. The difference between the principal amount of just compensation, or ₱15,225,000.00, and the amount of initial deposit, or ₱3,654,000.00, shall earn legal interest of 12% per annum from the date of the taking, or May 5, 2008, until June 30, 2013.
    ii. The difference between the principal amount of just compensation, or ₱15,225,000.00, and the amount of initial deposit, or ₱3,654,000.00, shall earn legal interest of 6% per annum from July 1, 2013 until the finality of the Decision.
    iii. The total amount of just compensation, or the sum of legal interest in items i and ii above, plus the unpaid portion of ₱11,571,000.00 (₱15,225,000.00 less ₱3,654,000.00) shall earn legal interest of 6% per annum from the finality of this Decision until full payment thereof.

SO ORDERED.

Leonen, Hernando, and *Carandang,*[*] *JJ.*, concur.

Reyes, A. Jr., J., on leave.

THIRD DIVISION

[A.C. No. 12125. February 11, 2019]

CELIANA B. BUNTAG, FLORA ARBILERA, VETALIANO BONGO, SEBASTIAN BONGO, PETRONILO BONGO, LEO BONGO, and RAUL IMAN, *complainants, vs.* **ATTY. WILFREDO S. TOLEDO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; DISBARMENT AND DISCIPLINE OF ATTORNEYS; THE ALLEGATIONS IN A DISBARMENT COMPLAINT MUST BE PROVEN WITH SUBSTANTIAL EVIDENCE; NOT ESTABLISHED IN CASE AT BAR.— It is well-established that the allegations in a disbarment complaint must be proven with substantial evidence. *Spouses Boyboy v. Atty. Yabut, Jr.* defines the standard of substantial evidence for an administrative complaint: The standard of substantial evidence required in administrative proceedings is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. x x x Here, complainants failed to present any evidence to adequately support their allegations against respondent. They failed to state how much he supposedly demanded from them. They also did not attach receipts of the

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[*] Designated as additional member per Special Order No. 2624 dated November 28, 2018.

payment they had sent him to support their claim of unreasonable demand of money. Receipts from financial institutions could have supported their allegations that the unreasonable demand of money caused them to borrow money with high interest rates. Complainants alleged that they were forced to sign documents without understanding their contents. These documents should have been annexed to their Complaint to show this Court what these were. If they were forced to lie during hearings and cross-examinations, the stenographic notes would have shown the statements they wanted to dispute. x x x Complainants made various accusations of impropriety and violations of the lawyer's oath against respondent. However, save for their bare allegations, they failed to attach records or other pieces of evidence to substantiate their Complaint. The little evidence that they did proffer failed to support their accusations or bolster their case against him.

2. ID.; RETAINER OR WRITTEN AGREEMENT BETWEEN THE ATTORNEY AND THE CLIENT; EXECUTION OF A WRITTEN AGREEMENT ON THE SCOPE OF SERVICES OFFERED BY THE LAWYER TO HIS/HER CLIENT IS RECOMMENDED TO AVOID BASELESS DEMANDS FROM THE CLIENT; CASE AT BAR.— A retainer or written agreement between a lawyer and the client lists the scope of the services to be offered by the lawyer and governs the relationship between the parties. Without a written agreement, it would be difficult to ascertain what the parties committed to; hence, a party may be emboldened to make baseless demands from the other party, presenting his or her own interpretation of the verbal agreement into which they entered. Here, complainants accuse respondent of demanding money from them on several occasions despite their indigence. Respondent denied their accusations, and asked that they specify the instances he had asked for money, along with the amounts he purportedly demanded from them. If the parties had executed a written agreement, issues on lawyer's fees and other expenses incurred during a trial would not have arisen, as each party would know his or her obligations under the retainer agreement. As it was, complainants seemed unaware of what was expected of them as clients, leading them to make blanket accusations of impropriety against respondent. To prevent a similar predicament from happening in the future, respondent is directed

to henceforth execute written agreements with all of his clients, even those whose cases he is handling *pro bono*.

R E S O L U T I O N

LEONEN, *J.*:

The burden of proof lies on the party making the allegation. In a disbarment complaint, the allegations of the complainant must be proven with substantial evidence.

Celiana Bongo-Buntag (Buntag), Flora Arbilera, Vetaliano Bongo, Sebastian Bongo, Petronilo Bongo, Leo Bongo, and Raul Iman (Buntag, et al.) filed a Disbarment Complaint[1] against Atty. Wilfredo S. Toledo (Atty. Toledo), their former counsel in several criminal and civil cases.[2]

Buntag, et al. claimed that despite knowing that they were indigents, Atty. Toledo demanded money from them several times.[3] To produce the money he asked for, they had to borrow money from their neighbors and from financial institutions with high interest rates, miring them in debt.[4]

Buntag, et al. also alleged that Atty. Toledo brought companions to their house without prior notice. He introduced them as "dignitaries"[5] and demanded that they serve them lechon, *sugpo*, and white "nokus."[6]

Moreover, Buntag, et al. claimed that Atty. Toledo forced them to lie during their hearings and cross-examinations, and to sign documents without understanding their contents.[7] He

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[1] *Rollo*, pp. 2-12 and 14-21.

[2] *Id.* at 2.

[3] *Id.* at 3-5.

[4] *Id.* at 3.

[5] *Id.* at 4.

[6] *Id.* at 7.

[7] *Id.* at 6.

even supposedly refused to conduct any inspection of the property to help them prove their ownership over the property.[8]

Further, Buntag, et al. alleged that Atty. Toledo did not take any action against the judge assigned on their cases, even if the judge was clearly biased against them.[9] He also failed to update them on the status of their cases. They would later be surprised to find out that they had already been convicted of the charge against them.[10]

Buntag, et al. added that Atty. Toledo handled a civil case despite a conflict of interest: he served as counsel for Ma. Teresa Edar Schaap (Schaap)[11] in a case where Buntag, et al. were the plaintiffs.[12]

Buntag, et al. claimed that Atty. Toledo became indifferent when he noticed that they could no longer afford to pay him, so they asked him to withdraw as their counsel.[13]

On November 28, 2011, Atty. Toledo filed an Omnibus Motion for a Bill of Particulars and Extension of Time to File Answer.[14] He requested Buntag, et al. to "enumerate the specific material facts and dates when he allegedly borrowed money from them [and] brought people to their houses to eat as 'dignitaries[.]'"[15] He also asked them to provide the specific incidents that involved his "alleged lying, conflict of interest[,] and mishandling[.]"[16]

On July 4, 2012, Buntag, et al. filed an Urgent Manifestation[17] where they stated that a Bill of Particulars was a prohibited

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[8] *Id*. at 8.

[9] *Id*. at 5.

[10] *Id*. at 8-10.

[11] *Id*. at 24 and 122. Teresa is sometimes spelled Theresa in the *rollo*.

[12] *Id*. at 17.

[13] *Id*. at 11.

[14] *Id*. at 23-26.

[15] *Id*. at 24.

[16] *Id*. at 24.

[17] *Id*. at 28-39.

pleading under Rule III, Section 2 of the Rules of Procedure of the Commission on Bar Discipline.[18] They maintained that Atty. Toledo should not have assumed that his Motion was automatically approved so he should have filed his answer.[19]

A Mandatory Conference was set at 11:30 a.m. on September 10, 2012.[20] Atty. Toledo filed an Omnibus Motion for Resetting of September 10, 2012 Mandatory Conference with Reiteration for a Bill of Particulars and Extension of Time to File Answer.[21] The Motion for a Bill of Particulars was denied, but the Motion for Resetting and Extension to File Answer was granted.[22] The Mandatory Conference was reset several times due to Atty. Toledo's repeated Motions.[23]

In his Answer,[24] Atty. Toledo denied all the allegations thrown against him. He also attached the Affidavits of Arturo Arboladura (Arboladura)[25] and Vitaliano Dumangcas (Dumangcas)[26] to support his claims that he did not neglect his duties as complainants' counsel, and that he did not demand huge sums of money from them.

Arboladura, a beach resort operator in Panglao, Bohol, attested that he first met Atty. Toledo sometime in 1998. The lawyer, he said, helped him create the Panglao Peace Multi-Purpose Cooperative and register it with the Cooperative Development Authority. He also attested that Atty. Toledo recruited his clients, the members of the Bongo family (or Buntag, et al. in this case), to be part of the cooperative.[27]

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

[19] *Id*. at 29.

[20] *Id*. at 40.

[21] *Id*. at 41-45.

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

[23] *Id*. at 48-49, 68, 69, 70, 93, and 94.

[24] *Id*. at 74-80.

[25] *Id*. at 82-86.

[26] *Id*. at 87-91.

[27] *Id*. at 82.

Arboladura stated that on two (2) occasions, Buntag, accompanied by Atty. Toledo, asked for his help in paying the bail bond of her family members who had been charged with estafa and illegal possession of unlicensed firearms. He lent her a total of ₱50,000.00,[28] stating that he would not have lent her any money had it not been for Atty. Toledo's intercession.[29]

Arboladura attested that the Bongo family had several criminal cases lodged against them by their relatives and the buyers of the parcels of land they had inherited from their grandparents. He testified that Atty. Toledo solely handled all their cases *pro bono*. Arboladura would sometimes get invited by Buntag to a thanksgiving party for Atty. Toledo when a case against them was dismissed, or when a family member was acquitted.[30]

Dumangcas, Atty. Toledo's messenger, attested that the lawyer had many poor clients in Panglao and Dauis in Bohol whose cases he had accepted without pay. He claimed that Atty. Toledo sometimes even used his own money to pay his clients' bail bond.[31]

Dumangcas attested that the Bongo family had been Atty. Toledo's clients as early as 1999, and that he handled at least 16 civil and criminal cases filed against them *pro bono*.[32]

On February 27, 2014, the Mandatory Conference was deemed terminated when both parties failed to appear. The parties were then directed to submit their respective position papers.[33]

In their Position Paper,[34] Buntag, et al. claimed that because Atty. Toledo did not submit his Answer, he must be declared in default and judgment must be rendered in their favor.[35]

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[28] *Id*. at 83.

[29] *Id*. at 86.

[30] *Id*. at 84.

[31] *Id*. at 87.

[32] *Id*. at 87-90.

[33] *Id*. at 110.

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

[35] *Id*. at 111.

In his Position Paper,[36] Atty. Toledo reiterated his denial of complainants' allegations.[37] He claimed to have represented them *pro bono* for over 10 years[38] and, in many of their cases, personally paid the docket fees[39] and miscellaneous costs such as postage stamps and photocopying of pleadings.[40]

Atty. Toledo denied that he brought persons in Buntag, et al.'s house without notice, or that he demanded that they prepare food for his guests. He maintained that he only went to their house when he was invited during a fiesta celebration or family occasions.[41]

Atty. Toledo also denied forcing Buntag, et al. to lie on their cases. He pointed out a case of forcible entry and damages, where it was revealed in a hearing that Buntag had already signed three (3) deeds of sale in favor of the defendant. Upon this discovery, Buntag engaged the services of another lawyer. Yet, despite having been discharged as their lawyer, he still continued to fulfill his duties as their counsel.[42]

Atty. Toledo further asserted that when he represented Schaap, there was no conflict of interest since Buntag, et al. were not parties to the case. Besides, he added, Schaap's case was executed by the sheriff even before they became his clients.[43]

Atty. Toledo claimed that he represented Buntag, et al. to the best of his abilities. Case in point, even if they discharged him as their counsel, he still filed a Motion for Reconsideration for one (1) of their cases, as the court had not yet acted upon their Notice of Withdrawal as Counsel.[44]

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[36] *Id*. at 114-145.

[37] *Id*. at 118.

[38] *Id*. at 120.

[39] *Id*. at 118.

[40] *Id*. at 121.

[41] *Id*. at 119.

[42] *Id*.

[43] *Id*. at 122.

[44] *Id*. at 143.

On July 11, 2016, Commissioner Mario V. Andres (Commissioner Andres) of the Integrated Bar of the Philippines Commission on Bar Discipline recommended[45] dismissing the Administrative Complaint against Atty. Toledo. He found that Buntag, et al. failed to substantiate their claims against the lawyer.[46] Nonetheless, he recommended that Atty. Toledo be directed to show cause why he should not be sanctioned for still acting as Buntag, et al.'s counsel despite being discharged. Thus:

RECOMMENDATION

It is respectfully recommended that for failing to overcome the burden of proof required in disbarment cases, the administrative complaint against Respondent Atty. Wilfredo S. Toledo be **DISMISSED** and he be ordered to **SHOW CAUSE** why he should not be sanctioned for encroaching upon the business of another lawyer.[47] (Emphasis in the original)

On November 5, 2016, the Board of Governors of the Integrated Bar of the Philippines adopted Commissioner Andres' findings of fact, but deleted the recommendation for the issuance of a show cause order against Atty. Toledo:[48]

RESOLVED to ADOPT the findings of fact and recommendation of the Investigating Commissioner dismissing the complaint but MODIFYING the same by deleting the recommendation for the issuance of a show cause order on matters not contained in the original complaint.

RESOLVED FURTHER to direct CIBD Director IPG Ramon S. Esguerra to prepare an extended resolution explaining the Board's action.[49]

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[45] *Id*. at 233-245.

[46] *Id*. at 237-244.

[47] *Id*. at 244.

[48] *Id*. at 231.

[49] *Id*.

In an Extended Resolution,[50] Commission on Bar Discipline Director Ramon S. Esguerra (Director Esguerra) recommended that the Complaint against Atty. Toledo be dismissed for lack of evidence. He stressed that despite being discharged as counsel, Atty. Toledo was still the counsel of record. Thus, the lawyer only acted in the best interest of his clients when he filed a Notice of Appeal on their behalf.[51]

The dispositive portion of the Extended Resolution read:

> WHEREFORE, it is respectfully recommended that the Complaint against Atty. Toledo be dismissed for lack of evidence. Moreover, it is respectfully submitted that Atty. Toledo had the duty to file the Notice of Appeal on behalf of Complainants despite the Notice for his discharge, and as such, cannot be directed to explain said action.[52]

The issue for this Court's resolution is whether or not respondent Atty. Wilfredo S. Toledo violated the Code of Professional Responsibility.

The Complaint must be dismissed.

It is well-established that the allegations in a disbarment complaint must be proven with substantial evidence.[53] *Spouses Boyboy v. Atty. Yabut, Jr.*[54] defines the standard of substantial evidence for an administrative complaint:

> The standard of substantial evidence required in administrative proceedings is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. While rules of evidence prevailing in courts of law and equity shall not be controlling, the obvious purpose being to free administrative boards from the compulsion of technical rules so

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[50] *Id*. at 246-260.

[51] *Id*. at 258.

[52] *Id*. at 260.

[53] *Fajardo v. Atty. Alvarez*, 785 Phil. 303, 322 (2016) [Per *J*. Leonen, Second Division] citing *Spouses Boyboy v. Atty. Yabut, Jr.*, 449 Phil. 664 (2003) [Per *J.* Bellosillo, Second Division].

[54] 449 Phil. 664 (2003) [Per *J*. Bellosillo, Second Division].

that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order, this assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without basis in evidence having rational probative force.[55] (Citations omitted)

Here, complainants failed to present any evidence to adequately support their allegations against respondent. They failed to state how much he supposedly demanded from them. They also did not attach receipts of the payment they had sent him to support their claim of unreasonable demand of money. Receipts from financial institutions could have supported their allegations that the unreasonable demand of money caused them to borrow money with high interest rates.

Complainants alleged that they were forced to sign documents without understanding their contents. These documents should have been annexed to their Complaint to show this Court what these were. If they were forced to lie during hearings and cross-examinations, the stenographic notes would have shown the statements they wanted to dispute. As Commissioner Andres observed:

> Complainants accuse Respondent of directing them to tell lies which caused them to be bewildered when they were being cross-examined. They offered no evidence to prove this accusation other than their Affidavit Complaint. In their Affidavit Complaint, they did not indicate in which case they were told to lie and what lies they were made to tell. The Respondent on the other hand denies this accusation and alleges that it was the other way around. According to Respondent, this allegation pertains to a Forcible Entry and Damages case filed by the Complainants against a certain Paz Mandin-Trotin where it turned out during the hearing that Celiana Bongo-Buntag, one of the Complainants, signed three deeds of sale in favor of Paz Mandin[-]Trotin.
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> The Respondent cannot be made administratively liable on the basis of mere general accusations such as this without proof.[56] (Citations omitted)

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[55] *Id*. at 670.

[56] *Rollo*, p. 238.

Complainants made various accusations[57] of impropriety and violations of the lawyer's oath against respondent. However, save for their bare allegations, they failed to attach records or other pieces of evidence to substantiate their Complaint. The little evidence that they did proffer failed to support their accusations or bolster their case against him.[58]

This Court will not penalize lawyers unless it is unmistakably shown that they are unfit to continue being a member of the Bar.[59] In *Advincula v. Atty. Macabata*:[60]

> As a basic rule in evidence, the burden of proof lies on the party who makes the allegations — *ei incumbit probation, qui decit, non qui negat; cum per rerum naturam factum negantis probation nulla sit*. In the case at bar, complainant miserably failed to comply with the burden of proof required of her. A mere charge or allegation of wrongdoing does not suffice. Accusation is not synonymous with guilt.
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> . . . . . .
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> The power to disbar or suspend ought always to be exercised on the preservative and not on the vindictive principle, with great caution and only for the most weighty reasons and only on clear cases of misconduct which seriously affect the standing and character of the lawyer as an officer of the court and member of the Bar. Only those acts which cause loss of moral character should merit disbarment or suspension, while those acts which neither affect nor erode the moral character of the lawyer should only justify a lesser sanction unless they are of such nature and to such extent as to clearly show the lawyer's unfitness to continue in the practice of law. The dubious character of the act charged as well as the motivation which induced the lawyer to commit it must be clearly demonstrated before suspension or disbarment is meted out. The mitigating or aggravating

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[57] *Id*. at 255-256.

[58] *Id*. at 255-258.

[59] *Fajardo v. Atty. Alvarez*, 785 Phil. 303 (2016) [Per *J*. Leonen, Second Division].

[60] 546 Phil. 431 (2007) [Per *J*. Chico-Nazario, Third Division].

circumstances that attended the commission of the offense should also be considered.[61] (Emphasis in the original, citation omitted)

Nonetheless, it has not escaped this Court's attention that respondent's lackadaisical attitude toward his professional dealings with complainants led in part to the controversy pending before this Court.

It is indeed laudable that respondent does not limit his legal assistance only to those who can afford his services and that he generously provides legal services to everyone who asks for help. Yet, his failure to put in writing his contractual agreements with his clients, paying or not, added to the confusion on the obligations and expectations of each party in their attorney-client relationship.

A retainer or written agreement between a lawyer and the client lists the scope of the services to be offered by the lawyer and governs the relationship between the parties. Without a written agreement, it would be difficult to ascertain what the parties committed to; hence, a party may be emboldened to make baseless demands from the other party, presenting his or her own interpretation of the verbal agreement into which they entered.

Here, complainants accuse respondent of demanding money from them on several occasions despite their indigence. Respondent denied their accusations, and asked that they specify the instances he had asked for money, along with the amounts he purportedly demanded from them.

If the parties had executed a written agreement, issues on lawyer's fees and other expenses incurred during a trial would not have arisen, as each party would know his or her obligations under the retainer agreement. As it was, complainants seemed unaware of what was expected of them as clients, leading them to make blanket accusations of impropriety against respondent.

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[61] *Id*. at 446-448.

To prevent a similar predicament from happening in the future, respondent is directed to henceforth execute written agreements with all of his clients, even those whose cases he is handling *pro bono*.

WHEREFORE, the Administrative Complaint against respondent Atty. Wilfredo S. Toledo is **DISMISSED** for lack of merit. However, he is **DIRECTED** to henceforth reduce into writing all of his agreements for legal services with his clients, and is given a **STERN WARNING** that a similar infraction in the future will merit a more severe response from this Court.

SO ORDERED.

Peralta (*Chairperson*), *Reyes, A. Jr., Hernando*, and *Carandang,*[*] *JJ.*, concur.

FIRST DIVISION

[G.R. No. 208543. February 11, 2019]

GOODLAND COMPANY, INC., *petitioner, vs.* **BANCO DE ORO-UNIBANK, INC., and GOODGOLD REALTY AND DEVELOPMENT CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; AS A RULE, ONLY MATTERS ASSIGNED AS ERRORS MAY BE RESOLVED BY THE COURT; EXCEPTIONS.— Indeed, Rule 51, Section 8 of the Rules of Court, which applies to petitions for review on *certiorari* under

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[*] Designated additional Member per Special Order No. 2624 dated November 28, 2018.

Rule 45 of the same rules, provides that as a rule, only matters assigned as errors may be resolved by the Court. There are, however, exceptions to this rule. In *Catholic Bishop of Balanga v. Court of Appeals*, the Court laid down several exceptions – x x x (1) Grounds not assigned as errors but affecting jurisdiction over the subject matter; (2) Matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; (3) Matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interest of justice or to avoid dispensing piecemeal justice; (4) Matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (5) Matters not assigned as errors on appeal but closely related to an error assigned; and (6) Matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent.

2. ID.; ACTIONS; CONSOLIDATION OF ACTIONS; FAILURE TO CONSOLIDATE A CASE WITH A RELATED CASE DOES NOT NECESSARILY RESULT IN THE DISMISSAL OF THE FORMER, UNLESS THERE IS *LITIS PENDENTIA* OR *RES JUDICATA*.— Consolidation is "a procedural device granted to the court as an aid in deciding how cases in its docket are to be tried so that the business of the court may be dispatched expeditiously and with economy while providing justice to the parties." Though there is no hard and fast rule requiring the consolidation of related cases, Section 1, Rule 31 of the Rules of Court allows the courts to order the consolidation of cases involving a common question of law or fact that are pending before it in order to avoid unnecessary costs or delay. Worth mentioning at this point is the case of *Magalang v. Court of Appeals*, where the Court emphasized the importance of consolidating petitions involving the same parties and issues. x x x To be clear, the failure to consolidate a case with a related case does not necessarily result in the dismissal of the former, unless there is *litis pendentia* or *res judicata*. Thus, it is incumbent upon the parties to be on the lookout and to immediately inform the courts of cases pending with other courts, and if needed, to move for the consolidation of related cases in order to avoid the dismissal of a case on the grounds of *litis pendentia* and/or *res judicata*, or the issuance of conflicting decisions.

3. ID.; ID.; DISMISSAL OF ACTIONS; *LITIS PENDENTIA*, AS A GROUND; REQUISITES.— *Litis pendentia* is a ground for the dismissal of an action when there is another action pending between the same parties involving the same cause of action, thus, rendering the second action unnecessary and vexatious. It exists when the following requisites concur: 1. Identity of parties or of representation in both cases, 2. Identity of rights asserted and relief prayed for, 3. The relief must be founded on the same facts and the same basis, and 4. Identity in the two preceding particulars should be such that any judgment which may be rendered in the other action, will, regardless of which party is successful, amount to *res judicata* on the action under consideration.

4. ID.; ID.; ID.; *RES JUDICATA*; REQUISITES.— *Res judicata*, on the other hand, exists if the following requisites concur: "(1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and the parties; (4) there must be, between the first and the second action, identity of parties, of subject matter and cause of action."

APPEARANCES OF COUNSEL

Ignacio & Ignacio Law Firm for petitioner.
Villaraza & Angangco for respondent.
Zamora Poblador Vazquez & Bretaña for respondent Goodgold Realty and Development Corp.

D E C I S I O N

DEL CASTILLO, *J.*:

"[P]ursuant to the policy of judicial stability, a division of the appellate court should not interfere with the decision of the other divisions of the court, otherwise confusion will ensue and may seriously hinder the administration of justice."[1]

Hon. Carlos A. Villanueva, in his capacity as Presiding Judge, Regional Trial Court, Branch 213, Mandaluyong City, is deleted as party-defendant pursuant to Section 4, Rule 45 of the Rules of Court.

[1] *Magalang v. Court of Appeals* (*Former 4th Div.*), 570 Phil. 236, 241 (2008).

Before the Court is a Petition for Review on *Certiorari*[2] filed under Rule 45 of the Rules of Court assailing the February 22, 2013 Decision[3] and the July 30, 2013 Resolution[4] of the Court of Appeals (CA) in CA-G.R. SP No. 119327.

Factual Antecedents

Petitioner Goodland Company, Inc. (Goodland), a duly registered domestic corporation, is the registered owner of a property in Makati City, covered by Transfer Certificate of Title (TCT) No. S-97436 (451440).[5]

Sometime in 1999, Gilbert Guy (Guy), on behalf of petitioner Goodland, Richgold Realty Corporation (Richgold), Smartnet Philippines, Inc. (Smartnet), and respondent Goodgold Realty Development Corporation (Goodgold), secured loans and credit facilities from Equitable PCI Bank, Inc. (EPCI).[6] The debtor corporations, however, failed to pay the monthly interest on the loan obligation.[7] Thus, they offered to pay their loan through a *dacion en pago*.[8] Accordingly, on July 30, 2004, EPCI wrote a letter agreement confirming that the property in Makati City, covered by TCT No. 218470, registered under the name of respondent Goodgold, shall be applied as full payment of the loan obligation of the debtor corporations at a *dacion* price of ₱245 million.[9] A Deed of Cession of Property in Payment of Debt (*Dacion En Pago*) was thereafter executed.[10] However,

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[2] *Rollo*, Volume I, pp. 15-50.

[3] *Id*. at 51-60; penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Rosmari D. Carandang (now a Member of this Court) and Leoncia Real-Dimagiba.

[4] *Id*. at 68.

[5] *Id*. at 51.

[6] *Id*. at 52.

[7] *Id*. at 52-53.

[8] *Id*. at 53.

[9] *Id*.

[10] *Id*.

despite the execution of the *Dacion En Pago*, EPCI was not able to cause the transfer of the title under its name due to the alleged fraudulent refusal of respondent Goodgold to turn over the transfer documents.[11]

Meanwhile, on May 25, 2007, EPCI merged with respondent Banco De Oro Universal Bank to form Banco De Oro Unibank, Inc. (BDO).[12]

On January 16, 2009, respondent BDO filed before the Regional Trial Court (RTC) of Mandaluyong City, Branch 213, a Complaint for a Sum of Money with Application for Preliminary Attachment,[13] docketed as Civil Case No. MC09-3902, against Guy, petitioner Goodland, and the other debtor corporations. Respondent BDO alleged that petitioner Goodland and the other debtor corporations, through Guy, obtained loans from EPCI; that they are guilty of fraud in the performance of their obligation to EPCI, now respondent BDO; that Guy, who was the controlling stockholder of the debtor corporations, conspired with the debtor corporations to cause the commencement of negotiations with EPCI regarding the *dacion* of the property owned by respondent Goodgold only for the purpose of fraudulently delaying and ultimately evading the settlement or collection of their loan obligations; that because of their misrepresentation, the maturity dates of their loan obligations were extended; that despite the execution of the *Dacion En Pago*, they refused to submit the required transfer documents; that as of August 31, 2008, they were liable to pay the total amount of ₱409,927,978.78;[14] that there was no sufficient security for the loan obligations; and

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[11] *Id*. at 53-54.

[12] *Rollo*, Volume III, p. 1943.

[13] *Rollo*, Volume I, pp. 69-99.

[14] *Id*. at 87. [Note: Total Obligation in Japanese Yen — JPY972,545,619.89, broken down as follows: Smartnet—JPY529,844,423.99; Petitioner Goodland – JPY156,455,704.71; Respondent Goodgold – JPY165,650,540.38; and Richgold – JPY120,594,950.81 (*Id*. at 464-465).]

that respondent BDO was willing to post a bond in the amount to be fixed by the court.[15]

The Ruling of the Regional Trial Court

On February 2, 2009, the RTC issued an Order[16] granting respondent BDO's application for a writ of preliminary attachment, and accordingly, caused the attachment of the following properties:

[Certificate of] Title:	Regist[ry] of Deeds:	Issued to:
TCT No. S-97436 (451440)	Makati City	Goodland
TCT No. 316187	Quezon City	Guy
TCT No. 335664 (RT-463)	Quezon City	Guy
TCT No. 335665 (RT-464)	Quezon City	Guy
TCT No. 43837	Quezon City	Goodgold
TCT No. 43838	Quezon City	Goodgold
TCT No. 218470	Makati City	Goodgold
CCT No. 1794	Mandaluyong City	Goodgold[17]

As expected, petitioner Goodland and Richgold filed an Urgent Omnibus Motion [a] to lift attachment and/or partial discharge of attachment and [b] to stop implementation thereof on account of excessive attachment.[18] Guy, on the other hand, filed a Motion to Lift/Discharge Attachment and to stop further implementation thereof;[19] while respondent Goodgold filed an *Ad Cautelam* Motion to Discharge Attachment.[20]

On March 3, 2010, the RTC issued an Order[21] discharging the properties of Guy and petitioner Goodland with respect to TCT No. S-97436 (451440) on the ground that the properties

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[15] *Id*. at 69-99.

[16] *Id*. at 104-105; penned by Judge Carlos A. Valenzuela.

[17] *Id*. at 54.

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

[19] *Id*. at 55.

[20] *Id*.

[21] *Id*. at 198-205.

of respondent Goodgold covered by TCT Nos. 43837, 43838, and 218470 were sufficient to cover the claims of respondent BDO.

Respondents Goodgold and BDO both moved for reconsideration.

On October 4, 2010, the RTC issued an Order[22] denying respondent BDO's motion but partly granting respondent Goodgold's motion in so far as it ordered the discharge of TCT No. 43838 and the reinstatement of the attachment of petitioner Goodland's property covered by TCT No. S-97436 (451440).

Respondent BDO elevated the matter to the CA *via* a Petition for *Certiorari*, docketed as CA-G.R. SP No. 117223.

Petitioner Goodland, on the other hand, moved for reconsideration.

On January 24, 2011, the RTC issued an Order[23] denying petitioner Goodland's motion. Thus, on April 25, 2011, petitioner Goodland also filed before the CA a Petition for *Certiorari* under Rule 65 of the Rules of Court, docketed as CA-G.R. SP No. 119327.

CA-G.R. SP No. 117223

On June 6, 2011, the CA, in CA-G.R. SP No. 117223, rendered a Decision[24] granting the Petition for *Certiorari* of respondent BDO. The CA, finding that the legal requisites for the attachment of Guy's properties were duly proven, reinstated the attachment on the said properties. However, as to the properties of respondent Goodgold, the CA ruled that there was no sufficient basis to include the same in the writ, except for the property covered by TCT No. 218470 subject of the *Dacion En Pago* but only to the extent of ₱69,821,702.77.

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[22] *Id*. at 206-207.

[23] *Id*. at 218-219.

[24] *Rollo*, Volume II, pp. 1546-1561 penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Bienvenido L. Reyes (retired Supreme Court Associate Justice) and Estela M. Perlas-Bernabe (now Supreme Court Associate Justice).

Guy moved for reconsideration while respondent Goodgold moved to correct the clerical error in the dispositive portion of the June 6, 2011 Decision as the property covered by TCT No. S-97436 (451440) was not registered under the name of Guy but under the name of petitioner Goodland.

On November 29, 2012, the CA issued a Resolution[25] denying Guy's motion for lack of merit. In order to rectify the error, the CA corrected the dispositive portion of its June 6, 2011 Decision to read as follows:

> WHEREFORE, premises considered, the petition is GRANTED and the assailed Orders dated March 3, 2010 and October 4, 2010 are hereby REVERSED and SET ASIDE and We ORDER the court a quo to REINSTATE the attachment on the property of **respondent Goodland covered by TCT No. S-97436 (451440)**, and the properties of respondent Gilbert Guy covered by TCT Nos. 316187, 335664 and 335665, as well as, retain the attachment on the property covered by TCT No. 218470 but only to the extent of ₱69,821,702.77.
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> However, the court a quo is hereby directed to cause the complete discharge of the properties covered by TCT Nos. 43837, 43838 and CCT No. 1794.
>
> SO ORDERED. (Emphasis supplied)

Guy appealed the case to this Court but the same was unavailing.[26] Thus, an Entry of Judgment was issued on July 31, 2013.[27]

Ruling of the Court of Appeals

On February 22, 2013, the CA, in CA-G.R. SP No. 119327, dismissed petitioner Goodland's Petition for *Certiorari* in view of the June 6, 2011 Decision in the CA-G.R. SP No. 117223. The CA found that there was an identity of parties and issues between the two petitions for *certiorari*, and thus, a judgment in one would result in *res judicata* in the other.

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[25] *Id*. at 1563-1565.

[26] *Rollo*, Volume I, p. 380.

[27] *Id*. at 382.

Petitioner Goodland moved for reconsideration but the CA denied the same in its July 30, 2013 Resolution.

Hence, petitioner Goodland filed the instant Petition for Review on *Certiorari* interposing the following assignment of errors:

> (1) THE WRIT OF PRELIMINARY ATTACHMENT ON PETITIONER [GOODLAND'S] PROPERTY IS NULL AND VOID BECAUSE OF THE FAILURE TO SHOW FRAUDULENT INTENT ON THE PART OF DEFENDANTS AND THAT THE REINSTATEMENT OF THE ATTACHMENT VIOLATES THE RULE AGAINST EXCESSIVE ATTACHMENT AS THE REMAINING ATTACHED PROPERTY (TCT 43837) OF CO-DEFENDANT GOODGOLD IS MORE THAN SUFFICIENT TO SATISFY [RESPONDENT] BDO'S CLAIM IN THE EVENT OF AN ADVERSE JUDGMENT.
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> (2) THE HONORABLE PUBLIC RESPONDENT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT WHIMSICALLY ORDERED THE REINSTATEMENT OF THE ATTACHMENT OF PETITIONER [GOODLAND'S] PROPERTY COVERED BY TCT NO. 97436 (451440) ON THE BASIS OF THE PERCEPTION THAT THE DISCHARGE OF THE SAME MIGHT BE PRESUMED AS HAVING ABSOLVED PETITIONER [GOODLAND] OF ANY LIABILITY.
>
> (3) THE COURT A QUO ERRED IN FAILING TO CONSIDER THAT THE RULES ON PRELIMINARY ATTACHMENT MUST BE STRICTLY CONSTRUED IN FAVOR OF HEREIN PETITIONER [GOODLAND], AS DEFENDANT IN THE CASE BELOW, AND AGAINST X X X RESPONDENT BDO.[28]

Petitioner Goodland's Arguments

Petitioner Goodland contends that the writ of preliminary attachment on its property was null and void as respondent BDO failed to show any evidence of fraud or bad faith on the part of petitioner Goodland in contracting its obligations arising from the promissory notes, surety agreements, and the *Dacion*

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[28] *Id*. at 31-32.

En Pago.[29] In addition, the justification of the RTC in reinstating the attachment on petitioner Goodland's property was not in accordance with the rules as it was based on mere presumption and speculation.[30] Petitioner Goodland further claims that the attachment was excessive as the property covered by TCT No. 218470 ceded to respondent BDO by virtue of the *Dacion En Pago* as well as the remaining attachment on TCT No. 43837 were sufficient to cover the amount sought to be collected by respondent BDO.[31]

Respondent BDO's Arguments

Respondent BDO, on the other hand, argues that the instant Petition should be summarily dismissed due to the failure of petitioner Goodland to assign as an error in the instant Petition the dismissal of its Petition for *Certiorari* by the CA.[32] Respondent BDO posits that such failure rendered the dismissal by the CA final and conclusive; and thus, there is no reason for the Court to resolve the other issues raised by petitioner Goodland.[33] Respondent BDO likewise points out that under the principle of *res judicata*, the issue on the propriety of the reinstatement of the attachment of the property of petitioner Goodland may no longer be disturbed in view of the finality of the June 6, 2011 Decision in CA-G.R. SP No. 117223, which already upheld the validity and propriety of the attachment made on petitioner Goodland's property.[34] In any case, even if there is no *res judicata,* respondent BDO maintains that the instant Petition should still be dismissed for lack of merit as the writ of attachment was validly issued. Respondent BDO insists that Guy, together with his conduit corporations, which includes petitioner Goodland, committed fraud in the performance of

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[29] *Rollo*, Volume III, pp. 1640-1646.

[30] *Id*. at 1645.

[31] *Id*. at 1646-1652.

[32] *Id*. at 1837-1840.

[33] *Id*.

[34] *Id*. at 1840-1844.

their obligations to respondent BDO by making it appear that Guy still had controlling interest in respondent Goodgold and by employing schemes to conceal its liabilities from respondent BDO.[35] Also, contrary to the claim of petitioner Goodland, the attachment on its property was not excessive as the *Dacion En Pago* did not extinguish its obligation to respondent BDO.[36] Respondent BDO likewise highlights the fact that on July 8, 2014, the RTC of Mandaluyong City, Branch 211, already rendered a Summary Judgment[37] finding, among others, petitioner Goodland liable to respondent BDO in the amount of ₱65,946,079.54 with legal interest from date of filing of the Complaint.[38] In the said Summary Judgment, the RTC likewise ruled that the liability of the debtor corporations was joint and not solidary, and that only Guy was held to be solidarily liable.[39]

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[35] *Id*. at 1852-1867.

[36] *Id*. at 1867-1885.

[37] *Id*. at 1940-1958; penned by Presiding Judge Ofelia L. Calo.

[38] *Id*. at 1885-1888.

[39] *Id*. at 1958. [Note: the dispositive portion reads:

WHEREFORE, premises considered, a Summary Judgment is hereby rendered as follows:

1) the Complaint filed by [respondent BDO] as against [respondent Goodgold] is hereby DISMISSED on the ground [of] extinguishment of the latter's obligation by virtue of the 2010 Deed of Dacion;
2) defendant [Smartnet] is hereby ordered to pay [respondent BDO] the amount of ₱223,329,424.71 with legal interest from the date of filing of the Complaint;
3) [petitioner Goodland] is hereby ordered to pay [respondent BDO] the amount of ₱65,946,079.54 with legal interest from the date of filing of the Complaint;
4) defendant [Richgold] is hereby ordered to pay [respondent BDO] the amount of ₱50,830,771.76 with legal interest from date of filing of the Complaint;
5) defendant [Guy] is hereby held solidarily liable with co-defendants [Smartnet], [Goodgold], [petitioner Goodland] and [Richgold] to [respondent BDO] for the respective liabilities of the aforesaid co-defendants;

Respondent Goodgold's Arguments

Echoing the arguments of respondent BDO, respondent Goodgold argues that the instant Petition is dismissible on the ground of *res judicata* as the June 6, 2011 Decision in CA-G.R. SP No. 117223 already made a final definitive ruling on the matter.[40] Moreover, even on the merits, respondent Goodgold asserts that the Petition is likewise dismissible as the attachment on the property was not excessive and that there was evidence of fraud on the part of Guy, petitioner Goodland, and Richgold.[41]

The Court's Ruling

The Petition lacks merit.

Failure to include the dismissal of the Petition for Certiorari as an assigned error may be excused in order for the Court to arrive at a just and complete resolution of the case.

Apparent in the pleadings filed by petitioner Goodland is its failure to include as an assigned error the CA's dismissal of its Petition. Instead, petitioner Goodland raised errors allegedly committed by the RTC in issuing the writ of attachment, some of which were not even raised as an issue before the CA. And despite the opportunity, petitioner Goodland did not offer any argument to dispute the contention of respondents BDO and Goodgold that the Petition for *Certiorari* was properly dismissed on the grounds of *litis pendentia* and/or *res judicata*. This blatant failure of petitioner Goodland to dispute the CA's dismissal, respondent BDO posits, is sufficient reason for the Court to dismiss the instant Petition.

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6) the pleadings filed by other law firms other than the law firm of Zamora Poblador Vazquez & Bretaña Law are hereby expunged for being filed without authority.

SO ORDERED.]

[40] *Id*. at 1969-1972.

[41] *Id*. at 1972-1976.

Indeed, Rule 51, Section 8[42] of the Rules of Court, which applies to petitions for review on *certiorari* under Rule 45 of the same rules, provides that as a rule, only matters assigned as errors may be resolved by the Court.[43] There are, however, exceptions to this rule. In *Catholic Bishop of Balanga v. Court of Appeals*,[44] the Court laid down several exceptions –

Guided by the foregoing precepts, we have ruled in a number of cases that the appellate court is accorded a broad discretionary power to waive the lack of proper assignment of errors and to consider errors not assigned. It is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal. Inasmuch as the Court of Appeals may consider grounds other than those touched upon in the decision of the trial court and uphold the same on the basis of such other grounds, the Court of Appeals may, with no less authority, reverse the decision of the trial court on the basis of grounds other than those raised as errors on appeal. We have applied this rule, as a matter of exception, in the following instances:

(1) Grounds not assigned as errors but affecting jurisdiction over the subject matter;

(2) Matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law;

(3) Matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interest of justice or to avoid dispensing piecemeal justice;

(4) Matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored;

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[42] SECTION 8. *Questions that May Be Decided.* — No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.

[43] *Heirs of Teodora Loyola v. Court of Appeals*, 803 Phil. 143, 154 (2017).

[44] 332 Phil. 206, 216-218 (1996).

(5) Matters not assigned as errors on appeal but closely related to an error assigned; and

(6) Matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent.

Taking into consideration the foregoing, the Court finds that, though not raised as an issue, it is more prudent to resolve the propriety of the dismissal of the Petition for *Certiorari* on the grounds of *litis pendentia* and/or *res judicata* as the resolution of said issue is necessary in order for the Court to arrive at a just and complete resolution of the instant case.

But before discussing the propriety of the dismissal of the Petition for *Certiorari*, it is *apropos* to discuss the importance of consolidating related cases.

Failure to consolidate a case with a related case does not necessarily result in the dismissal of the case, unless there is litis pendentia or res judicata.

Consolidation is "a procedural device granted to the court as an aid in deciding how cases in its docket are to be tried so that the business of the court may be dispatched expeditiously and with economy while providing justice to the parties."[45] Though there is no hard and fast rule requiring the consolidation of related cases, Section 1,[46] Rule 31 of the Rules of Court allows the courts to order the consolidation of cases involving a common question of law or fact that are pending before it in order to avoid unnecessary costs or delay.

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[45] *Producers Bank of the Philippines v. Excelsa Industries, Inc.*, 685 Phil. 694, 700 (2012).

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

Worth mentioning at this point is the case of *Magalang v. Court of Appeals*,[47] where the Court emphasized the importance of consolidating petitions involving the same parties and issues. The Court said:

> We note at the outset that the Ninth Division of the appellate court, in CA-G.R. SP No. 75185, already affirmed the September 5, 2002 Decision of the NLRC that petitioner was illegally dismissed but modified the ruling and awarded backwages to the petitioner. Later, the Fourth Division of the CA, in CA-G.R. SP No. 79408, rendered another decision inconsistent with the earlier ruling of its coordinate division. The Fourth Division merely affirmed the NLRC September 5, 2002 Decision, and did not award backwages to the petitioner.
>
> This conflict in the decisions of the different divisions of the appellate court would have been avoided had the two *certiorari* petitions been consolidated or had the Fourth Division, when apprised of the earlier ruling, remained consistent with the Ninth Division's pronouncements. The various divisions of the CA are, in a sense, coordinate courts, and, pursuant to the policy of judicial stability, a division of the appellate court should not interfere with the decision of the other divisions of the court, otherwise confusion will ensue and may seriously hinder the administration of justice.
>
> The Court notes further that no appeal was interposed to challenge the CA's decision in CA-G.R. SP No. 75185. The said decision declaring petitioner as illegally dismissed and entitled to backwages, therefore, already attained finality. Established is the rule that when a decision becomes final and executory, the court loses jurisdiction over the case and not even an appellate court will have the power to review the said judgment. Otherwise, there will be no end to litigation and will set to naught the main role of courts of justice which is to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality. We have further stressed in prior cases that just as the losing party has the privilege to file an appeal within the prescribed period, so does the winner have the correlative right to enjoy the finality of the decision.

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[47] *Supra* note 1 at 241-242.

To be clear, the failure to consolidate a case with a related case does not necessarily result in the dismissal of the former, unless there is *litis pendentia* or *res judicata*. Thus, it is incumbent upon the parties to be on the lookout and to immediately inform the courts of cases pending with other courts, and if needed, to move for the consolidation of related cases in order to avoid the dismissal of a case on the grounds of *litis pendentia* and/or *res judicata*, or the issuance of conflicting decisions. This petitioner Goodland failed to do.

The Petition for Certiorari was correctly dismissed.

Litis pendentia is a ground for the dismissal of an action when there is another action pending between the same parties involving the same cause of action, thus, rendering the second action unnecessary and vexatious.[48] It exists when the following requisites concur:

1. Identity of parties or of representation in both cases,

2. Identity of rights asserted and relief prayed for,

3. The relief must be founded on the same facts and the same basis, and

4. Identity in the two preceding particulars should be such that any judgment which may be rendered in the other action, will, regardless of which party is successful, amount to *res judicata* on the action under consideration.[49]

Res judicata, on the other hand, exists if the following requisites concur: "(1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and the parties; (4) there must be, between

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[48] *Times Transportation Co., Inc. v. Sotelo*, 491 Phil. 756, 765-766 (2005).

[49] *Tourist Duty Free Shops, Inc. v. Sandiganbayan*, 380 Phil. 328, 339 (2000).

the first and the second action, identity of parties, of subject matter and cause of action."[50]

In this case, the Court finds that the CA correctly dismissed the Petition for *Certiorari*, docketed as CA-G.R. SP No. 119327, on the ground of *litis pendentia*. As aptly found by the CA, the parties and issues raised in the said case were identical to that of CA-G.R. SP No. 117223. In CA-G.R. SP No. 117223, respondent BDO sought to reinstate the attachment of the properties of Guy on the ground that the remaining attached properties were insufficient to secure its claim. In CA-G.R. SP No. 119327, petitioner Goodland claimed that its attached property should be discharged as the total current market value of the attached properties of its co-defendants were more than enough to cover the amount claimed by respondent BDO. Clearly, both petitions for *certiorari* raised as an issue the sufficiency or insufficiency of the attached properties. The resolution of the said issue in CA-G.R. SP No. 117223 thus prevented the CA in CA G.R. SP No. 119327 from resolving the same issue.

In fact, the dismissal was inevitable as the argument of petitioner Goodland, that the attached properties of respondent Goodgold were sufficient to cover the amount sought to be collected by respondent BDO, no longer holds water because of the issuance of the June 6, 2011 Decision in CA-G.R. SP No. 117223 discharging the properties of respondent Goodgold, except for TCT No. 218470. The failure of petitioner Goodland to move for a reconsideration or to file an appeal likewise sealed its fate as it is now bound by the June 6, 2011 Decision. Though petitioner timely availed of petition for *certiorari* to assail the Orders of the RTC, the CA still had no choice but to dismiss the said petition for *certiorari* on the ground of *litis pendentia*, now *res judicata* in view of the finality of the June 6, 2011 Decision.

This could have been avoided had the two petitions for *certiorari* been consolidated. Petitioner Goodland, however,

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[50] *Taganas v. Hon. Emuslan*, 457 Phil. 305, 311-312 (2003).

has no one to blame but itself as it failed to inform the CA of the pendency of CA-G.R. SP No. 117223 at the time it filed its Petition for *Certiorari*. It is significant to note that when Guy, on behalf of petitioner Goodland, signed the Verification and Certification of Non-Forum Shopping[51] of CA-G.R. SP No. 119327, he failed to inform the CA there was a pending petition for *certiorari* involving the same parties and the same issues, docketed as CA-G.R. SP No. 117223. Petitioner Goodland and Guy cannot feign ignorance of the pendency of CA-G.R. SP No. 117223 considering that they were respondents in the said case. Knowing that there was a pending petition for *certiorari* involving the same parties and the same issues, petitioner Goodland should have moved to consolidate its petition for *certiorari*, docketed as CA-G.R. SP No. 119327, with that of CA-G.R. SP No. 117223. Unfortunately, it did not. And although respondent BDO later moved to consolidate the same on July 27, 2011, it was too late because by then, the CA, in CA-G.R. SP No. 117223, had already rendered a decision.

All told, the Court finds that the CA correctly dismissed the Petition for *Certiorari* filed by petitioner Goodland.

WHEREFORE, the Petition is hereby **DENIED**. The February 22, 2013 Decision and the July 30, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 119327 are hereby **AFFIRMED.**

SO ORDERED.

Bersamin, C.J., Jardeleza, Reyes, A. Jr.,[*] and *Gesmundo, JJ.*, concur.

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[51] CA *rollo*, Volume I, p. 32.

[*] Per Raffle dated February 4, 2019.

SECOND DIVISION

[G.R. No. 212611. February 11, 2019]

HEIRS OF BATORI,[*] represented by GLADYS B. ABAD, *petitioner, vs.* **THE REGISTER OF DEEDS OF BENGUET and PACITA GALVEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; DISMISSAL OF APPEAL; THE COURT OF APPEALS, IN THE EXERCISE OF ITS DISCRETIONARY POWER, MAY DISMISS AN APPEAL *MOTU PROPRIO* FOR FAILURE OF THE APPELLANT TO COMPLY WITH ORDERS, CIRCULARS OR DIRECTIVES OF THE COURT WITHOUT JUSTIFIABLE CAUSE; CASE AT BAR.— Section (1)(h), Rule 50 of the Rules of Court provides that the CA **may** dismiss an appeal *motu proprio* for failure of the appellant to comply with orders, circulars or directives of the court without justifiable cause. The said provision confers a discretionary power and not a mandatory duty. In *Tiangco v. Land Bank of the Philippines*, the Court explained that it is presumed that the CA had exercised sound discretion in deciding whether to dismiss the case in accordance with the rules, to wit: x x x Although said discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case, the presumption is that it has been so exercised. x x x Abad claims that the CA erred in dismissing her appeal for her alleged failure to comply with its lawful order. Thus, it is incumbent upon her to prove that the CA unsoundly exercised its discretion to dismiss her appeal as it is presumed that the appellate court had exercised its discretion judiciously. Unfortunately, Abad failed to overcome the said presumption.

2. ID.; ID.; JUDGMENT; DECISIONS MUST INFORM THE LOSING PARTIES WHY THEY LOST TO ENABLE THEM TO RAISE POSSIBLE ERRORS ON APPEAL.— Article

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[*] Also referred to as "Batore" and "Baturi" in some parts of the *rollo*.

VIII, Section 14 of the Constitution mandates that decisions written by courts should clearly and distinctly state the facts and the law on which it is based. This constitutional mandate is echoed in Section 5, Rule 51 of the Rules of Court. Decisions must inform the losing parties why they lost to enable them to raise possible errors on appeal. In addition, a clear statement of facts and law ensures the parties that the decision is not unfounded. Parties to a litigation should be informed of how it was decided with an explanation of the factual and legal reasons that led to the conclusions of the court. Further, courts should specify reasons for dismissal of cases so that on appeal, the reviewing court can readily determine the *prima facie* justification for the dismissal.

3. CIVIL LAW; PROPERTY; LAND REGISTRATION; ONLY ACTUAL AND EXTRINSIC FRAUD HAD BEEN ACCEPTED AND IS CONTEMPLATED BY THE LAW AS A GROUND TO REVIEW OR REOPEN A DECREE OF REGISTRATION; NOT ESTABLISHED IN CASE AT BAR.— As the complainant alleging fraud, the burden of proof rests with Abad. The burden of proof rests on the party who asserts the affirmative of the issue. Unfortunately for Abad, she failed to sufficiently prove that Galvez committed fraud in securing her Free Patent and certificate of title. In *Republic v. Guerrero*, the Court expounded on the kind of fraud necessary to invalidate a decree of registration, to wit: Fraud may also be either *extrinsic* or *intrinsic*. Fraud is regarded as intrinsic where the fraudulent acts pertain to an issue involved in the original action, or where the acts constituting the fraud were or could have been litigated therein. The fraud is extrinsic if it is employed to deprive parties of their day in court and thus prevent them from asserting their right to the property registered in the name of the applicant. The distinctions assume significance because only actual and extrinsic fraud had been accepted and is contemplated by the law as a ground to review or reopen a decree of registration. x x x In the present case, the courts *a quo* found that Galvez's Free Patent application and the certificate of title issued as a consequence was based on PSU No. 1000175 under the name of her father, Andres. Further, the DENR had ruled with finality that both PSU No. 1000175 and PSU No. 121133 are valid considering that they refer to different parcels of land. Thus, Galvez did not misrepresent in her Free Patent application

that there were no other claims over the land considering that the application pertained to PSU No. 1000175 and not PSU No. 121133. The validity of PSU No. 1000175 negates any finding of fraud on Galvez because it involved the registration of a parcel of land other than the one claimed by Abad.

APPEARANCES OF COUNSEL

Mangalay Dampac and Partners Law Office for petitioners.
Melani V. Zarate for respondent Pacita Galvez.

D E C I S I O N

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

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the November 19, 2013[1] and May 20, 2014[2] Resolutions of the Court of Appeals (CA) in CA-G.R. CV No. 96889, which affirmed the April 1, 2011 Resolution[3] of the Regional Trial Court (RTC), Branch 63, La Trinidad, Benguet.

The present controversy arose from the Complaint for Annulment and/or Cancellation of Original Certificate of Title (OCT)[4] filed by the petitioner heirs of Batori, represented by Gladys B. Abad (Abad) against private respondent Pacita Galvez (Galvez).

Factual background

The late Batori possessed a 6,000-square meter parcel of land in La Trinidad, Benguet since time immemorial. The said

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[1] Penned by Associate Justice Manuel M. Barrios, with Associate Justices Remedios A. Salazar-Fernando and Normandie B. Pizarro, concurring; *rollo*, pp. 27-29.

[2] *Id*. at 32-33.

[3] Penned by Acting Presiding Judge Robert P. Fangayen; *id*. at 94-97.

[4] *Id*. at 39-47.

property was registered for tax purposes in his name under Tax Declaration No. 1032 in 1945. In October 1948, Batori caused the said property to be surveyed and was identified as Lot 1, per PSU No. 121133. In April 1956, he applied for Free Patent and the issuance of a title in his name with the Bureau of Lands. Batori occupied the land until his death and was continued by Abad and her siblings as their father's heirs.[5]

In 2000, Abad went to the Department of Environment and Natural Resources (DENR) to follow up Baton's Free Patent application. She, however, discovered that there had been an amended survey on PSU No. 121133 in February 2000 and approved on August 30, 2000 wherein Lot 1 was subdivided into three lots, as follows : (1) Lot 1-A in Galvez's name; (2) Lot 1-B in the name of Abraham Batori, Sr.; and (3) Lot 1-C in Abad's name. Abad wondered why Lot 1-A was in Galvez's name considering that the latter was not one of Batori's heirs, no waiver was executed in her favor, and the said lot was supposed to be in the name of Abad's sister, Magdalena Batori Shagol. In addition, she learned that an amended survey of PSU No. 1000175 in the name of Johnson Andres (Andres) indicated that an area of 2,000 square meters of Andres' property allegedly overlaps with Batori's property under PSU No. 121133.[6]

Consequently, Abad filed a protest before the DENR-Cordillera Administrative Region (CAR) Office for the annulment of PSU No. 1000175. The DENR-CAR decided in Abad's favor, however, the Secretary of the DENR upheld the validity of both PSU No. 121133 and PSU No. 1000175 and directed the segregations of Lot 1. Aggrieved, Abad appealed the said decision before the Office of the President (OP).[7]

Meanwhile, in April 2008, Abad was surprised to learn that Galvez was able to secure a certificate of title over the parcel of land covered by PSU No. 1000175 especially since she thought

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

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

[7] *Id*. at 82.

her appeal was still pending with the OP. She verified the information before the Provincial Environment and Natural Resources Office (PENRO) in La Trinidad, Benguet and it was confirmed that Galvez was able to secure OCT No. 21449. Abad learned that the title was issued by the DENR on May 28, 2007 as a result of Galvez's application for Free Patent with the PENRO. Believing that Galvez obtained the title fraudulently, Abad filed her complaint before the RTC.[8]

In her Answer,[9] Galvez alleged that: her Free Patent application and subsequent OCT was based on PSU No. 1000175 and not PSU No. 121133; her Free Patent application covered a different parcel of land claimed by Batori; and the issue of overlapping of properties between PSU No. 1000175 and PSU No. 121133 had been settled by the DENR.

RTC Decision

In its November 18, 2010 Decision, the RTC granted Abad's complaint. The trial court pointed out that the parcel of land subject of Galvez's Free Patent application formed part of the land subject of Batori's Free Patent application. It elucidated that the evidence negated Galvez's claim that her Free Patent application involved a different land from that of Batori's. As such, the RTC surmised that Galvez was guilty of fraud in her Free Patent application because she had knowledge of Batori's continued possession and subsequent Free Patent application over Lot 1. The trial court noted that because Galvez is not among Batori's heirs, she is not entitled to inherit from him, contrary to what appeared in the amended survey plan of Lot 1 where Lot 1-A was subdivided in her name. Thus it disposed:

> WHEREFORE, in view of the foregoing, judgment is rendered in favor of the plaintiff and against the defendant as follows:
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> Declaring the *Katibayan ng Orihinal na Titulo Blg.* P-21449 as NULL AND VOID;

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

[9] *Id.* at 48-59.

Ordering the Register of Deeds for the Province of Benguet to cause the immediate cancellation of the said *Katibayan ng Orihinal na Titulo Blg* P-21449.

No pronouncement as to costs and damages.

SO ORDERED.[10]

Aggrieved, Galvez moved for reconsideration.

RTC Resolution

In its April 1, 2011 Resolution, the RTC granted Galvez's motion for reconsideration and reversed its November 18, 2010 Decision. The trial court expounded that fraud must have been deliberately and intentionally resorted to. It highlighted that the Secretary of the DENR, as affirmed by the OP, upheld the validity of PSU No. 1000175 and PSU No. 121133. As such, the RTC posited that Galvez did not act fraudulently when she applied for Free Patent and a certificate of title as it was based on a final decision of the DENR, and the application was supported by relevant documents and requirements. It explained that the parties are bound by *res judicata* considering that the DENR Decision had attained finality. In addition, the RTC pointed out the trial court had previously ruled in 1955 that the rightful owner of the land in question was Andres. Thus it disposed:

WHEREFORE, after thorough discussion and evaluation of the facts and issues raised in the Motion for Reconsideration of the defendant PACITA GALVEZ, the DECISION dated November 18, 2010 is set aside and the complaint is hereby DISMISSED for lack of merit.

SO ORDERED.[11]

Undeterred, Abad appealed to the CA.

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[10] Penned by Presiding Judge Benigno M. Galacgac; *id*. at 80-93.

[11] *Id*. at 97.

CA Resolutions

In its November 19, 2013 Resolution, the CA dismissed Abad's appeal for failure to comply with the CA's Order to furnish proof of receipt of appellee's counsel of a copy of the appellant's brief to determine whether the said brief was timely filed. It highlighted that from its initial June 6, 2012 Order until its March 25, 2013 Resolution granting Abad's counsel's request for extension of time to comply, no proof of receipt was ever presented. The appellate court expounded that even if the arguments in Abad's appellant's brief were considered, they were unmeritorious in light of the findings of the RTC. The CA reiterated that Galvez did not act fraudulently because her Free Patent application was based on a final and executory Decision of the DENR. Thus, it disposed:

> WHEREFORE, foregoing considered, the instant appeal is hereby DISMISSED pursuant to Rule 50, Section 1(h), Rules of Court.
>
> SO ORDERED.[12]

Unsatisfied, Abad moved for reconsideration.

In its May 20, 2014 Resolution, the CA denied Abad's motion for reconsideration. The appellate court highlighted that as early as June 6, 2012, Abad was required to submit proof of receipt of the appellant's brief by the appellee — the directive was repeated twice on September 25, 2012 and March 25, 2013 Resolutions. It posited that in spite of the lapse of at least eight months from the last order, Abad neglected to comply with its command. The CA did not consider the compliance of Abad on December 13, 2013 noting that she only did so after the appeal was already dismissed on November 19, 2013. In addition, the appellate court found that based on its merits, Abad's appeal should still be dismissed. The CA reiterated that the OCT issued to Galvez was based on a final and executory DENR Decision. It ruled:

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[12] *Id*. at 29.

WHEREFORE, in view of the foregoing[,] the Motion for Reconsideration is DENIED.

SO ORDERED.

Hence, this present petition, raising:

ISSUES

I

[WHETHER] THE [CA] GRIEVOUSLY COMMITTED A REVERSIBLE ERROR WHEN IT PUT MORE PRIMACY TO PROCEDURAL TECHNICALITIES RATHER THAN ON THE MERITS OF THE CASE WITH ITS DISMISSAL TO [sic] PETITIONER'S APPEAL SOLELY ON THE GROUND THAT PETITIONER DELAYED IN SHOWING PROOF OF RECEIPT BY RESPONDENT PACITA GALVEZ OF THE FORMER'S APPEAL BRIEF DESPITE THE FILING OF PETITIONER'S APPEAL BRIEF ON TIME[; and]

II

[WHETHER] THE [CA] GRIEVOUSLY COMMITTED A REVERSIBLE ERROR WHEN IT ISSUED DECISIONS WHICH DO NOT CONFORM TO THE FORM AND SUBSTANCE REQUIRED BY THE CONSTITUTION AND THE LAW.[13]

Abad argued that the CA erred when it dismissed her complaint purely on technicalities especially since she eventually complied with the order to furnish proof of receipt of her appellant's brief by the opposing party. She insisted that her eventual compliance should have rectified any negligence committed by her former counsel and should have prompted the CA to decide her case based on the merits.

Abad bewailed that she had a meritorious case highlighting that the courts had been ruling in her favor from the time she had filed the complaint against Galvez. She lamented that it was suspicious that the RTC would reverse its earlier Decision after Galvez filed her motion for reconsideration — it was

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[13] *Id*. at 18.

exacerbated by the fact that a different judge ruled on the motion for reconsideration.

Finally, Abad assailed that the CA Resolutions were defective because they did not comply with the guidelines set by the Constitution. She pointed out that the Resolutions did not fully state the facts and the law in which they were based.

In its Comment[14] dated November 10, 2014, Galvez countered that Abad's petition for review on *certiorari* should have been dismissed on account of *res judicata*. In addition, she posited that Abad was bound by the negligence of her counsel in failing to comply with the lawful orders of the CA.

In its Reply[15] dated May 8, 2015, Abad reiterated that she had substantially complied with the order of the CA to furnish proof of service of her appellant's brief to the opposing party. On the other hand, she explained that *res judicata* had not set in because the DENR Decision involved the validity of the survey plans issued to Batori and Andres while her complaint before the RTC involved the fraud Galvez committed in securing OCT No. P-21449.

The Court's Ruling

The petition is without merit.

Section (1)(h), Rule 50 of the Rules of Court provides that the CA **may** dismiss an appeal *motu proprio* for failure of the appellant to comply with orders, circulars or directives of the court without justifiable cause. The said provision confers a discretionary power and not a mandatory duty.[16]

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[14] *Id*. at 104-110.

[15] *Id*. at 113-115.

[16] *Banco de Oro Unibank, Inc. v. Spouses Locsin,* 739 Phil. 486, 499 (2014), citing *Philippine National Bank v. Philippine Milling Co., Inc*., 136 Phil. 212, 215 (1969).

In *Tiangco v. Land Bank of the Philippines*,[17] the Court explained that it is presumed that the CA had exercised sound discretion in deciding whether to dismiss the case in accordance with the rules, to wit:

> The CA has, under the said provision of the Rules of Court, discretion to dismiss or not to dismiss respondent's appeal. Although said discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case, the presumption is that it has been so exercised. It is incumbent upon herein petitioners, as actors in the case at bar, to offset this presumption.

Abad claims that the CA erred in dismissing her appeal for her alleged failure to comply with its lawful order. Thus, it is incumbent upon her to prove that the CA unsoundly exercised its discretion to dismiss her appeal as it is presumed that the appellate court had exercised its discretion judiciously. Unfortunately, Abad failed to overcome the said presumption.

On June 6, 2012, the CA had already ordered Abad to show proof of receipt of her appellant's brief by Galvez. This directive was again issued in the CA's September 25, 2012 and March 25, 2013 Resolutions because of her failure to comply. Still, even after the lapse of the period provided in the latest Order, Abad did not heed the CA's lawful orders. It is readily apparent that the CA had given her numerous opportunities to abide by its orders but it fell on deaf ears. Thus, the CA was constrained to dismiss Abad's appeal on account of repeated neglect to comply with its commands.

Abad's belated attempt to furnish the CA proof of receipt of her appellant's brief by the opposing party does little to help her cause. As pointed out by the CA, she only took the time to comply with its Order on December 13, 2013 — after the appellate court had dismissed her appeal in its November 19, 2013 Resolution. Neither could Abad hide behind the cloak of substantial justice as a close perusal of the November 19, 2013

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[17] 646 Phil. 554, 563-564 (2010).

and May 20, 2014 Resolutions of the CA would reveal that the appellate court reviewed her case and found its merits wanting. Certainly, her appeal was dismissed not only for her neglect of procedural rules but for its lack of merit as well.

On this score, Abad challenges the CA Resolutions to be constitutionally infirm for failing to observe the guidelines on the form and substance of judicial decisions.

Article VIII, Section 14 of the Constitution mandates that decisions written by courts should clearly and distinctly state the facts and the law on which it is based. This constitutional mandate is echoed in Section 5, Rule 51[18] of the Rules of Court. Decisions must inform the losing parties why they lost to enable them to raise possible errors on appeal.[19] In addition, a clear statement of facts and law ensures the parties that the decision is not unfounded.[20] Parties to a litigation should be informed of how it was decided with an explanation of the factual and legal reasons that led to the conclusions of the court.[21] Further, courts should specify reasons for dismissal of cases so that on appeal, the reviewing court can readily determine the *prima facie* justification for the dismissal.[22]

In the present case, the assailed CA Resolutions contained sufficient recital of facts and law to enable the parties and the reviewing court to identify the reason for the dismissal of Abad's appeal. As pointed out by the CA, it agreed with the findings

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[18] SEC. 5. *Form of decision.* — Every decision or final resolution of the court in appealed cases shall clearly and distinctly state the findings of fact and the conclusions of law on which it is based, which may be contained in the decision or final resolution itself, or adopted from those set forth in the decision, order, or resolution appealed from.

[19] *Yao v. Court of Appeals*, 398 Phil. 86, 105 (2000).

[20] *Id*. at 105-106.

[21] *Go v. East Oceanic Leasing and Finance Corporation*, G.R. Nos. 206841-42, January 19, 2018.

[22] *Shimizu Philippines Contractors, Inc. v. Magsalin*, 688 Phil. 384, 393 (2012).

of the RTC that the final and executory Decision of the DENR negated any fraud attributed to Galvez in her application for Free Patent and certificate of title.

Even if the procedural issues were to be considered in Abad's favor, the Court still finds her appeal unmeritorious.

As the complainant alleging fraud, the burden of proof rests with Abad. The burden of proof rests on the party who asserts the affirmative of the issue.[23] Unfortunately for Abad, she failed to sufficiently prove that Galvez committed fraud in securing her Free Patent and certificate of title.

In *Republic v. Guerrero*,[24] the Court expounded on the kind of fraud necessary to invalidate a decree of registration, to wit:

> Fraud may also be either *extrinsic* or *intrinsic*. Fraud is regarded as intrinsic where the fraudulent acts pertain to an issue involved in the original action, or where the acts constituting the fraud were or could have been litigated therein. The fraud is extrinsic if it is employed to deprive parties of their day in court and thus prevent them from asserting their right to the property registered in the name of the applicant.
>
> The distinctions assume significance because only actual and extrinsic fraud had been accepted and is contemplated by the law as a ground to review or reopen a decree of registration. Thus, relief is granted to a party deprived of his interest in land where the fraud consists in a deliberate misrepresentation that the lots are not contested when in fact they are; or in willfully misrepresenting that there are no other claims; or in deliberately failing to notify the party entitled to notice; or in inducing him not to oppose an application; or in misrepresenting about the identity of the lot to the true owner by the applicant causing the former to withdraw his application. In all these examples, the overriding consideration is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court or from presenting his case. The fraud, therefore, is one that affects and goes into the jurisdiction of the court.

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[23] *Republic v. Bellate*, 716 Phil. 60, 71 (2013).

[24] *Republic v. Guerrero,* 520 Phil. 296, 309 (2006).

In the present case, the courts *a quo* found that Galvez's Free Patent application and the certificate of title issued as a consequence was based on PSU No. 1000175 under the name of her father, Andres. Further, the DENR had ruled with finality that both PSU No. 1000175 and PSU No. 121133 are valid considering that they refer to different parcels of land. Thus, Galvez did not misrepresent in her Free Patent application that there were no other claims over the land considering that the application pertained to PSU No. 1000175 and not PSU No. 121133. The validity of PSU No. 1000175 negates any finding of fraud on Galvez because it involved the registration of a parcel of land other than the one claimed by Abad.

As to the perceived irregularities in the grant of Galvez's motion for reconsideration by the RTC, the Court finds the same to be baseless.

First, there is nothing suspicious in the RTC's reversal of its earlier Decision on account of Galvez's motion for reconsideration. The said motion is recognized in the rules and its function is to point out to the court possible mistakes it may have committed and to give it the opportunity to correct itself.[25] Should the courts reverse itself on motion, it is but a consequence of the exercise of judicial power. In addition, the fact that the motion for reconsideration was decided by a judge other than the one who rendered the original decision does not render it more dubious. Absent any proof that the motion for reconsideration was resolved outside of its own merits, it is presumed that judges have regularly performed their duties in the grant or denial thereof.

Second, Abad misunderstood the circumstances of her case when she claimed that the courts have been consistent in ruling in her favor since the incipiency of her case. She highlighted that the RTC denied Galvez's motion to dismiss and her motion for reconsideration for its denial, and that the CA dismissed

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[25] *Lopez dela Rosa Development Corporation v. Court of Appeals*, 497 Phil. 145, 158-159 (2005).

Galvez's petition for *certiorari* assailing the denial of her motion for reconsideration. It is readily apparent that Abad's claimed victories pertained to ancillary matters and did not dwell on the merits of the case.

WHEREFORE, the petition is **DENIED**. The November 19, 2013 and May 20, 2014 Resolutions of the Court of Appeals in CA-G.R. CV No. 96889 are **AFFIRMED**.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe, Caguioa*, and *Hernando,*[**] *JJ.*, concur.

FIRST DIVISION

[G.R. No. 213346. February 11, 2019]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **MILLER OMANDAM UNABIA,** *respondent.*

SYLLABUS

1. CIVIL LAW; REPUBLIC ACT NO. 9048, AS AMENDED BY REPUBLIC ACT NO. 10172 (CORRECTION OF ENTRIES IN THE CIVIL REGISTRY WITHOUT NEED OF A JUDICIAL ORDER); ADMINISTRATIVE CORRECTIONS OR CHANGES RELATING TO THE DATE OF BIRTH OR SEX OF INDIVIDUALS WAS AUTHORIZED ONLY WITH THE PASSAGE OF RA 10172, HOWEVER, RETROACTIVE APPLICATION IS ALLOWED SINCE THE LAW IS REMEDIAL IN NATURE AND UNDER THE PROVISIONS OF RA 9048, RETROACTIVE APPLICATION

[**] Additional Member per S.O. No. 2630 dated December 18, 2018.

IS ALLOWED INSOFAR AS IT DOES NOT PREJUDICE OR IMPAIR VESTED OR ACQUIRED RIGHTS IN ACCORDANCE WITH THE CIVIL CODE AND OTHER LAWS.— When Special Proceeding No. 2009-018 was filed in 2009, the governing law then was the original, unamended RA 9048. There was no provision then for the administrative correction or change of clerical or typographical errors or mistakes in the civil registry entries of the day and month in the date of birth or sex of individuals, but only clerical or typographical errors and change of first names or nicknames. Administrative corrections or changes relating to the date of birth or sex of individuals was authorized only with the passage in 2012 of RA 10172. Even then, the amendments under RA 10172 should still apply, the law being remedial in nature. Moreover, under Section 11 of RA 9048, retroactive application is allowed "insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code and other laws."

2. REMEDIAL LAW; EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; PUBLIC OFFICER DOCUMENT; A MEDICAL CERTIFICATE ISSUED BY A PUBLIC OFFICER IN THE PERFORMANCE OF OFFICIAL DUTY IS A PUBLIC DOCUMENT, AS SUCH, IT CONSTITUTES *PRIMA FACIE* EVIDENCE OF THE FACTS STATED THEREIN; CASE AT BAR.— Petitioner questions the Medical Certificate issued by Dr. Labis, Medical Officer III of the Northern Mindanao Medical Center under the Department of Health, claiming that it failed to include a certification that respondent "has not undergone sex change or sex transplant" as required by Section 5 of RA 9048, as amended, and that Dr. Labis was not presented in court in order that his qualifications may be established and so that he may identify and authenticate the medical certificate. However, the said Medical Certificate is a public document, the same having been issued by a public officer in the performance of official duty; as such, it constitutes *prima facie* evidence of the facts therein stated. Under Section 23, Rule 132 of the Rules of Court, "[d]ocuments consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which

gave rise to their execution and of the date of the latter." There was therefore no need to further identify and authenticate Dr. Labis' Medical Certificate. "A public document, by virtue of its official or sovereign character, or because it has been acknowledged before a notary public (except a notarial will) or a competent public official with the formalities required by law, or because it is a public record of a private writing authorized by law, is self-authenticating and requires no further authentication in order to be presented as evidence in court."

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

1. REMEDIAL LAW; RULES OF COURT; PROCEDURAL LAWS HAVE A RETROACTIVE EFFECT, BUT MAY ONLY BE APPLIED TO CASES OR ACTIONS PENDING AND UNDETERMINED WHEN THEY WERE ENACTED.— Settled is the rule that procedural laws have a retroactive effect, but may only be applied to cases or actions pending and undetermined when they were enacted. Remedial laws or procedural laws are statutes concerning modes of procedure "designed to facilitate the adjudication of cases." These laws "do not create new or take away vested rights, but only operate in furtherance of the remedy or confirmation of such rights[.]" Thus, remedial laws do not fall within the proscription against retroactive operation of statutes.

2. CIVIL LAW; REPUBLIC ACT NO. 9048, AS AMENDED BY REPUBLIC ACT NO. 10172 (CORRECTION OF ENTRIES IN THE CIVIL REGISTRY WITHOUT NEED OF A JUDICIAL ORDER); RETROACTIVE APPLICATION OF AMENDMENT IS PROPER WHEN IT NEITHER CREATES NOR ELIMINATES VESTED RIGHTS; CASE AT BAR.— Republic Act No. 9048 was the governing law when respondent filed his Petition. Under this law, the concerned city or municipal civil registrar or consul general may administratively correct or change clerical or typographical errors, provided that it does not involve a change in the nationality, age, status, or *sex* of the petitioner. While respondent's appeal was pending before the Court of Appeals, Republic Act No. 10172 was enacted into law. Republic Act No. 10172 amended Republic Act No. 9048 in the sense that clerical errors regarding one's sex may now be administratively

corrected. In its Decision, the Court of Appeals applied Republic Act No. 10172 and ruled that respondent had presented all the necessary documents to prove that there was a clerical error regarding his sex. The Court of Appeals correctly applied Republic Act No. 10172. As a procedural law, it neither creates nor eliminates vested rights. Instead, it merely reinforces and confirms people's right to have the entries in their birth certificates corrected. It reaffirms their right to remove any cloud of doubt on their identity. Moreover, Republic Act No. 9048, as amended by Republic Act No. 10172, specifically states that its provisions shall have a retroactive effect as long as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code and other laws.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Public Attorney's Office for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the June 27, 2014 Decision[2] of the Court of Appeals (CA) which denied the appeal in CA-G.R. CV No. 02755-MIN and affirmed the November 23, 2009 Decision[3] of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 17, in Special Proceeding No. 2009-018.

Factual Antecedents

On February 11,2009, respondent Miller Omandam Unabia filed before the RTC Special Proceeding No. 2009-018, which

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[1] *Rollo*, pp. 9-25.

[2] *Id.* at 29-34; penned by Associate Justice Oscar V. Badelles and concurred in by Associate Justices Romulo V. Borja and Pablito A. Perez.

[3] *Id*. at 26-27; penned by Presiding Judge Florencia D. Sealana-Abbu.

is a "Petition for Correction of Entries on the Birth Certificate of Mellie Umandam Unabia,"[4] claiming that his Birth Certificate[5] contained errors in that the name entered therein was "Mellie Umandam Unabia", when it should properly have been written as "Miller Omandam Unabia"; that the gender was erroneously entered as "female" instead of "male"; and that his father's middle initial was erroneously indicated as "U" when it should have been "O". In support of the petition, respondent attached the following documentary evidence to the petition:

1. Medical Certificate;
2. Police Clearance;
3. Voter's Identification;
4. Baptismal Certificate;
5. National Bureau of Investigation (NBI) Clearance;
6. Transcript of Records;
7. Mother's Birth Certificate; and
8. Father's Birth Certificate.

After satisfying the jurisdictional requirements, trial ensued. Respondent took the witness stand as the lone witness. To support the claim for change of entry as to gender, a Medical Certificate was presented which was supposedly issued by a physician of the Northern Mindanao Medical Center, Dr. Andresul A. Labis (Dr. Labis), which certificate stated that respondent was "phenotypically male"; however, the physician was not presented in court to testify on his findings and identify the document.

Ruling of the Regional Trial Court

On November 23, 2009, the RTC issued its Decision, decreeing as follows:

Petitioner Miller Omandam Unabia testified during the hearing of the case as follows:

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[4] *Id*. at 119-123.

[5] *Id*. at 124.

[T]hat he was born on August 11, 1980 in Claveria, Misamis Oriental to Spouses Magno O. Unabia and Rica Omandam Unabia. The fact of his birth [was] duly registered in the Office of the Local Civil Registrar of Claveria, Misamis Oriental.

When petitioner secured a copy of his Birth Certificate, he was surprised that his name was registered as MELLIE Umandam Unabia instead of Miller Omandam Unabia, the sex as Female instead of Male, and the middle name of his father which was entered as "O" instead of "U" (*Exh. "A" - "A-3"*). That from the time the petitioner was born, he was known as Miller Omandam Unabia, a Male and not a Female. This can be shown from his dealings and transactions. To prove such fact, petitioner presented his Baptismal Certificate to show that he was christened as Miller Omandam Unabia (*Exh. "E" - "E-1"*). Petitioner also presented his Official Transcript of Records issued by the Misamis Oriental State College of Agriculture and Technology to show that he was known as Miller O. Unabia (*Exh. "G" - "G-1"*). His voter's identification showed that his name was registered as Miller O. Unabia. There was no instance that petitioner used the name Mellie Umandam Unabia.

Likewise, to bolster his claim that he is a male and not a female, petitioner subjected himself to a medical examination with the Northern Mindanao Medical Center, Cagayan de Oro City. The Medical Certificate showed that petition [sic] is phenotypically male (*Exh. "B" - "B-1"*). Also[,] petitioner presented clearances from the National Bureau of Investigation and the Villanueva Police Station to show that he has no derogatory record on file in said Offices, (*Exhs. "C" - "C-1"; "F" - "F-1"*).

The Birth Certificate of petitioner's mother Rica Guia Omandam and that of his father Magno Olaybar Unabia were presented to show proof that the spelling of the middle name of petitioner is "O" and not "U". It was also shown that the middle name of his father is "O" from Olaybar and not "U", (*Exhs. "H" [-] "H-1"; "I" [-] "I-1"*).

The Court, after going over the pieces of evidence presented by petitioner finds merit [with] the petition. It has been clearly established by petitioner that there are erroneous entries in his birth [certificate]. That since petitioner was born, he was a ma[l]e. He is also known to his friends and relatives as Miller Omandam Unabia. His middle name spelled as an 'O' and not a 'U'. As shown from the birth certificate of the father indeed the latter's middle name is an 'O'.

There is a need to correct the erroneous entries in the birth certificate of petitioner to avoid confusion to his person. The correction is also necessary to reveal his true identity as not to create doubt [as] to his person.

WHEREFORE, premises considered, the Registrar of the Office of the Local Civil Registry of Claveria, Misamis Oriental is hereby ordered to correct the following erroneous entries in the birth certificate of herein petitioner Miller Omandam Unabia, to wit:

1) To change his name from Mel[l]ie [to] MILLER;

2) To correct the first letter of his middle name from 'U' to 'O', so that the same be read as OMANDAM;

3) To change his sex from Female to MALE;

4) To convert the middle initial of his father from letter 'U' to letter 'O'.

SO ORDERED.[6]

Ruling of the Court of Appeals

Petitioner appealed before the CA, arguing that respondent failed to state a valid ground for change of name; that the petition failed to state the aliases by which respondent was known; that respondent failed to exhaust administrative remedies; and that respondent failed to present the physician who allegedly issued the medical certificate stating that respondent was male.

On June 27, 2014, the CA issued the assailed Decision, which contains the following pronouncement:

Under Republic Act 10172, which amended R.A. 9048, the city or municipal registrar or the consul general, as the case may be, is now authorized to correct clerical or typographical errors in the day and month, in the date of birth or sex of a person appearing in the civil register without need of a judicial order. Section 1 thereof provides:

SECTION 1. *Authority to Correct Clerical or Typographical Error and Change of First Name or Nickname*. — No entry in

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

a civil register shall be changed or corrected without a judicial order, except for clerical or typographical errors and change of first name or nickname, the day and month in the date of birth or sex of a person where it is patently clear that there was a clerical or typographical error or mistake in the entry, which can be corrected or changed by the concerned city or municipal civil registrar or consul general in accordance with the provisions of this Act and its implementing rules and regulations.

Accordingly, its implementing rules provide for the form and content of the petition:

Rule 6. Form and content of the petition.

Insofar as applicable, Rule 8 of Administrative Order No. 1, Series of 2001 shall be observed. In addition, as supporting documents to the petition, the following shall be submitted:

6.1. Earliest school record or earliest school documents;

6.2. Medical records;

6.3. Baptismal certificate and other documents issued by religious authorities;

6.4. A clearance or a certification that the owner of the document has no pending administrative, civil or criminal case, or no criminal record, which shall be obtained from the following:

6.4.1. Employer, if employed;

6.4.2. National Bureau of Investigation; and

6.4.3. Philippine National Police.

6.5. The petition for the correction of sex and day and/or month in the date of birth shall include the affidavit of publication from the publisher and a copy of the newspaper clipping; and

6.6. In case of correction of sex, the petition shall be supported with a medical certification issued by an accredited government physician that the petitioner has not undergone sex change or sex transplant.

In this case, the appellee was able to present all the necessary documents to support the allegations in his petition. To prove that

there was a clerical error in his name, appellee formally offered as evidence the following:

a. Transcript of Records from Misamis Oriental School of Agriculture and Technology;

b. Birth Certificate;

c. Baptismal Certificate;

d. Police Clearance;

e. NBI Clearance;

f. Voter's ID;

g. Mother's Birth Certificate;

h. Father's Birth Certificate.

Meanwhile, to prove that there was a clerical error in his gender, appellee presented a medical certificate issued by Dr. Andresul A. Labis of the Northern Mindanao Medical Center.

A scrutiny of the foregoing evidence reveals that appellee was actually using the name Miller Omandam Unabia and not Millie [sic] Umandam Unabia, as that reflected in his birth certificate. The similarity between "Miller" and "Millie" [sic] and "Omandam" and "Umandam" undoubtedly caused confusion in its entry in the birth certificate of the appellee. Moreover, a reading of the medical certificate shows that appellee is phenotypically male. Evidently, it can readily be deduced that there were clerical errors in the aforesaid entries necessitating its rectification. Section 2(3) of R.A. 10172 defines 'clerical of [sic] typographical error' as:

> (3) 'Clerical or typographical error' refers to a mistake committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is harmless and innocuous, such as misspelled name or misspelled place of birth, mistake in the entry of day and month in the date of birth or the sex of the person or the like, which is visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records: *Provided, however*, That no correction must involve the change of nationality, age, or status of the petitioner.

All told, the Court finds that the court *a quo* committed no reversible error in ordering the correction of entries in the birth certificate of herein appellee.

WHEREFORE, premises considered, the instant appeal is DENIED. The Decision dated November 23, 2009 of the Regional Trial Court, Branch 17, Cagayan de Oro City, in Special Proceeding No. 2009-018 is AFFIRMED.

SO ORDERED.[7]

Thus, the instant Petition.

Issues

In a November 14, 2016 Resolution,[8] this Court resolved to give due course to the Petition, which contains the following sole assignment of error:

THE COURT OF APPEALS ERRED ON A QUESTION OF LAW WHEN IT AFFIRMED THE DECISION OF THE REGIONAL TRIAL COURT GRANTING UNABIA'S PETITION FOR CORRECTION OF ENTRIES.[9]

Petitioner's Arguments

In praying that the assailed RTC and CA dispositions be set aside and that, instead, the case be dismissed for lack of merit, petitioner pleads in its Petition and Reply:[10] (1) that the CA erred in ruling for respondent and applying Republic Act No. 9048[11]

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[7] *Id*. at 32-34.

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

[9] *Id*. at 13.

[10] *Id*. at 81-87.

[11] AN ACT AUTHORIZING THE CITY OR MUNICIPAL CIVIL REGISTRAR OR THE CONSUL GENERAL TO CORRECT A CLERICAL OR TYPOGRAPHICAL ERROR IN AN ENTRY AND/OR CHANGE OF FIRST NAME OR NICKNAME IN THE CIVIL REGISTER WITHOUT NEED OF A JUDICIAL ORDER, AMENDING FOR THIS PURPOSE ARTICLES 376 AND 412 OF THE CIVIL CODE OF THE PHILIPPINES. Approved March 22, 2001.

(RA 9048), as amended by Republic Act No. 10172[12] (RA 10172), since said laws apply only to administrative corrections of entries, and not to judicial correction of entries in the civil registry, the latter being covered by Rule 108 of the Rules of Court;[13] (2) that even assuming that RA 9048, as amended, applied in respondent's case, still respondent failed to comply with its provisions, in that the medical certificate submitted did not specifically certify that respondent "has not undergone sex change or sex transplant" as required by Section 5[14] of the law and the

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[12] AN ACT FURTHER AUTHORIZING THE CITY OR MUNICIPAL CIVIL REGISTRAR OR THE CONSUL GENERAL TO CORRECT CLERICAL OR TYPOGRAPHICAL ERRORS IN THE DAY AND MONTH IN THE DATE OF BIRTH OR SEX OF A PERSON APPEARING IN THE CIVIL REGISTER WITHOUT NEED OF A JUDICIAL ORDER, AMENDING FOR THIS PURPOSE REPUBLIC ACT NUMBERED NINETY FORTY-EIGHT. Approved August 15, 2012.

[13] CANCELLATION OR CORRECTION OF ENTRIES IN THE CIVIL REGISTRY.

[14] SEC. 5. Form and Contents of the Petition. — The petition for correction of a clerical or typographical error, or for change of first name or nickname, as the case may be, shall be in the form of an affidavit, subscribed and sworn to before any person authorized by law to administer oaths. The affidavit shall set forth facts necessary to establish the merits of the petition and shall show affirmatively that the petitioner is competent to testify to the matters stated. The petitioner shall state the particular erroneous entry or entries, which are sought to be corrected and/or the change sought to be made.

The petition shall be supported with the following documents:

(1) A certified true machine copy of the certificate or of the page of the registry book containing the entry or entries sought to be corrected or changed;

(2) At least two (2) public or private documents showing the correct entry or entries upon which the correction or change shall be based; and

(3) Other documents which the petitioner or the city or municipal civil registrar or the consul general may consider relevant and necessary for the approval of the petition.

No petition for correction of erroneous entry concerning the date of birth or the sex of a person shall be entertained except if the petition is accompanied by earliest school record or earliest school documents such as, but not limited to, medical records, baptismal certificate and other documents issued by religious authorities; **nor shall any entry involving change of gender**

physician who supposedly issued it was not presented in court in order that his qualifications may be established and so that he may identify the medical certificate itself; (3) that an individual's true gender is not determinable by simple visual observation and examination; (4) that the State's failure to object to the admissibility of the medical certificate does not automatically give the same evidentiary or probative weight, as admissibility is different from weight; (5) that respondent's medical certificate cannot stand on its own as it was not established and proved as a public document; (6) that without the required proof, it cannot simply be assumed that respondent is male; (7) that the correction of respondent's name from "Mellie" to "Miller" does not involve a simple clerical error contemplated by Rule 108 of the Rules of Court, as said rule refers only to changes or corrections of clerical, typographical, and other innocuous errors and obviously misspelled names; (8) that the change of name sought by respondent is a substantial one, as the name "Mellie" is not a misspelling of "Miller", and the two names are entirely different from each other; (9) that there is no compelling reason to change respondent's name, as was laid down in *Republic v. Mercadera*[15] and *Republic v. Coseteng-Magpayo*;[16] and, (10) that respondent likewise failed

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corrected except if the petition is accompanied by a certification issued by an accredited government physician attesting to the fact that the petitioner has not undergone sex change or sex transplant. The petition for change of first name or nickname, or for correction of erroneous entry concerning the day and month in the date of birth or the sex of a person, as the case may be, shall be published at least once a week for two (2) consecutive weeks in a newspaper of general circulation.

Furthermore, the petitioner shall submit a certification from the appropriate law [enforcements agencies] that he has no pending case or no criminal record.

The petition and its supporting papers shall be filed in three (3) copies to be distributed as follows: first copy to the concerned city or municipal civil registrar, or the consul general; second copy to the Office of the Civil Registrar General; and third copy to the petitioner. (Emphasis supplied)

[15] 652 Phil. 195 (2010).

[16] 656 Phil. 550 (2011).

to comply with the requirement of stating the petitioner's real name and known aliases in the petition for correction of entries filed with the trial court.

Respondent's Arguments

Respondent, on the other hand, simply counters in the Comment[17] that the CA was correct in its pronouncements; that the errors sought to be corrected were simple typographical and spelling errors; that the evidence on record supported the pronouncements of the RTC and the CA; that the trial court was in the best position to observe the true gender of respondent; that together with the medical certificate submitted, there was no doubt as to respondent's gender; and that petitioner was deemed to have waived its objections to the admissibility of the said medical certificate, as it failed to object to the same when it was offered in evidence below.

Our Ruling

The Court **DENIES** the petition.

When Special Proceeding No. 2009-018 was filed in 2009, the governing law then was the original, unamended RA 9048. There was no provision then for the administrative correction or change of clerical or typographical errors or mistakes in the civil registry entries of the day and month in the date of birth or sex of individuals, but only clerical or typographical errors and change of first names or nicknames. Administrative corrections or changes relating to the date of birth or sex of individuals was authorized only with the passage in 2012 of RA 10172. Even then, the amendments under RA 10172 should still apply, the law being remedial in nature. Moreover, under Section 11 of RA 9048, retroactive application is allowed "insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code and other laws."

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[17] *Rollo*, pp. 72-78.

Petitioner questions the Medical Certificate issued by Dr. Labis, Medical Officer III of the Northern Mindanao Medical Center under the Department of Health, claiming that it failed to include a certification that respondent "has not undergone sex change or sex transplant" as required by Section 5 of RA 9048, as amended, and that Dr. Labis was not presented in court in order that his qualifications may be established and so that he may identify and authenticate the medical certificate. However, the said Medical Certificate is a public document, the same having been issued by a public officer in the performance of official duty; as such, it constitutes *prima facie* evidence of the facts therein stated. Under Section 23, Rule 132 of the Rules of Court, "[d]ocuments consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter."

There was therefore no need to further identify and authenticate Dr. Labis' Medical Certificate. "A public document, by virtue of its official or sovereign character, or because it has been acknowledged before a notary public (except a notarial will) or a competent public official with the formalities required by law, or because it is a public record of a private writing authorized by law, is self-authenticating and requires no further authentication in order to be presented as evidence in court."[18]

On the other hand, while the trial court did not seem to make any material observation in its pronouncement regarding respondent's physical appearance or otherwise to support its finding that the latter was male, the record will support a finding that respondent was indeed male. In his photograph attached to the record, it will be observed particularly that respondent's Adam's apple — or, in medical terms, his laryngeal prominence — was quite evident and prominent. This can only indicate

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[18] *Patula v. People*, 685 Phil. 376, 397 (2012).

that respondent is male, because anatomically, only men possess an Adam's apple.

As for petitioner's argument that the medical certificate failed to specifically certify that respondent "has not undergone sex change or sex transplant" as required by law, suffice it to state that this is no longer required with the certification by Dr. Labis that respondent is "**phenotypically** male", meaning that respondent's entire *physical, physiological*, and *biochemical* makeup — *as determined both genetically and environmentally* — is male, which thus presupposes that he did not undergo sex reassignment. In other words, as determined genetically and environmentally, from conception to birth, respondent's **entire being**, from the physical, to the physiological, to the biochemical — meaning that all the chemical processes and substances occurring within respondent - was undoubtedly male. **He was *conceived* and *born* male, he *looks* male, and he *functions biologically* as a male.**

Thus, in respondent's case, the Court must do away with the requirement of no-sex change certification. The same is true with respondent's failure to include his known aliases in his petition, simply because there appear to be none at all; the bottom line issue is his gender as entered in the public record, not really his name.

Nonetheless, it must be laid down as a rule that when there is a medical finding that the petitioner in a case for correction of erroneous entry as to gender is phenotypically male or female, the no-sex change or transplant certification becomes mere surplusage.

Finally, suffice it to state that, as correctly declared by the CA, respondent was actually using the name Miller Omandam Unabia; that "Miller" and "Mellie" and "Omandam" and "Umandam" were confusingly similar; and that respondent's medical certificate shows that he is phenotypically male. The CA thus properly held that respondent's birth certificate contained clerical errors in its entries necessitating its rectification.[19]

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[19] *Rollo*, pp. 33-34.

Having disposed of the case in the foregoing manner, the other issues raised by the parties are deemed irrelevant and need not be passed upon. As far as the Court is concerned, it has been satisfactorily shown that indeed, there have been serious errors with respect to specific entries in respondent's birth record — errors that urgently need to be rectified with alacrity, if justice is to be served.

WHEREFORE, the Petition is **DENIED**. The June 27, 2014 Decision of the Court of Appeals in CA-G.R. CV No. 02755-MIN is **AFFIRMED *in toto***.

SO ORDERED.

Bersamin, C.J., Gesmundo, and *Carandang, JJ.*, concur.

Leonen, J.,[*] see separate concurring opinion.

SEPARATE CONCURRING OPINION

LEONEN, *J.*:

I concur in the result that the Petition should be denied. The erroneous entries in respondent Miller Omandam Unabia's birth certificate must be rectified.

I

There is no iota of doubt that respondent was *conceived* and *born* male.[1] However, to prevent confusion, certain clarifications must be made.

The terms "sex" and "gender" refer to two (2) different ideas having vast differences. These cannot be used interchangeably. Sex is a biological concept, while gender is a social concept.[2]

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[*] Per Raffle dated November 26, 2018.

[1] *Ponencia*, p. 9.

[2] Susan E. Short, Yang Claire Yang and Tania M. Jenkins, *Sex, Gender, Genetics, and Health*, American Journal of Public Health (2013), *available at* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3786754/?fbclid=IwAR

On one hand, sex "refers to the biological distinctions between males and females,"[3] and is based primarily on a person's capability to reproduce.[4] It "encompasses those that are biologically determined."[5] On the other hand, gender pertains to the "social elaboration of biological sex."[6] It highlights "the socially constructed differences between men and women"[7] influenced by the different norms and standards of societies, varying from one society to the other.[8]

Determining a person's sex mainly depends on "a combination of anatomical, endocrinal[,] and chromosomal features."[9] "Chromosomes are the structures that carry genes which in turn transmit hereditary characteristics from parents to offspring."[10]

Ordinarily, humans are born with 46 chromosomes,[11] broken down into 22 pairs of autosomal chromosomes and another pair

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3xZYKIGNkbta5wkVelbutQOW9rNg2AFCzeBAb5TArMmtPO_7Sht-IIaDs. Accessed February 19, 2019.

[3] *Id*.

[4] Penelope Eckert and Sally McConnell-Ginet, *Language and Gender* (2013), *available at* https://web.stanford.edu/-eckert/PDF/Chap1.pdf, 2. Accessed February 19, 2019.

[5] *Gender and Genetics*, World Health Organization, *available at* https://www.who.int/genomics/gender/en/. Accessed February 19, 2019.

[6] Penelope Eckert and Sally McConnell-Ginet, *Language and Gender* (2013), *available at* https://web.stanford.edu/-eckert/PDF/Chap1.pdf, 2. Accessed February 19, 2019.

[7] Susan E. Short, Yang Claire Yang and Tania M. Jenkins, *Sex, Gender, Genetics, and Health*, American Journal of Public Health (2013), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3786754/?fbclid=IwAR3xZYKIGNkbta5wkVelbutQOW9rNg2AFCzeBAb5TArMmtPO_7Sht-IIaDs. Accessed February 19, 2019.

[8] *Gender and Genetics*, World Health Organization, *available at* https://www.who.int/genomics/gender/en/. Accessed February 19, 2019.

[9] Penelope Eckert and Sally McConnell-Ginet, *Language and Gender* (2013), *available at* https://web.stanford.edu/-eckert/PDF/Chap1.pdf, 2. Accessed February 19, 2019.

[10] *Gender and Genetics*, World Health Organization, *available at* https://www.who.int/genomics/gender/en/. Accessed February 19, 2019.

[11] *Gender and Genetics*, World Health Organization, *available at* https://www.who.int/genomics/gender/en/. Accessed February 19, 2019.

called the sex chromosomes.[12] In most women, the combination of their chromosomes usually comprises 46XX; in most men, their chromosomes usually consist of 46XY.[13]

However, research suggests that the dichotomy of the chromosomal combinations of men and women are not the same in all individuals.[14] Some individuals are born with only one (1) sex chromosome (45X or 45Y), while some are born with three (3) or more sex chromosomes (47XXX, 47XYY, or 47XXY).[15]

The chromosomal combinations of men and women, which are used as basis to determine one's sex, are different in some individuals.[16] One may be born with 46XX chromosomes but is considered male. Another may have 46XY chromosomes but is born female. One's sex is not limited to a customary combination but is subject to a range of chromosome complements and phenotypic variations.[17]

Conversely, gender is the result of the norms and standards imposed by society. It is a changing concept that differs in every society. While most individuals are biologically born as

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[12] Susan E. Short, Yang Claire Yang and Tania M. Jenkins, *Sex, Gender, Genetics, and Health*, American Journal of Public Health (2013), *available at* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3786754/? fbclid = IwA R3x ZYKIGNkbta5wkVelbutQOW9rNg2AFCzeBAb5TArMmtPO_7Sht-IIaDs. Accessed February 19, 2019.

[13] *Gender and Genetics*, World Health Organization, *available at* https:// www.who.int/genomics/gender/en/, 2. Accessed February 19, 2019.

[14] Penelope Eckert and Sally McConnell-Ginet, *Language and Gender* (2013), *available at* https://web.stanford.edu/-eckert/PDF/Chap1.pdf, 2. Accessed February 19, 2019.

[15] *Gender and Genetics*, World Health Organization, *available at* https:// www.who.int/genomics/gender/en/, 2. Accessed February 19, 2019.

[16] Penelope Eckert and Sally McConnell-Ginet, Language and Gender (2013), available at https://web.stanford.edu/-eckert/PDF/Chap1.pdf, 2. Accessed February 19, 2019.

[17] *Gender and Genetics*, World Health Organization, *available at* https:// www.who.int/genomics/gender/en/. Accessed February 19, 2019.

male or female, the behavioral standard enforced in a given society affects one's gender identity.[18] Exactly how one is taught how to interact with others of the same or opposite sex usually defines one's gender identity.[19]

In its Petition, the Republic of the Philippines assailed the Decisions of the Regional Trial Court and the Court of Appeals, which ordered the correction of respondent's sex from female to male. It argued that an individual's true gender is not determined by a simple visual observation and examination.[20]

Respondent countered that the evidence on record supported the findings of the Regional Trial Court and the Court of Appeals. In support of his contention, he submitted a Medical Certificate,[21] which certified him to be "phenotypically male."[22]

The majority noted that based on respondent's photograph attached to the record, his Adam's apple was quite evident and prominent, which can only mean that respondent is male, because anatomically, only men possess an Adam's apple.[23]

I regret that I cannot agree with the factual premise for determining the biological sex of respondent.

Both men and women have Adam's apple. It is not limited to men. Granting that the Adam's apple is more prominent in some men, this is merely caused by differing hormonal levels.[24]

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[18] *Gender and Genetics*, World Health Organization, *available at* https://www.who.int/genomics/gender/en/. Accessed February 19, 2019.

[19] *Gender and Genetics*, World Health Organization, *available at* https://www.who.int/genomics/gender/en/. Accessed February 19, 2019.

[20] *Ponencia*, pp. 6-7.

[21] *Id*. at 7.

[22] *Id*. at 9.

[23] *Id*. at 8.

[24] Thomas H. Fitzpatrick, Marco A. Siccardi, *Anatomy, Head and Neck, Adam's Apple*, National Center for Biotechnology Information (2018), *available at* https://www.ncbi.nlm.nih.gov/books/NBK535354/. Accessed February 19, 2019.

An Adam's apple "is the colloquial term used to describe what is officially named the laryngeal prominence of the thyroid cartilage."[25] It is caused by an increased amount of testosterone,[26] a hormone "involved in regulating secondary male characteristics"[27] such as the Adam's apple.[28] While testosterone is ordinarily associated with men,[29] "women ... also have naturally occurring testosterone[.]"[30] Despite men having a higher amount of testosterone, the function of an Adam's apple in both women and men is just the same: to protect the vocal cords immediately behind it.[31]

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[25] Thomas H. Fitzpatrick, Marco A. Siccardi, *Anatomy, Head and Neck, Adam's Apple*, National Center for Biotechnology Information (2018), *available at* https://www.ncbi.nlm.nih.gov/books/NBK535354/. Accessed February 19, 2019.

[26] K. V. S. Hari Kumar, Anurag Garg, N. S. Ajai Chandra, S. P. Singh, and Rakesh Datta, *Voice and endocrinology*, Indian Journal of Endocrinology and Metabolism (20I6), *available at* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5040035/. Accessed February 19, 2019.

[27] George N. Nassar, Stephen W. Leslie, *Physiology, Testosterone*, National Center for Biotechnology Information (2018), *available at* https://www.ncbi.nlm.nih.gov/books/NBK526128/. Accessed February 19, 2019.

[28] Thomas H. Fitzpatrick, Marco A. Siccardi, Anatomy, *Head and Neck, Adam's Apple*, National Center for Biotechnology Information (2018), available at https://www.ncbi.nlm.nih.gov/books/NBK535354/. Accessed February 19, 2019.

[29] Vineet Tyagi, MD, Michael Scordo, MD, Richard S. Yoon, MD, Frank A. Liporace, MD, and Loren Wissner Greene, MD, MA, *Revisiting the role of testosterone: Are we missing something?*, Reviews on Urology, *available at* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5434832/. Accessed February 19, 2019.

[30] Sari M. Van Anders, Jeffrey Steiger, and Katherine L. Goldey, *Effects of gendered behavior on testosterone in women and men*, Proceedings of the National Academy of Sciences of the United States of America (2015), *available at* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4653185/. Accessed February 19, 2019.

[31] Thomas H. Fitzpatrick, Marco A. Siccardi, *Anatomy, Head and Neck, Adam's Apple*, National Center for Biotechnology Information (2018), *available at* https://www.ncbi.nlm.nih.gov/books/NBK535354/. Accessed February 19, 2019.

Accordingly, it is erroneous to conclude that only men can possess an Adam's apple. A woman has an Adam's apple, though generally less protruding than her male counterpart.[32] It is a logical fallacy to attach the category "male" to the size and shape of the Adam's apple. It is a false binary.

II

I, however, agree with the majority that Republic Act No. 10172, being remedial in nature, can retroactively apply here.

Settled is the rule that procedural laws have a retroactive effect, but may only be applied to cases or actions pending and undetermined when they were enacted.[33]

Remedial laws or procedural laws are statutes concerning modes of procedure[34] "designed to facilitate the adjudication of cases."[35] These laws "do not create new or take away vested rights, but only operate in furtherance of the remedy or confirmation of such rights[.]"[36] Thus, remedial laws do not fall within the proscription against retroactive operation of statutes.[37]

Republic Act No. 9048 was the governing law when respondent filed his Petition.[38] Under this law, the concerned

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[32] Thomas H. Fitzpatrick, Marco A Siccardi, *Anatomy, Head and Neck, Adam's Apple*, National Center for Biotechnology Information (2018), *available at* https://www.ncbi.nlm.nih.gov/books/NBK535354/. Accessed February 19, 2019.

[33] *Zulueta v. Asia Brewery, Inc.*, 406 Phil. 543 (2001) [Per J. Panganiban, Third Division].

[34] *Frivaldo v. Commission on Elections*, 327 Phil. 521 (1996) [Per J. Panganiban, *En Banc*].

[35] *Land Bank of the Philippines v. Natividad*, 497 Phil. 737, 744 (2005) [Per J. Tinga, Second Division].

[36] *Frivaldo v. Commission on Elections*, 327 Phil. 521, 557 (1996) [Per J. Panganiban, *En Banc*].

[37] *Heirs of Divinagracia v. Ruiz*, 638 Phil. 639 (2010) [Per J. Carpio, Second Division].

[38] *Ponencia*, p. 7.

city or municipal civil registrar or consul general may administratively correct or change clerical or typographical errors,[39] provided that it does not involve a change in the nationality, age, status, or *sex* of the petitioner.[40]

While respondent's appeal was pending before the Court of Appeals, Republic Act No. 10172 was enacted into law. Republic Act No. 10172 amended Republic Act No. 9048 in the sense that clerical errors regarding one's sex may now be administratively corrected.[41]

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[39] Rep. Act No. 9048 (2001), Sec. 1 provides:

SECTION 1. Authority to Correct Clerical or Typographical Error and Change of First Name or Nickname. — No entry in a civil register shall be changed or corrected without a judicial order, except for clerical or typographical errors and change of first name or nickname which can be corrected or changed by the concerned city or municipal civil registrar or consul general in accordance with the provisions of this Act and its implementing rules and regulations.

[40] Rep. Act No. 9048 (2001), Sec. 2(3) provides:

SECTION 2. *Definition of Terms*.— As used in this Act, the following terms shall mean:

. . . . . .

(3) "Clerical or typographical error" refers to a mistake committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is harmless and innocuous, such as misspelled name or misspelled place of birth or the like, which is visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records: *Provided, however*, That no correction must involve the change of nationality, age, status or sex of the petitioner.

[41] Republic Act No. 10172 (2012), Sec. 2 provides:

SECTION 2. Section 2, paragraph (3) of the Act is likewise amended to read as follows:

SEC. 2. *Definition of Terms*.— As used in this Act, the following terms shall mean:

. . . . . .

(3) 'Clerical or typographical error' refers to a mistake committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is harmless and innocuous, such as misspelled

In its Decision, the Court of Appeals applied Republic Act No. 10172 and ruled that respondent had presented all the necessary documents to prove that there was a clerical error regarding his sex.[42]

The Court of Appeals correctly applied Republic Act No. 10172. As a procedural law, it neither creates nor eliminates vested rights. Instead, it merely reinforces and confirms people's right to have the entries in their birth certificates corrected. It reaffirms their right to remove any cloud of doubt on their identity.

Moreover, Republic Act No. 9048, as amended by Republic Act No. 10172, specifically states that its provisions shall have a retroactive effect as long as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code and other laws.[43]

III

As a final note, a review of the pertinent laws and rules would reveal that the entries in a person's birth certificate were never meant to be set in stone. The procedure in changing the entries in a birth certificate is not unprecedented. In several cases, this Court has had the opportunity to decide on cases involving changes in the entry of a person's birth certificate.[44]

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name or misspelled place of birth, mistake in the entry of day and month in the date of birth or the sex of the person or the like, which is visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records: Provided, however, That no correction must involve the change of nationality, age, or status of the petitioner.

[42] *Ponencia*, pp. 4-5.

[43] Rep. Act No. 9048 (2001), as amended by Rep. Act No. 10172 (2012), Sec. 11, provides:

SECTION 11. Retroactivity Clause. — This Act shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code and other laws.

[44] See *Silverio v. Republic of the Philippines*, 562 Phil. 953 (2007) [Per *J.* Corona, First Division] and *Cagandahan v. Republic*, 586 Phil. 637 (2008) [Per *J.* Quisumbing Second Division].

This fundamental desire to change and correct one's entry in his or her birth certificate is born from the need to be identified as an individual. The entries in one's birth certificate separate him or her from others. The entries, such as the name and sex, as indicated in one's birth certificate, are considered as markers of one's identity. To ensure that an individual's sex is aligned with his or her identity, one undergoes the process of correcting his or her sex, as entered in his or her birth certificate.

Perhaps in the nearest future, when our society, as represented by our constitutional organs, may become more enlightened, the binary male or female may be reassessed. Understanding that sex may be a continuum interacting with gender as another continuum may assist to identify ourselves better, devoid of the stereotypes imposed by a patriarchal society.

Even the objective of being identified as regards to biological sex may become superseded with the changing of times. For instance, there has been a steady rise of sex reassignment surgeries being performed all across the globe.

Sex reassignment or gender-affirming surgery[45] "is a medical treatment intended to effect change to a person's sex. It may include surgery and hormonal treatments designed to alter a person's gender."[46] As more individuals undergo sex reassignment, changing the sexes in their birth certificates is inevitable. Thus, sex may cease to be believed as permanent and immutable. It may already be an impractical and obsolete marker of identity. Rather than identify, it may become a forced category with all its attendant burdens.

Accordingly, I vote to **DENY** the Petition.

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[45] Frey JD, Poudrier G, Chiodo MV, Hazen A., *An Update on Genital Reconstruction Options for the Female-to-Male Transgender Patient: A Review of the Literature*, National Center for Biotechnology Information (2017), *available at* https://www.ncbi.nlm.nih.gov/pubmed/28234856. Accessed February 19, 2019.

[46] *BLACK'S LAW DICTIONARY*, 9th Ed. (2009), West Publishing Co., p. 1498.

SECOND DIVISION

[G.R. No. 228807. February 11, 2019]

CARLITO B. LINSANGAN, *petitioner, vs.* **PHILIPPINE DEPOSIT INSURANCE CORPORATION,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; REPUBLIC ACT NO. 3591 (AN ACT ESTABLISHING THE PHILIPPINE DEPOSIT INSURANCE CORPORATION); THE PHILIPPINE DEPOSIT INSURANCE CORPORATION (PDIC); DUTY TO GRANT OR DENY CLAIMS FOR DEPOSIT INSURANCE; IN DETERMINING THE AMOUNT DUE TO ANY DEPOSITOR, THERE SHALL BE ADDED TOGETHER ALL DEPOSITS IN THE BANK MAINTAINED IN THE SAME RIGHT AND CAPACITY FOR HIS BENEFIT EITHER IN HIS OWN NAME OR IN THE NAMES OF OTHERS.— The PDIC was created by Republic Act (R.A.) No. 3591 on June 22, 1963 as an insurer of deposits in all banks entitled to the benefits of insurance under the PDIC Charter to promote and safeguard the interests of the depositing public by way of providing permanent and continuing insurance coverage of all insured deposits. Based on its charter, the PDIC has the duty to grant or deny claims for deposit insurance. "The term 'insured deposit' means the amount due to any *bona fide* depositor for legitimate deposits in an insured bank net of any obligation of the depositor to the insured bank as of the date of closure, but not to exceed Five Hundred Thousand Pesos (₱500,000.00). x x x In determining such amount due to any depositor, there shall be added together all deposits in the bank maintained in the same right and capacity for his benefit either in his own name or in the names of others."

2. ID.; ID.; ID.; PDIC REGULATORY ISSUANCE NO. 2009-03; DEPOSIT SPLITTING; ELEMENTS.— PDIC Regulatory Issuance No. 2009-03, x x x IV. **Deposit Splitting** x x x 3. *Elements.* The elements of Deposit Splitting are as follows: a. Existence of source account/s in a bank with a balance or aggregate balance of more than the MDIC; b. There is a break up and transfer of said account/s into two or more existing or

new accounts in the name of another person/s or entity/entities; c. The transferee/s have no Beneficial Ownership over the transferred funds; and d. Transfer occurred within 120 days immediately preceding or during a bank-declared bank holiday, or immediately preceding bank closure. 4. The PDIC shall deem that there exists Deposit Splitting for the purpose of availing of the maximum deposit insurance coverage when all of these elements are present. 5. The bank, its directors, officers, employees, or agents are prohibited from and shall not in any way participate or aid in, or otherwise abet Deposit Splitting activities as herein defined, nor shall they promote or encourage the commission of Deposit Splitting among the bank's depositors. The approval by a bank officer or employee of a transaction resulting to Deposit Splitting shall be *prima facie* evidence of participation in Deposit Splitting activities.

3. ID.; ID.; ID.; ID.; EVEN IF THE TRANSFER INTO DIFFERENT ACCOUNTS WAS NOT MADE WITHIN THE 120 DAYS IMMEDIATELY PRECEDING BANK CLOSURE, THE GRANT OF DEPOSIT INSURANCE TO AN ACCOUNT FOUND TO HAVE ORIGINATED FROM ANOTHER DEPOSIT IS NOT AUTOMATIC BECAUSE TRANSFEREE STILL HAS TO PROVE THAT THE TRANSFER WAS FOR A VALID CONSIDERATION THROUGH DOCUMENTS KEPT IN THE CUSTODY OF THE BANK.— In deposit splitting, there is a presumption that the transferees have no beneficial ownership considering that the source account, which exceeded the maximum deposit insurance coverage, was split into two or more accounts within 120 days immediately preceding bank closure. On the other hand, in cases wherein the transfer into two or more accounts occurred before the 120-day period, the PDIC does not discount the possibility that there may have been a transfer for valid consideration, but in the absence of transfer documents found in the records of the bank at the time of closure, the presumption arises that the source account remained with the transferor. Consequently, even if the transfer into different accounts was not made within 120 days immediately preceding bank closure, the grant of deposit insurance to an account found to have originated from another deposit is not automatic because the transferee still has to prove that the transfer was for a valid consideration through documents kept in the custody of the bank.

APPEARANCES OF COUNSEL

Jaime S. Linsangan for petitioner.
PDIC Office of the General Counsel for respondent.

D E C I S I O N

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

Assailed in this petition for review on *certiorari* are the March 31, 2016 Decision[1] and the December 19, 2016 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 137172 which affirmed the Philippine Deposit Insurance Corporation's (PDIC's) denial of petitioner Carlito B. Linsangan's (petitioner's) deposit insurance claim on July 12, 2013.

The Antecedents

In a Resolution dated May 23, 2013, the Monetary Board (MB) of the Bangko Sentral ng Pilipinas (BSP) ordered the closure of the Cooperative Rural Bank of Bulacan, Inc. (CRBBI) and placed it under PDIC's receivership. PDIC took over CRBBI's assets and affairs and examined its records in order to determine the insured deposits.

Petitioner filed a claim for payment of deposit insurance for his Special Incentive Savings Account (SISA) No. 00-44-10750-9, which had a balance of ₱400,000.00 at the time of CRBBI's closure.

Upon investigation, PDIC found that petitioner's account originated from the account of "Cornelio Linsangan or Ligaya Linsangan" (source account) with an opening balance of ₱1,531,993.42. On December 13, 2012, the source account was

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[1] Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Ricardo R. Rosario and Marie Christine Azcarraga-Jacob, concurring; *rollo*, pp. 33-42.

[2] *Id.* at 45-47.

closed and its balance of ₱1,544,081.48 was transferred and distributed to four accounts.

PDIC then conducted a tracing of relationship for the purpose of determining beneficial ownership of accounts and it discovered that petitioner is not a qualified relative[3] of Cornelio Linsangan and Ligaya Linsangan (Cornelio and Ligaya).

Consequently, pursuant to the provisions of PDIC Regulatory Issuance No. 2009-03, par. V, petitioner's account was consolidated with the other legitimate deposits of Cornelio and Ligaya for purposes of computing the insurable deposit. PDIC considered the source account holders Cornelio and Ligaya as the real owners of the four resulting accounts. Thus, they were only entitled to the maximum deposit insurance of ₱500,000.00.

On July 12, 2013, PDIC denied petitioner's claim. Then, on August 6, 2014, it also denied petitioner's request for reconsideration. The PDIC ruled that under PDIC Regulatory Issuance No. 2009-03, the transferee is considered the beneficial owner of the deposit provided that (a) the transfer is for valid consideration as shown by the documents supporting the transfer which should be in the custody of the bank upon takeover by PDIC; or (b) he/she is a qualified relative of the transferor. It held that CRBBI was not furnished a copy of any document which could prove the transfer of the deposit from the transferors to petitioner. The PDIC added that the documents which petitioner submitted did not show that he is a relative of Cornelio and Ligaya within the second degree of consanguinity or affinity. It concluded that the transferors should be considered the beneficial owners of the transferred deposit.

Aggrieved, petitioner filed a petition for *certiorari* before the CA.

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[3] PDI Regulatory Issuance No. 2009-03.

II. Definiton of Terms

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f. Qualified Relative — means a relative within the second degree of consanguinity or affinity (PDIC Regulatory Issuance No. 2002-03).

The CA Ruling

In a Decision dated March 31, 2016, the CA ruled that the PDIC did not act with grave abuse of discretion because it merely followed the applicable law in determining whether petitioner's account was insurable or not. It noted that both petitioner and the transferor failed to provide CRBBI of the details regarding the splitting of deposit and the circumstances behind such transfer. The appellate court declared that PDIC had sufficient reason to doubt the validity of the splitting of accounts and subject them to scrutiny as there were indicators that the source account was divided and distributed to newly-opened and existing accounts to make them covered under the PDIC insurance. It held that PDIC's denial of insurance deposit does not invalidate the alleged donation, nor will it result in the total non-payment of said deposit because the latter may still be paid from the assets of CRBBI. Thus, it disposed:

> WHEREFORE, the Petition for *Certiorari* [is] hereby DENIED for lack of merit. Accordingly, the denial of Carlito B. Linsangan's claim for Deposit Insurance from the Philippine Deposit Insurance [Corporation] is hereby AFFIRMED.
>
> SO ORDERED.[4]

Petitioner moved for reconsideration, but the same was denied by the CA in a Resolution dated December 19, 2016. Hence, this petition for review on *certiorari* wherein petitioner assails the denial of his deposit insurance claim.

Petitioner argues that the transfer of funds to his account is not deposit splitting because the transfer took place more than 120 days prior to the closure of the bank; that as stated in PDIC Regulatory Issuance No. 2009-03, splitting of deposits occurs whenever an account is broken down and transferred into two or more accounts in the name/s of natural or juridical person/s or entity/entities who have no beneficial ownership on transferred

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[4] *Rollo*, p. 41.

deposits in their names within 120 days immediately preceding or during bank-declared bank holiday, or immediately preceding a closure order issued by the MB of the BSP; and that he was not informed of the requirement that the documents proving transfer must be in the records of the bank at the time of its closure.[5]

In its Comment,[6] respondent counters that the joint account of Cornelio and Ligaya was split and transferred to different persons, thus, the provisions of PDIC Regulatory Issuance No. 2009-03, which was published in the Philippine Star on October 10, 2009, find application in determining the beneficial ownership of the resulting deposit accounts; that the alleged donation was not supported by documents evidencing transfer of account in the records of the bank; and that there is no premium if the splitting of deposit was done within 120 days preceding a bank closure, because if an account was split prior to the 120-day period, PDIC Regulatory Issuance No. 2009-03 steps in and determines the beneficial ownership of the resulting accounts, whereas, if the splitting of deposit was made within 120 days preceding the bank closure, the act is a criminal offense and the director, officer, employee, or agent of the bank who facilitated the splitting would be held liable.

In his Reply,[7] petitioner contends that the bank failed to inform him of PDIC Regulatory Issuance No. 2009-03, thus, the provisions thereof are not binding upon him; that requiring the submission of transfer documents prior to the takeover by PDIC of the bank violates his constitutional right against deprivation of property without due process; and that demanding the transfer documents to be kept in a particular location adds another requisite for the validity of donation.

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[5] *Id*. at 18-28.

[6] *Id*. at 62-71.

[7] *Id*. at 74-85.

The Court's Ruling

The petition lacks merit.

The PDIC was created by Republic Act (R.A.) No. 3591[8] on June 22, 1963 as an insurer of deposits in all banks entitled to the benefits of insurance under the PDIC Charter to promote and safeguard the interests of the depositing public by way of providing permanent and continuing insurance coverage of all insured deposits.[9]

Based on its charter, the PDIC has the duty to grant or deny claims for deposit insurance. "The term 'insured deposit' means the amount due to any *bona fide* depositor for legitimate deposits in an insured bank net of any obligation of the depositor to the insured bank as of the date of closure, but not to exceed Five Hundred Thousand Pesos (₱500,000.00). x x x In determining such amount due to any depositor, there shall be added together all deposits in the bank maintained in the same right and capacity for his benefit either in his own name or in the names of others."[10] To determine beneficial ownership of legitimate deposits which are entitled to deposit insurance, the provisions of PDIC Regulatory Issuance No. 2009-03 provides:

III. Determination of Beneficial Ownership of Legitimate Deposits

1. In determining the depositor entitled to insured deposit payable by the PDIC, the registered owner/holder of a Legitimate Deposit in the books of the issuing bank shall be recognized as the depositor entitled to deposit insurance, except as otherwise provided by this Issuance.

2. Where the records of the bank show that one or several deposit accounts in the name of one or several other persons or entities

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[8] AN ACT ESTABLISHING THE PHILIPPINE DEPOSIT INSURANCE CORPORATION, DEFINING ITS POWERS AND DUTIES AND FOR OTHER PURPOSES.

[9] *Phil. Deposit Insurance Corp. v. Phil. Countryside Rural Bank, Inc.*, 655 Phil. 313, 337 (2011).

[10] Republic Act No. 3591, Sec. 3(g).

are maintained in the same right and capacity for the benefit of a depositor, PDIC shall recognize said depositor as the beneficial owner of the account/s entitled to deposit insurance.

3. Where a deposit account/s with an outstanding balance of more than the maximum deposit insurance coverage is/are broken up and transferred to one or more account/s, PDIC shall recognize the transferor as the beneficial owner of the resulting deposit accounts entitled to deposit insurance, unless the transferee/s can prove that:

    a. The break-up and transfer of Legitimate Deposit was made under all of the following conditions:

        i. The break-up and transfer of Legitimate Deposit to the transferee is for a Valid Consideration;

        ii. The details or information for the transfer, which establish the validity of the transfer from the transferor to the transferee, are contained in any of the Deposit Account Records of the bank; and

        iii. Copies of documents, which show the details or information for the transfer, such as[,] but not limited to[,] contracts, agreements, board resolutions, orders of the courts or of competent government body/agency, are in the custody or possession of the bank upon takeover by PDIC.

    b. He/she is a *Qualified Relative* of the transferor, in which case PDIC shall recognize the transferee as the beneficial owner of the resulting deposit accounts. Relationship shall be proven by relevant documents such as, but not limited to, birth certificates and marriage certificates.

II. Definition of Terms

x x x x x x x x x

f. Qualified Relative — means a relative within the second degree of consanguinity or affinity.

Petitioner, however, argues that the foregoing provisions are not applicable to him because the transfer did not occur within 120 days immediately preceding bank closure as stated in PDIC Regulatory Issuance No. 2009-03, *viz.*:

IV. **Deposit Splitting**

x x x x x x x x x

3. *Elements*. The elements of Deposit Splitting are as follows:

   a. Existence of source account/s in a bank with a balance or aggregate balance of more than the MDIC;

   b. There is a break up and transfer of said account/s into two or more existing or new accounts in the name of another person/s or entity/entities;

   c. The transferee/s have no Beneficial Ownership over the transferred funds; and

   d. Transfer occurred within 120 days immediately preceding or during a bank-declared bank holiday, or immediately preceding bank closure.

4. The PDIC shall deem that there exists Deposit Splitting for the purpose of availing of the maximum deposit insurance coverage when all of these elements are present.

5. The bank, its directors, officers, employees, or agents are prohibited from and shall not in any way participate or aid in, or otherwise abet Deposit Splitting activities as herein defined, nor shall they promote or encourage the commission of Deposit Splitting among the bank's depositors. The approval by a bank officer or employee of a transaction resulting to Deposit Splitting shall be *prima facie* evidence of participation in Deposit Splitting activities.

Petitioner's argument is erroneous. In deposit splitting, there is a presumption that the transferees have no beneficial ownership considering that the source account, which exceeded the maximum deposit insurance coverage, was split into two or

more accounts within 120 days immediately preceding bank closure. On the other hand, in cases wherein the transfer into two or more accounts occurred before the 120-day period, the PDIC does not discount the possibility that there may have been a transfer for valid consideration, but in the absence of transfer documents found in the records of the bank at the time of closure, the presumption arises that the source account remained with the transferor. Consequently, even if the transfer into different accounts was not made within 120 days immediately preceding bank closure, the grant of deposit insurance to an account found to have originated from another deposit is not automatic because the transferee still has to prove that the transfer was for a valid consideration through documents kept in the custody of the bank.

In this case, even assuming that Cornelio donated the amount contained in the subject savings account to petitioner, not one document evidencing the alleged donation is in the custody or possession of the bank upon takeover by PDIC. Thus, the PDIC properly relied on the records of the bank which showed that Cornelio's accounts remained in his name and for his account. Moreover, even if the Court disregards the submission of transfer documents, petitioner could not be considered the beneficial owner of the resulting deposit account because he is not a qualified relative of the transferor. Being the son of Cornelio's cousin, petitioner is already a fifth degree relative of the transferor,[11] far from the requirement that the transferee must be a relative within the second degree of consanguinity or affinity.

As regards petitioner's contention that the provisions of PDIC Regulatory Issuance No. 2009-03 do not apply to him because he was not personally notified of the contents thereof by CRBBI, the same deserves scant consideration. *Ignorantia legis non excusat* remains a valid dictum. Here, it is settled that PDIC Regulatory Issuance No. 2009-03 was published in a newspaper

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[11] Petition for review; *rollo*, p. 12.

of general circulation. Hence, the publication operated as constructive notice to all owners of bank deposits. Personal notice to all citizens of promulgated laws and regulations is not required.

Considering the above disquisitions, it is sufficiently established that the PDIC did not commit any grave abuse of discretion in denying petitioner's claim for deposit insurance.

WHEREFORE, the petition is **DENIED**. The March 31, 2016 Decision and the December 19, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 137172 are **AFFIRMED**.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe, Caguioa*, and *Hernando,*[*] *JJ.*, concur.

THIRD DIVISION

[G.R. No. 233063. February 11, 2019]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **HON. SANDIGANBAYAN (FIFTH DIVISION), REYNALDO O. PAROJINOG, SR., and NOVA PRINCESS E. PAROJINOG ECHAVEZ,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; FACTORS TO CONSIDER IN THE DETERMINATION OF WHETHER THE RIGHT TO THE SPEEDY

[*] Additional Member per S.O. No. 2630 dated December 18, 2018.

DISPOSITION OF A CASE HAS BEEN VIOLATED, ENUMERATED.— The right to the speedy disposition of cases is enshrined in Article III of the Constitution, x x x "The constitutional right is not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature, as well as all proceedings, either judicial or quasi-judicial." "In this accord, any party to a case may demand expeditious action from all officials who are tasked with the administration of justice." "This right, however, like the right to a speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays." "The concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case." Hence, the doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are as follows: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.

2. ID.; ID.; ID.; ID.; THE PERIOD DEVOTED FOR FACT-FINDING INVESTIGATIONS BEFORE FILING OF THE FORMAL COMPLAINT IS NOT INCLUDED IN THE DETERMINATION OF WHETHER THERE HAS BEEN INORDINATE DELAY; APPLICATION IN CASE AT BAR.— Our ruling in the case of *People v. Sandiganbayan, et al.*, where we held that fact-finding investigations are included in the period for determination of inordinate delay has already been abandoned. In *Cagang v. Sandiganbayan, et al.*, we made the following disquisition, thus: x x x Considering that fact-finding investigations are not yet adversarial proceedings against the accused, the period of investigation will not be counted in the determination of whether the right to speedy disposition of cases was violated. Thus, this Court now holds that for the purpose of determining whether inordinate delay exists, a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation. x x x Clearly, the period devoted for fact-finding investigations before the filing of the formal complaint is not included in the determination of whether there has been inordinate

> delay. Hence, in this case, the period from the receipt of the anonymous complaint by the Office of the Ombudsman-Mindanao, on August 23, 2010, until December 7, 2014 should not be considered in the determination of the presence of inordinate delay. This is so because during this period, respondents were not yet exposed to adversarial proceedings, but only for the purpose of determining whether a formal complaint against them should be filed based on the result of the fact-finding investigation. Therefore, the reckoning point to determine if there had been inordinate delay should start to run from the filing of the formal complaint with the Office of the Ombudsman-Mindanao, on December 8, 2014, up to the filing of the Information on November 23, 2016. x x x We find that the period from the filing of the formal complaint to the subsequent conduct of the preliminary investigation was not attended by vexatious, capricious, and oppressive delays as would constitute a violation of respondents' right to a speedy disposition of cases. We find the period of less than two years not to be unreasonable or arbitrary.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.

Custodio Cruz Puno & Camara Law Offices for private respondent Nova Princess Parojinog-Echavez.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for *certiorari* are the Resolutions, dated April 7, 2017[1] and June 14, 2017,[2] issued by the Sandiganbayan in SB-16-CRM-1206.

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[1] *Rollo*, pp. 45-58. Penned by Associate Justice Maria Theresa V. Mendoza-Arcega, and concurred in by Associate Justices Rafael R. Lagos and Reynaldo P. Cruz.

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

In an anonymous letter[3] dated August 23, 2010, the Ombudsman was requested to conduct an investigation against respondents Reynaldo O. Parojinog, Sr., then Mayor of Ozamiz City, Misamis Occidental, and Nova Princess E. Parojinog-Echavez, Mayor Parojinog's daughter, for possible violation of Section 3(h) of Republic Act No. (*RA*) 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, to wit:

> Section 3. *Corrupt practices of public officers*. In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> x x x x x x x x x
>
> (h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

On December 22, 2010, the Office of the Ombudsman-Mindanao endorsed the letter to the Commission on Audit (*COA*) for a conduct of a special audit on the matter. The COA submitted a copy of the Joint Affidavit and Special Audit Report dated September 26, 2011 which disclosed deficiencies in the procurement for the improvement/renovation of the multi-purpose building/ Ramirez Gymnasium in Lam-an, Ozamiz City by the local government of Ozamiz City. The payment for the renovation project was suspended in audit, through notice of suspension no. 13-001 101(08), as it was discovered, based on the audit, that the end user of the renovation project was the local government unit of Ozamiz City, represented by respondent Mayor Parojinog, the father of respondent Echavez who is the managing partner of Parojinog and Sons Construction Company to which the renovation project was awarded; that the relationship of father and daughter falls within the third civil degree of consanguinity which transaction is prohibited by Section 47

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[3] Requesting for a conduct of investigation against the officials of Ozamiz City, Province of Misamis Occidental.

of the Revised Implementing Rules and Regulations of RA 9184 or the Government Procurement Reform Act.

On December 8, 2014, a formal complaint was filed by the Ombudsman Field Investigation Unit against respondents. On January 7, 2015, the Office of the Ombudsman-Mindanao issued a Joint Order[4] directing the respondents, among others, to submit their counter-affidavits. On February 13, 2015, respondents filed a motion[5] for additional time to file their counter-affidavits and which they filed[6] on March 3, 2015. On July 22, 2015, a subpoena *duces tecum*[7] was issued to the COA and the Department of Public Works and Highways (*DPWH*) for them to submit certified true copies of documents relating to the bidding, evaluation, and acceptance of the gymnasium project. The other respondents filed a supplemental to their position paper on October 16, 2015, and their motion to admit annexes on October 23, 2015.

On November 27, 2015, the graft investigation officer submitted a Resolution[8] finding probable cause to indict herein respondents for violation of Section 3(h) of RA 3019. The Resolution was approved[9] by the Ombudsman on April 29, 2016. Respondents filed their motion for reconsideration which was denied in an Order[10] dated June 30, 2016.

On November 23, 2016, an Information for violation of Section 3(h) of RA 3019 against respondents was filed with the Sandiganbayan. The accusatory portion of the Information reads:

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[4] *Rollo*, pp. 72-76.

[5] *Id.* at 77-82.

[6] *Id.* at 90-107.

[7] *Id.* at 120-122.

[8] *Id.* at 123-133.

[9] *Id.* at 132.

[10] *Id.* at 136-145.

During the period of April to May 2008, or sometime prior or subsequent thereto, in Ozamiz City, Misamis Occidental, Philippines, and within this Honorable Court's jurisdiction; REYNALDO OZAMIZ PAROJINOG, SR. as Mayor (SG 27) o[f] Ozamiz City; while in the performance of his administrative and/or official functions and in conspiracy with his daughter NOVA PRINCESS ENGRACIA PAROJINOG-ECHAVEZ, Managing Partner of Parojinog & Sons Construction Company (PSCC); willfully, unlawfully, and criminally possessed a financial or pecuniary interest in PSCC — a company owned by his family — when it participated as a bidder and was awarded the project for the [I]mprovement/Renovation of Multi-Purpose Building/Ramiro Gymnasium, Lam-an, Ozamiz City and when the local government of Ozamiz City as end user, represented by Parojinog, accepted said project as completed.[11]

Respondent Mayor Parojinog filed his Motion to Quash[12] dated February 17, 2017 on the ground that the facts charged did not constitute an offense. Later, both respondents filed an Omnibus Motion[13] to Quash Information and to Dismiss SB-16-CRM-1206, contending that the facts alleged in the Information did not constitute an offense warranting the quashal thereof and that their right to a speedy disposition of cases had been violated.

On April 7, 2017, the Sandiganbayan issued its first assailed Resolution, the decretal portion of which reads:

WHEREFORE, in the light of the foregoing, the Omnibus Motion is hereby GRANTED. The Information is ordered QUASHED and the instant case is DISMISSED for violation of accused's constitutional right to speedy disposition of cases[.]

Accordingly, the hold-departure issued by the Court against the accused is hereby LIFTED and SET ASIDE, and the bonds they posted for their provisional liberty are ordered RELEASED, subject to the usual accounting and auditing procedures.[14]

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

[12] *Id.* at 146-154.

[13] *Id.* at 155-182.

[14] *Id.* at 58.

In granting the motion to quash, the Sandiganbayan ruled that the following elements need to be proven in order to constitute a violation of Section 3(h) of RA 3019, to wit: (1) the accused is a public officer; (2) he has a direct or indirect financial or pecuniary interest in any business, contract, or transaction; and (3) he either (a) intervenes or takes part in his official capacity in connection with such interest, or (b) is prohibited from having such interest by the Constitution or by any law. It found that the allegation in the Information that the subject business is owned by the family of respondent Mayor Parojinog was glaringly deficient as it did not state if he had any interest in the business; hence, the second element had not been properly alleged. As to the third element, it found that the Information did not state how respondent Mayor Parojinog intervened or participated in furtherance of the alleged financial interest nor did it state that he had any financial interest prohibited by the Constitution or by any other law; that the acceptance of the project only after it was completed cannot amount to intervention or participation of respondent Mayor Parojinog in order that the project could push through since it was the DPWH which bidded out and awarded the project to the company.

The Sandiganbayan dismissed the case because there was a violation of respondents' right to a speedy disposition of cases. It took into consideration the period from the receipt by the Office of the Ombudsman-Mindanao of the anonymous letter-complaint up to the filing of the Information in this case, which amounted to a total of five (5) years and eleven (11) months; that the delay could not be ignored by separating the fact-finding investigation from the conduct of preliminary investigations as all stages to which the accused was exposed should be included; that there was no explanation offered for such delay. The Sandiganbayan found that respondents had raised the issue of the violation of their right to a speedy disposition of cases in their motion for reconsideration of the Resolution finding probable cause; and even if they did not, there was no need to follow up their case. There was prejudice to the respondents since relevant documents could have already been lost since

the subject business was only required to keep its business books, accounts and other documents for three years.

Petitioner People of the Philippines filed a motion for reconsideration which the Sandiganbayan denied in the second assailed Resolution dated June 14, 2017.

The Sandiganbayan found that petitioner failed to address its finding that the fact-finding investigation period must be considered in determining whether there was inordinate delay. It also found that petitioner violated Sections 4 and 5, Rule 15 of the Rules of Court regarding hearing of motion and notice of hearing, and resultantly, the motion was reduced to a mere scrap of paper which did not toll the period to appeal.

Hence, this petition for *certiorari* filed by petitioner raising the following issues:

I.

THE PUBLIC RESPONDENT SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RECKONING THE CONDUCT OF PROCEEDINGS —AND THE IMPUTATION OF DELAY - FROM THE CONDUCT OF THE FACT-FINDING INVESTIGATION BY THE OFFICE OF THE OMBUDSMAN, WHICH CONSTITUTES A COLLATERAL ATTACK ON THE RULE-MAKING POWER OF THE OMBUDSMAN AND A DEROGATION OF ITS CONSTITUTIONAL MANDATE TO CONDUCT AN INVESTIGATION.

II.

THE PUBLIC RESPONDENT SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN MERELY RESORTING TO A MATHEMATICAL COMPUTATION OF THE PERIOD CONSTITUTING THE ALLEGED DELAY, WITHOUT REGARD TO THE FACTS AND CIRCUMSTANCES SURROUNDING THE CASE AS WELL AS THE PRECEDENTS THAT DEFINE THE PARAMETERS OF INORDINATE DELAY.

III.

THE PUBLIC RESPONDENT SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT VIOLATIONS OF SECTIONS 4 & 5 OF RULE 15 OF THE RULES OF COURT ARE FATAL TO PETITIONER'S MOTION FOR RECONSIDERATION.[15]

We first address the third issue raised by petitioner regarding the Sandiganbayan's finding that it violated Sections 4 and 5, Rule 15 of the Rules of Court in the filing of its motion for reconsideration, which did not toll the running of the period to appeal.

Sections 4 and 5, Rule 15 of the Rules of Court provide that:

Sec. 4. Hearing of motion. — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

Sec. 5. Notice of hearing. — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the tiling of the motion.

In *Cabrera v. Ng*,[16] we held:

The general rule is that the three-day notice requirement in motions under Sections 4 and 5 of the Rules of Court is mandatory. It is an integral component of procedural due process. "The purpose of the three-day notice requirement, which was established not for the benefit of the movant but rather for the adverse party, is to avoid surprises upon the latter and to grant it sufficient time to study the motion and to enable it to meet the arguments interposed therein."

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

[16] 729 Phil. 544 (2014).

"A motion that does not comply with the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is a worthless piece of paper which the clerk of court has no right to receive and which the court has no authority to act upon." "Being a fatal defect, in cases of motions to reconsider a decision, the running of the period to appeal is not tolled by their filing or pendency."

Nevertheless, the three-day notice requirement is not a hard and fast rule. When the adverse party had been afforded the opportunity to be heard, and has been indeed heard through the pleadings filed in opposition to the motion, the purpose behind the three-day notice requirement is deemed realized. In such case, the requirements of procedural due process are substantially complied with.[17] (Citations omitted.)

The Sandiganbayan found that petitioner failed to furnish the respondents a copy of the motion for reconsideration at least three days before the date of hearing as prescribed in Section 4, Rule 15 of the Rules of Court. Petitioner claims that it sent the motion for reconsideration and notice of hearing to respondents' counsel 15 days before the scheduled hearing; thus, there was enough time to reach them. However, as respondents stated in their Comment, the unit number in the address of the respondents' counsel was wrongly written, *i.e.*, Unit 1002 which should be Unit 1102; thus, the motion was only received by respondents' counsel one day before the date of hearing. Notwithstanding, we find that respondents were given the opportunity to be heard as they were able to file their opposition to petitioner's motion for reconsideration, and controvert the arguments raised therein. Thus, the requirement of procedural process was met.

The Sandiganbayan also found that petitioner failed to comply with Section 5, Rule 15 of the Rules of Court on the rule of setting the hearing of the motion for reconsideration not later than 10 days after the filing of the motion. Here, the motion for reconsideration was filed on April 27, 2017 and was set for hearing on May 12, 2017, however, considering that an examination of the petition shows its merit, we decide to relax

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[17] *Id.* at 550.

the strict application of the rules of procedure in the exercise of our equity jurisdiction.

In *Atty. Gonzales v. Serrano*,[18] we held:

> Rules of procedure exist to ensure the orderly, just and speedy dispensation of cases; to this end, inflexibility or liberality must be weighed. Thus, the relaxation or suspension of procedural rules, or exemption of a case from their operation is warranted only by compelling reasons or when the purpose of justice requires it.[19] (Citation omitted.)

Petitioner contends that the Sandiganbayan committed grave abuse of discretion amounting to lack of jurisdiction in dismissing the complaint for violating respondents' right to a speedy disposition of cases.

The right to the speedy disposition of cases is enshrined in Article III of the Constitution, which declares:

> Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

"The constitutional right is not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature, as well as all proceedings, either judicial or quasi-judicial."[20] "In this accord, any party to a case may demand expeditious action from all officials who are tasked with the administration of justice."[21] "This right, however, like the right to a speedy trial, is deemed violated

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[18] 755 Phil. 513 (2015).

[19] *Id.* at 527.

[20] *People v. Sandiganbayan 5th Div., et al.*, 791 Phil. 37, 52 citing *Cadalin v. Philippine Overseas Employment Administration's Administrator*, 308 Phil. 728,772 (1994).

[21] *Id.* at 52-53, citing *Capt. Roquero v. The Chancellor of UP-Manila, et al.*, 628 Phil. 628, 639 (2010).

only when the proceeding is attended by vexatious, capricious, and oppressive delays."[22]

"The concept of speedy disposition is relative or flexible. A mere mathematical reckoning of the time involved is not sufficient. Particular regard must be taken of the facts and circumstances peculiar to each case."[23] Hence, the doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are as follows: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.[24]

In dismissing the complaint for violation of respondents' right to a speedy disposition of cases, the Sandiganbayan found that from the time the Office of the Ombudsman-Mindanao officially took cognizance of the case by referring the letter to the COA for audit up to the filing of the Information, a total of five (5) years and eleven (11) months had elapsed; and that there was no explanation for the delay. It cited the case of *People v. Sandiganbayan, et al.*,[25] where we declared:

> The guarantee of speedy disposition under Section 16 of Article III of the Constitution applies to all cases pending before all judicial, quasi-judicial or administrative bodies. The guarantee would be defeated or rendered inutile if the hair-splitting distinction by the State is accepted. Whether or not the fact-finding investigation was separate from the preliminary investigation conducted by the Office of the Ombudsman should not matter for purposes of determining if the respondents' right to the speedy disposition of their cases had been violated.[26]

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[22] *Id.* at 53, citing *Dela Peña v. Sandiganbayan*, 412 Phil. 921, 929 (2001).

[23] *Id.,* citing *Binay v. Sandiganbayan*, 374 Phil. 413, 447 (1999).

[24] *Id.*, citing *Alvizo v. Sandiganbayan*, 292-A Phil. 144, 155 (1993); *Dansal v. Judge Fernandez, Sr.,* 383 Phil. 897, 906 (2000); and *Blanco v. Sandiganbayan*, 399 Phil. 674, 682 (2000).

[25] 723 Phil. 444 (2013).

[26] *Id.* at 493.

Our ruling in the cited case of *People v. Sandiganbayan, et al.*,[27] where we held that fact-finding investigations are included in the period for determination of inordinate delay has already been abandoned. In *Cagang v. Sandiganbayan. et al*.,[28] we made the following disquisition, thus:

> *People v. Sandiganbayan, Fifth Division* must be re-examined.
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> When an anonymous complaint is filed or the Office of the Ombudsman conducts a motu proprio fact-finding investigation, the proceedings are not yet adversarial. Even if the accused is invited to attend these investigations, this period cannot be counted since these are merely preparatory to the filing of a formal complaint. At this point, the Office of the Ombudsman will not yet determine if there is probable cause to charge the accused.
>
> This period for case build-up cannot likewise be used by the Office of the Ombudsman as unbridled license to delay proceedings. If its investigation takes too long, it can result in the extinction of criminal liability through the prescription of the offense.
>
> Considering that fact-finding investigations are not yet adversarial proceedings against the accused, the period of investigation will not be counted in the determination of whether the right to speedy disposition of cases was violated. Thus, this Court now holds that for the purpose of determining whether inordinate delay exists, a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation. In *People v. Sandiganbayan, Fifth Division*, the ruling that fact-finding investigations are included in the period for determination of inordinate delay is abandoned. (Citations omitted.)

Clearly, the period devoted for fact-finding investigations before the filing of the formal complaint is not included in the determination of whether there has been inordinate delay. Hence, in this case, the period from the receipt of the anonymous complaint by the Office of the Ombudsman-Mindanao, on August 23, 2010, until December 7, 2014 should not be considered in the determination of the presence of inordinate delay. This is

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[27] *Supra* note 25.

[28] G.R. Nos. 206438, 206458, and 210141-42, July 31, 2018.

so because during this period, respondents were not yet exposed to adversarial proceedings, but only for the purpose of determining whether a formal complaint against them should be filed based on the result of the fact-finding investigation.

Therefore, the reckoning point to determine if there had been inordinate delay should start to run from the filing of the formal complaint with the Office of the Ombudsman-Mindanao, on December 8, 2014, up to the filing of the Information on November 23, 2016. Here, it appears that after the filing of the formal complaint on December 8, 2014, the Office of the Ombudsman-Mindanao issued a Joint Order dated January 7, 2015 directing respondents, among others, to submit their counter-affidavits, which they did on March 3, 2015 after some extensions of time. Thereafter, a subpoena *duces tecum* was issued to the COA and the DPWH. The other respondents filed a Supplement to Position Paper on October 16, 2015 and followed by a Motion to Admit Annexes of the Supplemental Counter-Affidavits on October 23, 2015. On November 27, 2015, the Graft Investigation Officer submitted to the Ombudsman a Resolution finding probable cause. The Resolution was approved by the Ombudsman on April 29, 2016 and the Information was filed on November 23, 2016.

We find that the period from the filing of the formal complaint to the subsequent conduct of the preliminary investigation was not attended by vexatious, capricious, and oppressive delays as would constitute a violation of respondents' right to a speedy disposition of cases. We find the period of less than two years not to be unreasonable or arbitrary. In fact, respondents did not raise any issue as to the violation of their right to a speedy disposition of cases until the issuance of the Ombudsman's Resolution finding probable cause.

Finally, we note that the Sandiganbayan granted respondents' motion to quash the Information on the ground that the facts did not constitute an offense, and since it dismissed the case due to the violation of respondents' right to a speedy disposition of cases, it did not order the amendment of the information as provided under Section 4, Rule 117 of the Rules of Court, to wit:

Section 4. Amendment of complaint or information — If the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order that an amendment be made.

If it is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment.

Petitioner did not assail the finding of the Sandiganbayan regarding the insufficiency of the allegations in the Information. Considering our finding that there was no violation of respondents' right to a speedy disposition of cases, hence, the case should not be dismissed and, therefore, petitioner should be given an opportunity to amend the Information and correct its defect pursuant to Section 4, Rule 117 of the Rules of Court. Notably, respondent Mayor Parojinog had already died on July 30, 2017[29] as shown by his death certificate; thus, the Information should only be filed against respondent Echavez.

WHEREFORE, the petition is **GRANTED**. The Resolutions dated April 7, 2017 and June 14, 2017, issued by the Sandiganbayan in SB-16-CRM-1206, are hereby **REVERSED** and **SET ASIDE**. The Prosecution is hereby given the chance to **AMEND** the Information against respondent Nova Princess E. Parojinog-Echavez for violation of Section 3(h) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

SO ORDERED.

Leonen, Reyes, A. Jr., Hernando, and *Carandang,*[*] *JJ.,* concur.

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[29] *Rollo*, p. 389.

[*] Designated as additional member per Special Order No. 2624 dated November 28, 2018.

SECOND DIVISION

[G.R. No. 241081, February 11, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BERNIDO ACABO *y* AYENTO,**[*] *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE/ POSSESSION OF DANGEROUS DRUGS; IN CASES INVOLVING DANGEROUS DRUGS, IT IS ESSENTIAL THAT THE IDENTITY OF THE DANGEROUS DRUG BE ESTABLISHED WITH MORAL CERTAINTY, CONSIDERING THAT THE DANGEROUS DRUG ITSELF FORMS AN INTEGRAL PART OF THE *CORPUS DELICTI* OF THE CRIME.—** In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.

2. **ID.; ID.; ID.; CHAIN OF CUSTODY RULE; TO ESTABLISH THE IDENTITY OF THE DANGEROUS DRUG WITH MORAL CERTAINTY, THE PROSECUTION MUST BE ABLE TO ACCOUNT FOR EACH LINK OF THE CHAIN OF CUSTODY FROM THE MOMENT THE DRUGS ARE SEIZED UP TO THEIR PRESENTATION IN COURT AS EVIDENCE OF THE CRIME; REQUIREMENTS.—** To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the

[*] "Bernido Acabo *y* Ayento *alias* 'Bidok'" in some parts of the records.

seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that "[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team." Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody. The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640, "a representative from the media ***and*** the Department of Justice (DOJ), and any elected public official"; or (*b*) if **after** the amendment of RA 9165 by RA 10640, "an elected public official and a representative of the National Prosecution Service ***or*** the media." The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

3. ID.; ID.; ID.; ID.; AS A GENERAL RULE, COMPLIANCE WITH THE CHAIN OF CUSTODY PROCEDURE IS STRICTLY ENJOINED AS THE SAME IS REGARDED NOT MERELY AS A PROCEDURAL TECHNICALITY BUT AS A MATTER OF SUBSTANTIVE LAW; EFFECT OF FAILURE TO STRICTLY COMPLY WITH THE PROCEDURE, EXPLAINED.— As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law." This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment." Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible. As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a

justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved. The foregoing is based on the saving clause found in Section 21 (a) Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640. It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

4. **ID.; ID.; ID.; ID.; NON-COMPLIANCE WITH THE WITNESS REQUIREMENT MAY BE PERMITTED IF THE PROSECUTION PROVES THAT THE APPREHENDING OFFICERS EXERTED GENUINE AND SUFFICIENT EFFORTS TO SECURE THE PRESENCE OF SUCH WITNESSES, HOWEVER, THEY EVENTUALLY FAILED TO APPEAR.—** Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances. Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule. Notably, the Court, in *People v. Miranda*, issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that "[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only

for the first time on appeal, or even not raised, become apparent upon further review."

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated November 29, 2017 of the Court of Appeals (CA) in CA-G.R. CEB-HC No. 02396, which affirmed the Decision[3] dated October 19, 2016 of the Regional Trial Court of Loay, Bohol, Branch 50 (RTC) in Crim. Case No. 1417, finding accused-appellant Bernido Acabo *y* Ayento (Acabo) guilty beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information[5] filed before the RTC charging Acabo of the crime of Illegal Sale of Dangerous

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[1] See Notice of Appeal dated January 24, 2018; *rollo*, pp. 22-23.

[2] *Id*. at 4-21. Penned by Associate Justice Edgardo L. Delos Santos with Associate Justices Edward B. Contreras and Gabriel T. Robeniol, concurring.

[3] CA *rollo*, pp. 44-56. Penned by Executive Presiding Judge Dionisio R. Calibo, Jr.

[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 September 28, 2009. Records, pp. 17-18.

Drugs. The prosecution alleged that on September 12, 2009, members of the Provincial Mobile Group, Tagbilaran City successfully implemented a buy-bust operation against Acabo, during which two (2) plastic sachets containing white crystalline substance were recovered from him. Thereafter, Acabo and the seized items were brought to the Garcia-Hernandez Police Station, where the inventory was conducted in the presence of two (2) elected public officials, Barangay Kagawads Servidia Cuadra (Cuadra) and Alberto Ladaga (Ladaga), and a PDEA representative, IO1 John Carlo Daquiado (IO1 Daquiado). Afterwards, they went to the Bohol Provincial Police Office, where Media Representative Dave Charles Responte (Media Representative Responte) signed[6] the Inventory of Property Seized/Confiscated[7] and the Certificate of Inventory.[8] The seized items were then brought to the crime laboratory, where, after examination,[9] the contents thereof yielded positive for 0.08 gram of methamphetamine hydrochloride or *shabu*, a dangerous drug.[10]

In defense, Acabo denied the charges against him, and instead, claimed that on September 12, 2009, he was on his way to his old house to get some snacks when he noticed three (3) armed men by the road riding a motorcycle. Upon asking their purpose, they responded that they would be arresting him for selling *shabu*. He then ran off because he was afraid of being arrested without committing a crime, but eventually stopped when he heard a gunshot fired. He was then handcuffed and brought to

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[6] Although it appears from the Inventory of Property Seized/Confiscated that it was signed by a media representative, elected public officials, and a PDEA representative, the cross-examination of the poseur-buyer, PO2 Rolex Tamara, reveals that only the elected public officials and PDEA representative were actually present during the said inventory. The media representative only signed the same, as well as the Certificate of Inventory, at the Bohol Provincial Police Office. (See TSN, September 6, 2011, pp. 13-14.)

[7] Dated September 12, 2009. Records, p. 9.

[8] Dated September 12, 2009. *Id*. at 8.

[9] See Chemistry Report No. D-76-2009 dated September 13, 2009; *id*. at 4.

[10] See *rollo*, pp. 6-8. See also CA *rollo*, pp. 44-51.

the police station, where he saw items that were listed in the inventory sheet. He likewise saw two (2) barangay kagawads who signed the document. He averred that he was framed because he had a minor conflict with a certain PO3 Elvan Cadiz in a previous motorcycle accident.[11]

In a Decision[12] dated October 19, 2016, the RTC found Acabo 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 that Acabo was arrested during a buy-bust operation wherein two (2) sachets containing a total of 0.08 gram of white crystalline substance were recovered from him. It likewise did not give credence to Acabo's defense of denial since he failed to show any ill motive on the part of the police officers to impute such crime to him.[13] Aggrieved, Acabo appealed[14] to the CA.

In a Decision[15] dated November 29, 2017, the CA affirmed the RTC ruling. It held that the prosecution was able to establish all the elements of the crime charged, and that the integrity of the seized items was preserved.[16]

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

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,[17] it is essential that the identity of the

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[11] See *rollo*, pp. 8-9. See also CA *rollo*, pp. 54-55.

[12] CA *rollo*, pp. 44-56.

[13] See *id*. at 56.

[14] See Notice of Appeal dated October 25, 2016; records, p. 198.

[15] *Rollo*, pp. 4-21.

[16] See *id*. at 15-20.

[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

dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[18] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.[19]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[20] As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and 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

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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.

team."[21] Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.[22]

The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640,[23] "a representative from the media ***and*** the Department of Justice (DOJ), and any elected public official";[24] or (*b*) if **after** the amendment of RA 9165 by RA 10640, "an elected public official and a representative of the National Prosecution Service ***or*** the media."[25] The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."[26]

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[21] *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

[22] See *People v. Tumulak,* 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

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

[24] Section 21 (1) and (2), Article II of RA 9165; emphasis and underscoring supplied.

[25] Section 21 (1), Article II of RA 9165, as amended by RA 10640; emphasis and underscoring supplied.

[26] See *People v. Bangalan*, G.R. No. 232249, September 3, 2018, citing *People v. Miranda*, *supra* note 17. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law."[27] This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment."[28]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[29] As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved.[30] The foregoing is based on the saving clause found in Section 21 (a),[31] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[32] It should, however, be emphasized

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[27] See *People v. Miranda*, *id*. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215, citing *People v. Umipang*, *supra* note 19, at 1038.

[28] *People v. Segundo*, G.R. No. 205614, July 26, 2017, 833 SCRA 16, 44, citing *People v. Umipang*, *id*.

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

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

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

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

that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[33] and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[34]

Anent the 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

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[33] *People v. Almorfe*, *supra* note 30.

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

[35] See *People v. Manansala*, *supra* note 17.

[36] See *People v. Gamboa*, *supra* note 19, citing *People v. Umipang*, *supra* note 19, at 1053.

[37] See *People v. Crispo*, *supra* note 17.

[38] *Supra* note 17.

the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."[39]

In this case, there was a deviation from the witness requirement as the conduct of the inventory and photography was not witnessed by the DOJ and media representatives. The absence of the DOJ representative is evident from the Certificate of Inventory,[40] which only shows the signatures of Media Representative Responte, Barangay Kagawads Cuadra and Ladaga, and IO1 Daquiado as witnesses. Such finding is confirmed by the testimony of the poseur buyer, PO2 Rolex Tamara[41] (PO2 Tamara), on direct examination, to wit:

[Assistant Provincial Prosecutor Aida Langcamon (APP Langcamon)]: How about the signatures below the phrase, "Witness in the conduct of inventory", whose signatures are these?
[PO2 Tamara]: **These are the signatures of Dave Charles Responte from DYTR, the barangay kagawads of their barangay Manaba, Servidia Cuadra, and Alberto Ladaga, and IO1 John Carlo Daquiado.**

Q: How do you know that these are the signatures of the persons, which were named?
A: I was present during the Inventory.

Q: Did you request them to sign on this Inventory?
A: Yes Maam.[42]

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Q: Attached to the record and marked as Exhibit E is a Certificate of Inventory, what relation that document has to the one you mentioned having prepared?
A: This is the document that I mentioned.

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[39] See *id*.

[40] Dated September 12, 2009. Records, p. 8.

[41] "Tamarra" in some parts of the records.

[42] See TSN, June 28, 2011, p. 8; emphasis supplied.

Q: And will you please identify the signatures appearing on the lower most portion of that document?
A: **This is the signature of PCI Nicomedes Olaivar, Jr. as team leader; the signature of Dave Charles Responte; signature of Servidia Cuadra; Kagawad Alberto Ladaga, and IO1 John Carlo Daquiado, their signatures.**[43]

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Q: What about this space provided for Department of Justice, will you explain before this Honorable Court why this is blank or why there is no signature on that space provided for?
A: **When we went to the Provincial Fiscal's Office, there was no available representative who will sign.**[44]

Moreover, although Media Representative Responte signed the Inventory of Property Seized/Confiscated and the Certificate of Inventory, he did not actually witness the conduct of the inventory and photography of the seized items at the Garcia-Hernandez Police Station. As the records show, PO2 Tamara testified on cross-examination that the police officers only contacted the media representative upon reaching Tagbilaran, particularly at the Bohol Provincial Police Office,[45] where Media Representative Responte apparently signed the said certification, *viz.*:

Q: So this means that that (sic) Certificate of Inventory and Receipt of Property Seized would be prepared and signed by persons who were not present during the inventory, because you attempted to go to the Fiscal's office to have the Fiscal sign in the space provided for the Department of Justice?
A: Based on our operation, if we have to serve a search warrant, all those persons mentioned in the inventory are together with us, but since this is a buy bust operation, usually, the one who will sign is the barangay official only. **Like in this case, there is no media representative in Garcia-Hernandez so only the PDEA and the barangay officials.**

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[43] *Id*. at 12; emphasis supplied.

[44] See TSN, July 26, 2011, p. 9; emphasis supplied.

[45] See *rollo*, p. 7.

Q: What I am emphasizing Mr. Witness is that, in order to have that space signed or somebody will sign on that space, you will have to go to other place to look for representative like this one, the representative of the Department of Justice?
A: **We have to have it signed but since there is no media representative who will always be going with us, so like this case, upon reaching Tagbilaran, we have to call up a media representative.**

COURT: What are the wordings of that document to be signed by the media? Does it say that they are signing because they saw the items found by the search team or they just sign that these are the items.
[Atty. Jesus Bautista, Jr.]: According to the document, Certificate of Inventory and the Receipt of Property Seized, they are witnesses.
[APP Langcamon]: Witnesses in the conduct of inventory, insofar as inventory of property seized and confiscated.[46]

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 Tamara acknowledged the absence of the DOJ and media representatives during the aforementioned conduct, he failed to provide any justifiable reason for said absence. Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, cannot be considered as a justifiable reason for non-compliance. 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 Acabo were compromised, which consequently warrants his acquittal.

WHEREFORE, the appeal is **GRANTED**. The Decision dated November 29, 2017 of the Court of Appeals in CA-G.R. CEB-HC No. 02396 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Bernido Acabo *y* Ayento is **ACQUITTED** of the crime charged. The Director of the Bureau

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[46] TSN, September 6, 2011, pp. 13-14; emphases supplied.

of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

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

EN BANC

[G.R. Nos. 219824-25. February 12, 2019]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **HONORABLE SANDIGANBAYAN (First Division), MARIO L. RELAMPAGOS, MARILOU D. BARE, ROSARIO S. NUÑEZ and LALAINE N. PAULE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL; THE PROPER REMEDY FROM THE SANDIGANBAYAN RESOLUTIONS DISMISSING THE CRIMINAL CASES IS AN APPEAL BY *CERTIORARI* UNDER RULE 45 AND NOT UNDER RULE 65 OF THE RULES OF COURT; SUBJECT TO CERTAIN EXCEPTIONS, THE USE OF AN ERRONEOUS MODE OF APPEAL, IS CAUSE FOR DISMISSAL OF THE PETITION FOLLOWING THE BASIC RULE THAT *CERTIORARI*, BEING AN INDEPENDENT ACTION, IS NOT A SUBSTITUTE FOR A LOST APPEAL.— Section 1, Rule 122 of the Revised Rules

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[**] Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018.

of Criminal Procedure provides that: "Any party may appeal from a judgment or final order, unless the accused will be placed in double jeopardy." x x x Further, Section 7 of Presidential Decree No. 1606, as amended by Section 3 of R.A. No. 7975 provides that decisions and final orders of the Sandiganbayan shall be appealable to the Court by a petition for review on *certiorari* raising pure questions of law in accordance with Rule 45 of the Rules of Court. This is in harmony with the procedural rule that the provisions of Rules 42, 44, 45, 46 and 48 to 56 relating to the procedure in original and appealed civil cases shall also be applied to criminal cases. x x x Thus, the proper remedy from the Sandiganbayan Resolutions dismissing the criminal cases is an appeal by *certiorari* under Rule 45 and not under Rule 65 of the Rules of Court. The availability of appeal, it being speedy and adequate, proscribes a *certiorari* petition under Rule 65. Subject to certain exceptions, the use of an erroneous mode of appeal is cause for dismissal of the petition following the basic rule that *certiorari*, being an independent action, is not a substitute for a lost appeal.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MISAPPLICATION OF FACTS AND EVIDENCE, AND ERRONEOUS CONCLUSIONS BASED ON EVIDENCE DO NOT, BY MERE FACT THAT ERRORS WERE COMMITTED, RISE TO THE LEVEL OF GRAVE ABUSE OF DISCRETION.— Petitioner also assails the Sandiganbayan's finding of lack of probable cause as it was allegedly attended by a failure to consider and weigh all the evidence. As a rule, misapplication of facts and evidence, and erroneous conclusions based on evidence do not, by the mere fact that errors were committed, rise to the level of grave abuse of discretion. Even granting that the Sandiganbayan erred in weighing the sufficiency of the prosecution's evidence, such error does not necessarily amount to grave abuse of discretion. Similarly, the mere fact that a court erroneously decides a case does not necessarily deprive it of jurisdiction. Such are errors of judgment that cannot be corrected by an extraordinary writ of *certiorari*.

3. ID.; CRIMINAL PROCEDURE; PROBABLE CAUSE; TWO STAGES OF DETERMINING PROBABLE CAUSE IN CRIMINAL PROSECUTION, DISTINGUISHED.— The

executive determination of probable cause is not to be confused with the judicial determination of probable cause. In a criminal prosecution, probable cause is determined at two stages: *first*, the executive level where probable cause is determined by the prosecutor during the preliminary investigation and before the filing of the criminal information; and *second*, the judicial level where probable cause is determined by the judge before the issuance of a warrant of arrest. Thus, while it is true that the Ombudsman retains full discretion to determine whether or not a criminal case should be filed in the Sandiganbayan, the latter gains full control as soon as the case has been filed before it. This must necessarily be so considering that when an information is filed in court, the court acquires jurisdiction over the case and the concomitant authority to determine whether or not the case should be dismissed being the "best and sole judge" thereof. Consequently, absent a showing of grave abuse of discretion, the Court will not interfere with the Sandiganbayan's jurisdiction and control over a case properly filed before it.

4. ID.; ID.; PRELIMINARY INVESTIGATION; A JUDGE IS MANDATED TO PERSONALLY DETERMINE THE EXISTENCE OF PROBABLE CAUSE AFTER HIS PERSONAL EVALUATION OF THE PROSECUTOR'S RESOLUTION AND THE SUPPORTING EVIDENCE FOR THE CRIME CHARGED; THREE (3) OPTIONS OF THE COURT UPON THE FILING OF A CRIMINAL COMPLAINT OR INFORMATION, ENUMERATED.— A judge is mandated to personally determine the existence of probable cause after his personal evaluation of the prosecutor's resolution and the supporting evidence for the crime charged. Specifically, under Section 5(a), Rule 112 of the Rules of Criminal Procedure, the court has three options upon the filing of a criminal complaint or information: a) immediately dismiss the case if the evidence on record clearly failed to establish probable cause; b) issue a warrant of arrest if it finds probable cause; or c) order the prosecutor to present additional evidence within five days from notice in case of doubt on the existence of probable cause.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Hans Roger S. Luna for Mario L. Relampagos.

Ma. Cecilia S. Lauchengco-Rebollido for Rosario S. Nuñez and Lalaine N. Paule.

Pearl Lizza S. Principio for Marilou D. Bare.

D E C I S I O N

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

Through a Petition for *Certiorari*[1] under Rule 65 of the Rules of Court, petitioner People of the Philippines, represented by the Office of the Ombudsman (Ombudsman) through the Office of the Special Prosecutor, seeks to partially nullify the (1) Resolution[2] dated May 13, 2015 of the Sandiganbayan (First Division) in Criminal Case Nos. SB-15-CRM-0017 for violation of Section 3(e) of Republic Act (R.A.) No. 3019 and SB-15-CRM-0020 for violation of Article 217 of the Revised Penal Code (RPC), or malversation of public funds, insofar as it dismissed the said criminal cases against herein respondents; and (2) Resolution[3] dated July 9, 2015 insofar as it denied petitioner's motion for partial reconsideration.[4]

The Facts

Following the disclosure by Benhur Luy (Luy) of the "pork barrel scam" or "PDAF scam" perpetrated through a scheme that utilizes the Priority Development Assistance Fund (PDAF) allocated to the members of the Congress, the National Bureau of Investigation (NBI) filed a complaint against then Congressman Constantino G. Jaraula (Jaraula) and several other

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[1] Dated September 8, 2015; *rollo*, pp. 3-34.

[2] Case Nos. SB-15-CRM-0016 to SB-15-CRM-0024; *id* at 35-40.

[3] *Id*. at 41-44.

[4] *Id*. at 45-54.

public officers, which included Mario L. Relampagos (Relampagos) as then Undersecretary for Operations, Rosario S. Nuñez (Nuñez), Lalaine N. Paule (Paule) and Marilou D. Bare (Bare) (collectively, Relampagos, *et al*.), assigned to the Office of the Undersecretary for Operations, all of the Department of Budget and Management (DBM), for malversation of public funds, direct bribery, corruption of public officials and violation of Section 3, paragraphs (b), (e), (g) and (j), and Section 4 of R.A. No. 3019.

As uncovered by the NBI, the scheme begins with either the lawmaker or Janet Lim Napoles (Napoles) commencing negotiations for the use of the PDAF. They would then agree on the projects, the Napoles-controlled non-governmental organization (NGO) which would implement the project and the implementing agency through which the project shall be coursed.[5]

Luy would then prepare a "listing" containing the list of projects to be implemented by the NGO, the implementing agency and the project cost. The lawmaker would then adopt the "listing" and shall then request the Senate President and the Finance Committee Chairperson (in case of a Senator), or to the House Speaker and Chair of the Appropriations Committee (in case of a Congressman), for the release of his allocation. The request shall then be endorsed by the Senate President or the Speaker, as the case may be, to the DBM.[6]

The DBM shall then issue a Special Allotment Release Order (SARO), and later, a Notice of Cash Allocation (NCA), to the implementing agency. Thereafter, the lawmaker shall endorse the Napoles-controlled NGO to the implementing agency. A memorandum of agreement covering the project to be undertaken shall then be executed between the lawmaker, the implementing agency and the Napoles-controlled NGO. The implementing

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[5] *Id*. at 61.

[6] *Id*.

agency then releases the check to the NGO, the proceeds of which shall thereafter be withdrawn by Napoles.[7]

Among the implementing agencies mentioned by Luy was the Technology Resource Center (TRC), which allegedly transferred funds to Countrywide Agri and Rural Economic Development Foundation, Inc. (CARED), a Napoles-controlled "dummy" NGO.[8]

The NBI also presented records from the Commission on Audit (COA) showing that in 2007, an aggregate amount of ₱30,000,000.00 covered by three SAROs, *i.e.*, SARO No. ROCS-07-00580, SARO No. ROCS-07-00861 and SARO No. ROCS-07-05450, were taken from Jaraula's PDAF and then transferred from TRC to CARED. The COA also conducted a special audit on the PDAF allocations and disbursements of Jaraula from 2007 to 2009, the results of which were contained in the COA Special Audits Office (SAO) Report No. 2012-03.[9]

Meantime, the Field Investigation Office (FIO) of the Ombudsman also filed a complaint against Jaraula and other public officers, including Relampagos, *et al*., for malversation of public funds and violation of Section 3(e) of R.A. No. 3019.[10] The FIO complaint alleged, among others, that Jaraula and Napoles conspired with each other in misappropriating the PDAF allocation and converting it to their personal use and benefit, and that Jaraula acted with manifest partiality and evident bad faith in endorsing CARED, thus, giving Napoles unwarranted benefits causing undue injury to the government.[11]

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

[8] *Id*. at 63.

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

[10] *Id*. at 59.

[11] *Id*. at 73.

The Ombudsman's Resolution

The NBI and the FIO complaints were jointly resolved by the Ombudsman in its Joint Resolution[12] dated September 26, 2014.

Based on the testimonies of Luy, Marina Sula (Sula) and Merlina Suñas (Suñas), all employees of the Janet Lim Napoles Corporation, COA Report No. 2012-03 and the FIO verification, the Ombudsman found probable cause against therein respondents, including Relampagos, *et al*., for three counts of violation of Section 3(e) of R.A. No. 3019, covering SARO No. ROCS-07-00580, SARO No. ROCS-07-00861 and SARO No. ROCS-07-05450.

Insofar as respondents Relampagos, *et al*. were concerned, the Ombudsman held that they were the ones who processed the SAROs and the NCAs pertaining to Jaraula's PDAF projects. They also exhibited manifest partiality in favor of Napoles when they expedited the processing of the SAROs and NCAs.

The Ombudsman also found probable cause to indict therein respondents, including Relampagos, *et al*., for three counts of malversation of public funds for having conspired with Jaraula and Napoles to misappropriate public funds drawn from Jaraula's PDAF.

Respondents Relampagos, *et al*. filed a consolidated motion for reconsideration, arguing that the PDAF Process Flow adopted by the DBM for 2007 to 2009 shows that they had no means of expediting the release of the SAROs and NCAs of Jaraula.[13]

Relampagos claimed that his participation was limited to the signing of the SAROs only in the absence of the DBM Secretary and that out of the three SAROs, he signed only two: SARO No. ROCS-07-00580 and SARO No. ROCS-07-00861. He claimed that he had no participation in the preparation of the

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[12] *Id*. at 55-122.

[13] *Id*. at 133.

SAROs nor the NCAs because the evaluation and recommendation for the release of such were not done by his office.[14]

Similarly, Nuñez, Paule and Bare claimed that they had no participation in the release of the PDAF from 2007 to 2009 and that Luy's follow-up of the status of the release of the SAROs is not at all extraordinary as it was a regular practice in their office. Luy also did not accuse them of having participated in the PDAF scam nor having received any portion of the PDAF allocations.[15]

The Ombudsman, however, denied Relampagos, *et al.*'s consolidated motion for reconsideration in its Joint Order[16] dated November 26, 2014.

The Information

Consequently, three Information for violation of Section 3(e) of R.A. No. 3019 were filed before the Sandiganbayan and were docketed as Criminal Case Nos. SB-15-CRM-0016, SB-15-CRM-0017 and SB-15-CRM-0018. As well, three Information for malversation of public funds were filed before the Sandiganbayan and were docketed as Criminal Case Nos. SB-15-CRM-0019, SB-15-CRM-0020 and SB-15-CRM-0021.

The subject matter of Criminal Case Nos. SB-15-CRM-0017 and SB-CRM-15-0020 was the PDAF allocation covered by SARO No. ROCS-07-05450. The accusatory portions of the Information covering SARO No. ROCS-07-05450 read:

[**A.**] In Criminal Case No. SB-15-CRM-0017 (For violation of Section 3(e) of R.A. [No.] 3019):

In January 2007, or sometime prior or subsequent thereto, in Quezon City, and within this Honorable Court's jurisdiction, accused public officers CONSTANTINO GALAGNARA JARAULA (Jaraula), the then Congressman of the lone district of Cagayan de Oro City; MARIO

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[14] *Id*.

[15] *Id*. at 134.

[16] *Id*. at 123-163.

LOQUELLANO RELAMPAGOS (Relampagos), Undersecretary for Operations, ROSARIO SALAMIDA NUÑEZ (Nuñez), LALAINE NARAG PAULE (Paule) and MARILOU DIALINO BARE (Bare), assigned to the Office of the Undersecretary for Operations, all of the DEPARTMENT OF BUDGET AND MANAGEMENT (DBM); ANTONIO YRIGON ORTIZ (Ortiz), Director General, DENNIS LACSON CUNANAN (Cunanan), Deputy Director General, FRANCISCO B. FIGURA (Figura), Group Manager, MA. ROSALINDA MASONGSONG LACSAMANA (Lacsamana), Group Manager, MARIVIC V. JOVER (Jover), Chief Accountant, and MAURINE E. DIMARANAN (Dimaranan), Internal Auditor V/ Division Chief, all of the TECHNOLOGY RESOURCE CENTER (TRC); while in the performance of their administrative and/or official functions and conspiring with one another and with private individuals JANET LIM NAPOLES (Napoles) and MYLENE T. ENCARNACION (Encarnacion); acting with manifest partiality and/or evident bad faith; did then and there [willfully], unlawfully and criminally cause undue injury to the government and/or give unwarranted benefits and advantage to said private individuals in the amount of at least NINE MILLION AND SIX HUNDRED THOUSAND PESOS (₱9,600,000.00), through a scheme described as follows:

a. Jaraula unilaterally chose and indorsed COUNTRYWIDE AGRI AND RURAL ECONOMIC DEVELOPMENT FOUNDATION, INC. (CARED), a non-government organization operated and/or controlled by the aforementioned private individuals, as "project partner" in implementing livelihood projects to farmers in his legislative district, which were funded by Jaraula's Priority Development Assistance Fund (PDAF) allocation covered by Special Allotment Release Order (SARO) No. ROCS-07-05450, in disregard of the appropriation law and its implementing rules, and/or without the benefit of public bidding, as required under Republic Act No. 9184 and its implementing rules and regulations, and with CARED being unaccredited and unqualified to undertake projects;

b. **DBM's Relampagos, Nuñez, Paule and Bare, unduly accommodating herein private individuals, facilitated the processing of the aforementioned SARO and the corresponding Notice of Cash Allocation resulting in the release of the subject funds drawn from Jaraula's PDAF**

to TRC, the agency chosen by Jaraula through which to course his PDAF allocations; (Emphasis supplied)

c. Jaraula and TRC's Ortiz then entered into a Memorandum of Agreement (MOA) with CARED on the purported implementation of Jaraula's PDAF-funded projects, and which MOA was prepared and/or reviewed by Lacsamana;

d. Ortiz also facilitated, processed, and approved the disbursement of the subject PDAF release by signing Disbursement Voucher No. 12007040660 along with Cunanan and Jover, with Dimaranan verifying that the supporting documents were attached, as well as causing the issuance of Landbank Check No. 850453 in the amount of [₱]9,600,000.00 to CARED which was signed by Ortiz and Figura, without accused TRC officers and employees having carefully examined and verified the accreditation and qualifications of CARED as well as the transaction's supporting documents;

e. Encarnacion, acting for and in behalf of Napoles and CARED, received the above-described check from TRC and remitted the proceeds to Napoles;

f. The above acts by the accused public officials[,] thus[,] allowed CARED to divert said PDAF-drawn public funds to Napoles' control and benefit instead of implementing the PDAF-funded projects which turned out to be non-existent, while Napoles and Encarnacion caused/participated in the preparation and signing of the acceptance and delivery reports, disbursement reports, project proposals and other liquidation documents to conceal the fictitious nature of the transaction; and

g. Jaraula, personally and/or thru his representatives, as well as the other accused public officers and employees, received commissions and/or "kickbacks" from Napoles, in consideration of their participation and collaboration as described above.

CONTRARY TO LAW.[17]

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[17] *Id*. at 10-12.

[B.] In Criminal Case No. SB-15-CRM-0020 (For violation of Article 217, RPC):

In January 2007, or sometime prior or subsequent thereto, in Makati City, and within this Honorable Court's jurisdiction, accused public officers CONSTANTINO GALAGNARA JARAULA (Jaraula), the then Congressman of the lone district of Cagayan de Oro City; MARIO LOQUELLANO RELAMPAGOS (Relampagos), Undersecretary for Operations, ROSARIO SALAMIDA NUÑEZ (Nuñez), LALAINE NARAG PAULE (Paule) and MARILOU DIALINO BARE (Bare), assigned to the Office of the Undersecretary for Operations, all of the DEPARTMENT OF BUDGET AND MANAGEMENT (DBM); ANTONIO YRIGON ORTIZ (Ortiz), Director General, DENNIS LACSON CUNANAN (Cunanan), Deputy Director General, FRANCISCO B. FIGURA (Figura), Group Manager, MA. ROSALINDA MASONGSONG LACSAMANA (Lacsamana), Group Manager, MARIVIC V. JOVER (Jover), Chief Accountant, and MAURINE E. DIMARANAN (Dimaranan), Internal Auditor V/ Division Chief, all of the TECHNOLOGY RESOURCE CENTER (TRC); while in the performance of their administrative and/or official functions and conspiring with one another and with private individuals JANET LIM NAPOLES (Napoles) and MYLENE T. ENCARNACION (Encarnacion); did then and there [willfully], unlawfully and criminally allow private individuals to take public funds amounting to at least NINE MILLION AND SIX HUNDRED THOUSAND PESOS ([₱]9,600,000.00), through a scheme described as follows:

a. Jaraula, a public officer accountable for and exercising control over the Priority Development Assistance Fund (PDAF) allocated to him by the general appropriation law for the year 2007, unilaterally chose and indorsed COUNTRYWIDE AGRI AND RURAL ECONOMIC DEVELOPMENT FOUNDATION, INC. (CARED), a non-government organization operated and/or controlled by the aforementioned private individuals, as "project partner" in implementing livelihood projects to farmers in his legislative district, which were funded by Jaraula's Priority Development Assistance Fund (PDAF) allocation covered by Special Allotment Release Order (SARO) No. ROCS-07-05450, in disregard of the appropriation law and its implementing rules, and/or without the benefit of public bidding, as required under Republic Act No. 9184 and its implementing rules and regulations,

and with CARED being unaccredited and unqualified to undertake projects;

b. **DBM's Relampagos, Nuñez, Paule and Bare, unduly accommodating herein private individuals, facilitated the processing of the aforementioned SARO and the corresponding Notice of Cash Allocation resulting in the release of the subject funds drawn from Jaraula's PDAF to TRC, the agency chosen by Jaraula through which to course his PDAF allocations**; (Emphasis supplied)

c. Jaraula and TRC's Ortiz then entered into a Memorandum of Agreement (MOA) with CARED on the purported implementation of Jaraula's PDAF-funded projects, and which MOA was prepared and/or reviewed by Lacsamana;

d. Ortiz also facilitated, processed, and approved the disbursement of the subject PDAF release by signing Disbursement Voucher No. 12007040660 along with Cunanan and Jover, with Dimaranan verifying that the supporting documents were attached, as well as causing the issuance of Landbank Check No. 850453 in the amount of [₱]9,600,000.00 to CARED which was signed by Ortiz and Figura, without accused TRC officers and employees having carefully examined and verified the accreditation and qualifications of CARED as well as the transaction's supporting documents;

e. Encarnacion, acting for and in behalf of Napoles and CARED, received the above-described check from TRC and remitted the proceeds to Napoles;

f. By their above acts, Jaraula and the above-named TRC officials allowed Napoles and her cohorts, through CARED, to take possession and[,] thus[,] misappropriate PDAF-drawn public funds, instead of implementing the PDAF-funded projects, which turned out to be non-existent, while Napoles and Encarnacion caused/participated in the preparation and signing of the acceptance and delivery reports, disbursement reports, project proposals and other liquidation documents to conceal the fictitious nature of the transaction, to the damage and prejudice of the Republic of the Philippines.

CONTRARY TO LAW.[18]

The Sandiganbayan's Resolutions

Except for these two criminal cases, *i.e.*, Criminal Case Nos. SB-15-CRM-0017 and SB-15-CRM-0020, the Sandiganbayan found probable cause for the issuance of warrants of arrest against all the accused.[19]

As regards Criminal Case Nos. SB-15-CRM-0017 and SB-15-CRM-0020, the Sandiganbayan deferred the determination of probable cause against Relampagos, Nuñez, Paule and Bare, noting that while Relampagos readily admitted having signed two SAROs (subject of Criminal Case Nos. SB-15-CRM-0016, SB-15-CRM-0018, SB-15-CRM-0019, and SB-15-CRM-0021), he denied having signed SARO No. ROCS-07-05450 (subject of Criminal Case Nos. SB-15-CRM-0017 and SB-15-CRM-0020). Thus, the Sandiganbayan ordered the prosecution to produce a copy of the said SARO before it rules on the existence of probable cause against Relampagos, *et al*.[20]

Meanwhile, Relampagos, *et al*. jointly filed an omnibus motion for judicial re-determination of probable cause and to defer arraignment.[21]

Partially granting the said motion, the Sandiganbayan in its presently assailed Resolution[22] dated May 13, 2015 dismissed Criminal Case Nos. SB-15-CRM-0017 and SB-15-CRM-0020 against respondents Relampagos, *et al*. for lack of probable cause.

In so dismissing, the Sandiganbayan noted:

The Court, in its February 18, 2015 Resolution, directed the Office of the Ombudsman to submit a copy of SARO No. ROCS-07-05450, subject of Criminal Cases No. SB-15-CRM-0017 and No. SB-15-

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

[19] *Id*. at 164.

[20] *Id*.

[21] *Id*. at 35.

[22] *Supra* note 2.

CRM-0020, involving accused Relampagos, Nuñez, Paule and Bare. Pending submission of a copy of the said SARO, the Court held in abeyance the determination of probable cause in the said cases. By way of compliance, dated March 12, 2015, the Office of the Special Prosecutor submitted a certified true copy of SARO No. ROCS-07-05450. **After a careful examination of the said SARO, the Court finds that it was signed by DBM Secretary Rolando G. Andaya, Jr., and that apparently, accused Relampagos, Nuñez, Paule and Bare had no participation therein. Considering that the basis for the indictment of the aforenamed accused in the two criminal cases was their participation in the preparation and issuance of the said SARO, the Court, therefore, rules that there is no sufficient ground to find the existence of probable cause for the issuance of warrants of arrest against accused Relampagos, Nuñez, Paule and Bare in these cases. Thus, Criminal Case No. SB-15-CRM-0017 and No. SB-15-CRM-0020 against accused Relampagos, Nuñez, Paule and Bare should be dismissed.**[23] (Emphasis supplied)

The Sandiganbayan, thus, disposed:

WHEREFORE, in light of all the foregoing, the Court resolves:

1. To PARTIALLY GRANT the Urgent Consolidated Omnibus Motion, dated March 2, 2015, of accused Relampagos, Nuñez, Paule and Bare, by DISMISSING Criminal Cases No. SB-15-CRM-0017 and No. SB-15-CRM-0020 against accused Relampagos, Nuñez, Paule and Bare, for lack of probable cause; (Emphasis supplied)

2. To **DENY** accused Jaraula's *Ex-Parte Motion to Expunge Plaintiff's Comment/Opposition (to accused Jaraula's Urgent Consolidated Motion to Quash Informations with Motion to Defer Arraignment)*, dated April 6, 2015; and

3. To **DENY** accused Jaraula's Urgent Consolidated Motion to Quash Informations with Motion to Defer Arraignment, dated March 6, 2015.

Accordingly, the arraignment of the accused scheduled on **June 1, 2015** at **8:30 in the morning** will proceed as scheduled.

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

SO ORDERED.[24]

Both petitioner and Relampagos, *et al*. moved for a partial reconsideration but were similarly denied by the Sandiganbayan in its Resolution[25] dated July 9, 2015.

The Issues

Hence, the instant petition imputing grave abuse of discretion on the part of the Sandiganbayan, when it:

A

[Dismissed these cases for lack of probable cause considering that the executive function of determining the existence of probable cause for the filing of an information is vested solely in the prosecution.

B

[S]ummarily dismissed these cases based on a single piece of evidence and wantonly disregarded the other evidence for the Prosecution.[26]

Essentially, the issue to be resolved is whether the Sandiganbayan gravely abused its discretion when it reversed the finding of probable cause by the Ombudsman and consequently dismissed the criminal cases against Relampagos, *et al*. insofar as the PDAF allocation covered by SARO No. ROCS-07-05450 is concerned.

By way of Consolidated Comment,[27] Relampagos, *et al*. contend that the Sandiganbayan properly dismissed the criminal cases by virtue of its own power to judicially determine probable cause and that the SARO itself controverted petitioner's allegations against them. In its Reply,[28] petitioner reiterated that the Sandiganbayan gravely abused its discretion when it

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

[25] *Supra* note 3.

[26] *Id*. at 15.

[27] *Id*. at 170-183.

[28] *Id*. at 199-212.

failed to consider the other pieces of evidence, *i.e.*, the affidavit of Luy and the findings of the COA in COA SAO Report No. 2012-03, which show probable cause against Relampagos, *et al*.

The Ruling of the Court

We dismiss the petition.

I
***Certiorari* is not the proper remedy**

The assailed Resolutions of the Sandiganbayan which dismissed Criminal Case Nos. SB-15-CRM-0017 and SB-15-CRM-0020 against Relampagos, *et al*. for lack of probable cause was a final order which finally disposed of said criminal cases insofar as herein respondents Relampagos, *et al*. are concerned.[29]

Section 1, Rule 122 of the Revised Rules of Criminal Procedure provides that: "Any party may appeal from a judgment or final order, unless the accused will be placed in double jeopardy." Relampagos, *et al*. moved for the judicial determination of probable cause and the Sandiganbayan dismissed the criminal cases before they were arraigned, thus, the prohibition against an appeal from a dismissal of a criminal case when the accused will be twice put in jeopardy does not apply.[30]

Further, Section 7 of Presidential Decree No. 1606, as amended by Section 3 of R.A. No. 7975 provides that decisions and final orders of the Sandiganbayan shall be appealable to the Court by a petition for review on *certiorari* raising pure questions of law in accordance with Rule 45 of the Rules of Court. This is in harmony with the procedural rule that the provisions of Rules 42, 44, 45, 46 and 48 to 56 relating to the procedure in original and appealed civil cases shall also be applied to criminal cases.[31]

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[29] See *Fuentes v. Sandiganbayan* (*Second Division*), 528 Phil. 388 (2006).

[30] *First Women's Credit Corp. v. Judge Baybay*, 542 Phil. 607, 616 (2007).

[31] Rule 124, Section 18 of the Rules of Criminal Procedure states:

Section 1, Rule 45 of the Rules of Court expressly states:

SEC. 1. *Filing of petition with Supreme Court.* —A party desiring **to appeal by *certiorari* from a judgment, final order or resolution** of the Court of Appeals, **the Sandiganbayan**, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the **Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth.** x x x (Emphasis supplied)

Thus, the proper remedy from the Sandiganbayan Resolutions dismissing the criminal cases is an appeal by *certiorari* under Rule 45 and not under Rule 65 of the Rules of Court. The availability of appeal, it being speedy and adequate, proscribes a *certiorari* petition under Rule 65.

Subject to certain exceptions,[32] the use of an erroneous mode of appeal is cause for dismissal of the petition following the basic rule that *certiorari*, being an independent action, is not a substitute for a lost appeal. None of the allowable exceptions are present in the instant case, thus, the general rule must be applied.

Too, while the Court may consider a petition for *certiorari* as a petition for review under Rule 45 of the Rules of Court in exceptional cases, Section 2[33] provides that such petition must be filed within the prescribed period. Here, petitioner received the Sandiganbayan's Resolution dated July 9, 2015 denying its partial motion for reconsideration on July 10, 2015 and filed the instant petition only on September 8, 2015. At the time petitioner filed the instant petition, the period to appeal had clearly expired.

Petitioner also assails the Sandiganbayan's finding of lack of probable cause as it was allegedly attended by a failure to

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SEC. 18. *Application of certain rules in civil procedure to criminal cases*. — The provisions of Rules 42, 44 to 46 and 48 to 56 relating to procedure in the Court of Appeals and in the Supreme Court in original and appealed civil cases shall be applied to criminal cases insofar as they are applicable and not inconsistent with the provisions of this Rule.

consider and weigh all the evidence. As a rule, misapplication of facts and evidence, and erroneous conclusions based on evidence do not, by the mere fact that errors were committed, rise to the level of grave abuse of discretion.[34] Even granting that the Sandiganbayan erred in weighing the sufficiency of the prosecution's evidence, such error does not necessarily amount to grave abuse of discretion.[35] Similarly, the mere fact that a court erroneously decides a case does not necessarily deprive it of jurisdiction. Such are errors of judgment that cannot be corrected by an extraordinary writ of *certiorari*.[36]

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[32] As held in *Department of Education v. Cuanan*, 594 Phil. 451, 460 (2008):

(a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority.

In *Tanenglian v. Lorenzo*, 573 Phil. 472, 488-489 (2008), the Court added other grounds: (a) when, for persuasive reasons, the rules may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure; or (b) in other meritorious cases.

[33] SEC. 2. *Time for filing; extension.* — The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.

[34] Grave abuse of discretion is defined in *Ysidoro v. Justice Leonardo-De Castro*, 681 Phil. 1, 18 (2012), citing *Ganaden v. Hon. Office of the Ombudsman,* 665, Phil. 224, 232 (2011), as "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility."

[35] *People of the Philippines v. Sandiganbayan*, G.R. Nos. 228494-96, March 21, 2018.

[36] *Id*.

Nevertheless, to pursue judicial economy,[37] the Court reviewed the petition and its attachments and find that even on the merits, the instant petition must still fail.

II

The Sandiganbayan has the authority to determine whether or not to dismiss the case.

Petitioner essentially attacks the Sandiganbayan's reversal of the Ombudsman's finding of probable cause, contending that the function of determining whether or not probable cause exists is executive in nature that is lodged within the competence of the Ombudsman.

The executive determination of probable cause is not to be confused with the judicial determination of probable cause. In a criminal prosecution, probable cause is determined at two stages: *first*, the executive level where probable cause is determined by the prosecutor during the preliminary investigation and before the filing of the criminal information; and *second*, the judicial level where probable cause is determined by the judge before the issuance of a warrant of arrest.[38]

Thus, while it is true that the Ombudsman retains full discretion to determine whether or not a criminal case should be filed in the Sandiganbayan, the latter gains full control as soon as the case has been filed before it.[39] This must necessarily be so considering that when an information is filed in court, the court acquires jurisdiction over the case and the concomitant authority to determine whether or not the case should be dismissed being

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[37] In *Personal Collection Direct Selling, Inc. v. Carandang*, G.R. No. 206958, November 8, 2017, the Court proceeded to decide the issues despite the use of an improper remedy on the ground of "judicial economy" or when "the prospective opportunity cost that may be expended by the parties and the courts far outweigh the likelihood of success of the aggrieved party, Court resources will be more efficiently expended by this Court's discussion of the merits of the case."

[38] *Spouses Hao v. People*, 743 Phil. 204, 214 (2014).

[39] *Nava v. National Bureau of Investigation*, 495 Phil. 354, 370 (2005).

the "best and sole judge" thereof.[40] Consequently, absent a showing of grave abuse of discretion, the Court will not interfere with the Sandiganbayan's jurisdiction and control over a case properly filed before it.[41]

As to the manner by which a court is expected to determine the existence or non-existence of probable cause for the arrest of the accused, the same is spelled under the Constitution[42] and the Rules of Criminal Procedure.[43] A judge is mandated to personally determine the existence of probable cause after his personal evaluation of the prosecutor's resolution and the supporting evidence for the crime charged.

Specifically, under Section 5(a), Rule 112 of the Rules of Criminal Procedure, the court has three options upon the filing of a criminal complaint or information: a) immediately dismiss the case if the evidence on record clearly failed to establish probable cause; b) issue a warrant of arrest if it finds probable cause; or c) order the

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[40] *Yambot v. Armovit*, 586 Phil. 735, 738 (2008), citing *Crespo v. Judge Mogul,* 235 Phil. 465, 474 (1987).

[41] *Brig. Gen. (Ret.) Ramiscal, Jr. v. Sandiganbayan*, 645 Phil. 69, 83 (2010), citing *Atty. Serapio v. Sandiganbayan*, 444 Phil. 499, 528 (2003).

[42] Article III, 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.

[43] Rule 112, Section 5. *When warrant of arrest may issue*. — (a) By the Regional Trial Court. — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order when the complaint or information was filed pursuant to Section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information. (As revised by A.M. No. 05-8-26-SC, August 30, 2005)

prosecutor to present additional evidence within five days from notice in case of doubt on the existence of probable cause.[44]

Thus, when the Sandiganbayan chose to issue the corresponding warrants of arrest over the other criminal cases, ordered the prosecution to present the subject SARO which Relampagos, *et al*. denied having signed and processed, and thereafter, upon examination of the subject SARO, dismissed the criminal cases for lack of probable cause, the Sandiganbayan, in fact acted well-within its competence and jurisdiction. There is therefore no reason to ascribe grave abuse of discretion on the part of the Sandiganbayan for having reversed the Ombudsman's earlier determination of probable cause.

That the Sandiganbayan issued the assailed Resolution only upon compliance with the requirement that probable cause was personally determined by the court is evident from its examination of the subject SARO and noting that it was signed by a person other than Relampagos, *et al*. This examination, in turn, led the Sandiganbayan to conclude that Relampagos, *et al*. probably did not participate in the preparation and issuance of said SARO. To emphasize, when the court judicially determines probable cause, it is tasked to determine the probability of the guilt of the accused by personally reviewing the prosecutor's initial determination and seeing if it is supported by substantial evidence.[45] In determining probable cause, the average man weighs the facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge.[46] In this case, the Sandiganbayan reached the conclusion that there was no probable cause for Relampagos, *et al*. to commit the crimes charged insofar as the subject SARO was concerned, only upon application of the basic precepts of criminal law to the facts, allegations and evidence on record.

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[44] See also *People v. Judge Dela Torre-Yadao*, 698 Phil. 471, 492 (2012).

[45] *People v. Court of Appeals*, 361 Phil. 401, 411 (1999).

[46] *Baltazar v. People*, 582 Phil. 275, 290 (2008).

III

The Sandiganbayan did not err in finding that no probable cause existed to indict Relampagos, *et al*.

In arguing that the Sandiganbayan erred in dismissing the criminal cases relative to SARO No. ROCS-07-05450 against Relampagos, *et al*., petitioner invites attention to other pieces of evidence that the Sandiganbayan had allegedly failed to consider: (a) Luy's affidavit identifying Relampagos, *et al*. as his "contacts" within the DBM that helped expedited the release of the SAROs and the NCAs; and (b) COA SAO Report No. 2012-03 which found, among others, that the SAROs and NCAs were hastily released by DBM despite the absence of documents[47] required under DBM National Budget Circular No. 476.

It is worthy to emphasize that petitioner itself admits[48] that the basis for the inclusion of Relampagos, *et al*. in the criminal cases were their *participation in the preparation and issuance* of the SAROs. Contravening such allegation is the subject SARO itself which was factually found to have been *signed and issued* by then DBM Secretary Andaya, and not by Relampagos, *et al*. In fact, in *Cambe v. Office of the Ombudsman*[49] and its consolidated cases,[50] the Court gave value to these pieces of evidence or circumstances only with respect to the SAROs and NCAs which were found to have been issued by the Office of Relampagos as DBM Undersecretary where Nuñez, Paule, and Bare were all working.[51]

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[47] These documents, according to petitioner, are the Project Profile and endorsement that must be submitted by the implementing agency to the DBM.

[48] See petitioner's Reply, *rollo*, p. 206.

[49] 802 Phil. 190 (2016).

[50] G.R. Nos. 212427-28; G.R. Nos. 212694-95; G.R. Nos. 212794-95; G.R. Nos. 213477-78; G.R. Nos. 213532-33; G.R. Nos. 213536-37 and G.R. Nos. 218744-59.

[51] In *Cambe v. Office of the Ombudsman* (*supra* note 49, at 238) and the consolidated cases (*supra* note 50), the Court held:

x x x x x x x x x

As pointed out by the Ombudsman and the Sandiganbayan, **some of the SAROs and NCAs issued in the perpetuation of the PDAF scam were issued by the Office of Relampagos as DBM Undersecretary, where Nuñez,**

Moreover, a perusal of the Ombudsman's Resolution and Joint Order shows a painfully limited demonstration as to how Relampagos, *et al*. probably expedited the preparation and release of SARO No. ROCS-07-05450.

In finding probable cause for violation of Section 3(e) of R.A. No. 3019, the Ombudsman merely held that (1) Relampagos, *et al*. processed the SAROs and NCAs pertaining to Jaraula's PDAF projects;[52] and (2) their partiality was manifest because the processing of the requisite SAROs and NCAs in Relampagos's office were expedited through the assistance provided by Nuñez, Paule, and Bare.[53] Less definite was the Ombudsman's ratiocination for indicting Relampagos, *et al*. for the crime of malversation of public funds as it loosely held that DBM transferred funds to the implementing agency so as to facilitate the release of said funds to the Napoles-controlled NGO.[54]

From these findings, it is clear that the supposed irregular processing and issuance of the SAROs could have probably been undertaken by Relampagos, *et al*. only with respect to the SAROs that were signed and issued by the Office of the Undersecretary for Operations. As the Ombudsman itself observed, Relampagos, *et al*. could not have feigned ignorance of the follows-up made by Luy for the expedited release of the SAROs and NCAs which were issued by the Office of the Undersecretary for Operations. The same conclusion, however,

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Paule, and Bare are all working — a finding that they themselves did not dispute. More significantly: (a) whistleblower Luy positively identified Relampagos, *et al*. as Napoles's "contact persons" in the DBM; and (b) the COA Report found irregularities in their issuances of the aforesaid SAROs and NCAs. Ostensibly, these circumstances show Relampagos *et al*.'s manifest partiality and bad faith in favor of Napoles and her cohorts that evidently caused undue prejudice to the Government. Thus, they must stand trial for violation of Section [3(e)] of [R.A. No.] 3019.

x x x x x x x x x (Emphasis and underscoring supplied)

[52] See Ombudsman's Joint Resolution, *rollo*, pp. 61-68.

[53] *Id*.

[54] *Id*.

cannot be readily reached with respect to the SARO issued by then Secretary Andaya. The dearth of allegation or finding as to how Relampagos, *et al*. could have participated in or expedited the preparation and issuance of SAROs emanating from the Office of the Secretary itself renders their participation, insofar as SARO No. ROCS-07-05450 is concerned, highly improbable.

In view of the finding that Relampagos, *et al*. could not have participated in the preparation and processing of SARO No. ROCS-07-05450, there is no need to discuss, at this point, petitioner's contention that Relampagos, *et al*. failed to comply with the documentary requirements under DBM National Budget Circular No. 476 nor that of Relampagos, *et al*.'s counter-argument that the SAROs were not issued by their office based on the PDAF Process Flow.

It is also opportune to emphasize that the purpose of requiring the courts to determine probable cause is to insulate from the very beginning those falsely charged with crimes from the tribulations, expenses and anxiety of a public trial.[55] We recognize in *Principio v. Judge Barrientos*,[56] the Court's policy of non-interference in the Ombudsman's exercise of its constitutionally-mandated powers, or the Sandiganbayan's, as in this case, and the delicate task of balancing such with the purpose of preliminary investigation to secure the innocent against hasty, malicious, and oppressive prosecution, and to protect the State from useless and expensive trials. Thus, we caution that "where the evidence patently demonstrates the innocence of the accused, x x x [there is] no reason to continue with his prosecution; otherwise, persecution amounting to grave and manifest injustice would be the inevitable result."[57] We, thus, affirm the Sandiganbayan's temperance of the Ombudsman's authority to prosecute for want of probable cause not only to save herein respondents from the

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[55] *Okabe v. Hon. Gutierrez*, 473 Phil. 758, 780 (2004).

[56] 514 Phil. 799, 811-813 (2005), citing *Venus v. Hon. Desierto*, 358 Phil. 675, 699-700 (1998) and *Fernando v. Sandiganbayan*, 287 Phil. 753, 764 (1992).

[57] *Principio v. Judge Barrientos*, *id*. at 813.

expense, rigors and embarrassment of trial, but also to prevent needless wastage of the court's limited time and resources.

All told, the Court finds that the Sandiganbayan did not err in finding that no probable cause existed to indict Relampagos, *et al*. for violation of Section 3(e) of R.A. No. 3019 and for malversation of public funds insofar as the funds covered by SARO No. ROCS-07-05450 is concerned. Neither do we find that the Sandiganbayan gravely abused its discretion in reaching such conclusion. No hint of whimsicality, nor of gross and patent abuse of discretion as would amount to an evasion of a positive duty, or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law can be discerned on the part of the Sandiganbayan.

WHEREFORE, the instant petition for *certiorari* is **DISMISSED**. The Resolutions dated May 13, 2015 and July 9, 2015[58] of the Sandiganbayan in Criminal Case Nos. SB-15-CRM-0017 for violation of Section 3(e) of Republic Act No. 3019 and SB-15-CRM-0020 for violation of Article 217 of the Revised Penal Code, insofar as said Resolutions dismissed the criminal cases against herein respondents Mario L. Relampagos, Marilou D. Bare, Rosario S. Nuñez and Lalaine N. Paule, are **AFFIRMED.**

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Reyes, A. Jr., Gesmundo, Hernando, and *Carandang, JJ*., concur.

Caguioa, J., no part.

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[58] *Supra* note 2.

EN BANC

[G.R. No. 238467. February 12, 2019]

MARK ANTHONY V. ZABAL, THITING ESTOSO JACOSALEM, and ODON S. BANDIOLA, *petitioners, vs.* **RODRIGO R. DUTERTE, President of the Republic of the Philippines; SALVADOR C. MEDIALDEA, Executive Secretary; and EDUARDO M. AÑO, Secretary of the Department of Interior and Local Government,** *respondents.*

SYLLABUS

1. POLITICAL LAW; PRESIDENTIAL IMMUNITY FROM SUIT; THE PRESIDENT MAY NOT BE SUED IN ANY CIVIL OR CRIMINAL CASE DURING HIS TENURE OF OFFICE OR ACTUAL INCUMBENCY.— As correctly pointed out by respondents, President Duterte must be dropped as respondent in this case. The Court's pronouncement in *Professor David v. President Macapagal-Arroyo* on the non-suability of an incumbent President cannot be any clearer, *viz*.: x x x Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government. Accordingly, President Duterte is dropped as respondent in this case.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PROHIBITION; A PREVENTIVE REMEDY SEEKING THAT A JUDGMENT BE RENDERED DIRECTING THE

DEFENDANT TO DESIST FROM CONTINUING WITH THE COMMISSION OF AN ACT PERCEIVED TO BE ILLEGAL.— "Indeed, prohibition is a preventive remedy seeking that a judgment be rendered directing the defendant to desist from continuing with the commission of an act perceived to be illegal. As a rule, the proper function of a writ of prohibition is to prevent the performance of an act which is about to be done. It is not intended to provide a remedy for acts already accomplished."

3. **ID.; ID.; EXTRAORDINARY REMEDIES OF PROHIBITION AND *MANDAMUS* ARE APPROPRIATE REMEDIES TO RAISE CONSTITUTIONAL ISSUES AND TO REVIEW AND/OR PROHIBIT/NULLIFY, WHEN PROPER, ACTS OF LEGISLATIVE AND EXECUTIVE OFFICIALS, AS THERE IS NO OTHER PLAIN, SPEEDY OR ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW; FOUR REQUISITES FOR THE EXERCISE OF THE POWER OF JUDICIAL REVIEW.—** [T]he use of prohibition and *mandamus* is not merely confined to Rule 65. These extraordinary remedies may be invoked when constitutional violations or issues are raised. As the Court stated in *Spouses Imbong v. Hon. Ochoa, Jr.*: As far back as *Tañada v. Angara*, the Court has unequivocally declared that *certiorari*, **prohibition and *mandamus* are appropriate remedies to raise constitutional issues and to review and/or prohibit/nullify, when proper, acts of legislative and executive officials, as there is no other plain, speedy or adequate remedy in the ordinary course of law.** x x x It must be stressed, though, that resort to prohibition and *mandamus* on the basis of alleged constitutional violations is not without limitations. After all, this Court does not have unrestrained authority to rule on just about any and every claim of constitutional violation.

4. **POLITICAL LAW; JUDICIAL REVIEW; REQUISITES.—** The petition must be subjected to the four exacting requisites for the exercise of the power of judicial review, *viz.*: (a) there must be an actual case or controversy; (b) the petitioners must possess *locus standi*; (c) the question of constitutionality must be raised at the earliest opportunity; and (d) the issue of constitutionality must be the *lis mota* of the case. Hence, it is not enough that this petition mounts a constitutional challenge

against Proclamation No. 475. It is likewise necessary that it meets the aforementioned requisites before the Court sustains the propriety of the recourse.

5. ID.; ID.; ID.; EXISTENCE OF AN ACTUAL CASE OR CONTROVERSY; AN ACTUAL CASE OR CONTROVERSY IS CHARACTERIZED AS A CASE OR CONTROVERSY THAT IS APPROPRIATE OR RIPE FOR DETERMINATION, NOT CONJECTURAL OR ANTICIPATORY, LEST THE DECISION OF THE COURT WOULD AMOUNT TO AN ADVISORY OPINION; CASE AT BAR.— In *La Bugal-B'laan Tribal Association, Inc. v. Sec. Ramos*, an actual case or controversy was characterized as a "case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory, lest the decision of the court would amount to an advisory opinion. The power does not extend to hypothetical questions since any attempt at abstraction could only lead to dialectics and barren legal question and to sterile conclusions unrelated to actualities." The existence of an actual controversy in this case is evident. President Duterte issued Proclamation No. 475 on April 26, 2018 and, pursuant thereto, Boracay was temporarily closed the same day. Entry of non-residents and tourists to the island was not allowed until October 25, 2018. Certainly, the implementation of the proclamation has rendered legitimate the concern of petitioners that constitutional rights may have possibly been breached by this governmental measure. It bears to state that when coupled with sufficient facts, "reasonable certainty of the occurrence of a perceived threat to any constitutional interest suffices to provide a basis for mounting a constitutional challenge". And while it may be argued that the reopening of Boracay has seemingly rendered moot and academic questions relating to the ban of tourists and non-residents into the island, abstention from judicial review is precluded by such possibility of constitutional violation and also by the exceptional character of the situation, the paramount public interest involved, and the fact that the case is capable of repetition.

6. ID.; ID.; ID.; POSSESSION OF *LOCUS STANDI*; *LOCUS STANDI* IS A PARTY'S PERSONAL AND SUBSTANTIAL INTEREST IN A CASE SUCH THAT HE HAS SUSTAINED OR WILL SUSTAIN DIRECT INJURY AS A RESULT OF THE GOVERNMENTAL ACT BEING CHALLENGED;

CASE AT BAR.— "Legal standing or *locus standi* is a party's personal and substantial interest in a case such that he has sustained or will sustain direct injury as a result of the governmental act being challenged. It calls for more than just a generalized grievance. The term 'interest' means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest." There must be a present substantial interest and not a mere expectancy or a future, contingent, subordinate, or consequential interest. x x x Here, as mentioned, Zabal is a sandcastle maker and Jacosalem, a driver. The nature of their livelihood is one wherein earnings are not guaranteed. As correctly pointed out by respondents, their earnings are not fixed and may vary depending on the business climate in that while they can earn much on peak seasons, it is also possible for them not to earn anything on lean seasons, especially when the rainy days set in. Zabal and Jacosalem could not have been oblivious to this kind of situation, they having been in the practice of their trade for a considerable length of time. Clearly, therefore, what Zabal and Jacosalem could lose in this case are mere projected earnings which are in no way guaranteed, and are sheer expectancies characterized as contingent, subordinate, or consequential interest, just like in *Galicto*. Concomitantly, an assertion of direct injury on the basis of loss of income does not clothe Zabal and Jacosalem with legal standing. As to Bandiola, the petition is bereft of any allegation as to his substantial interest in the case and as to how he sustained direct injury as a result of the issuance of Proclamation No. 475. While the allegation that he is a non-resident who occasionally goes to Boracay for business and pleasure may suggest that he is claiming direct injury on the premise that his right to travel was affected by the proclamation, the petition fails to expressly provide specifics as to how. "It has been held that a party who assails the constitutionality of a statute must have a direct and personal interest. [He] must show not only that the law or any governmental act is invalid, but also that [he] sustained or is in immediate danger of sustaining some direct injury as a result of its enforcement, and not merely that [he] suffers thereby in some indefinite way. [He] must show that [he] has been or is about to be denied some right or privilege to which [he] is lawfully entitled or that [he] is about to be subjected to some burdens or penalties by reason of the statute or act complained

of." Indeed, the petition utterly fails to demonstrate that Bandiola possesses the requisite legal standing to sue.

7. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; RIGHT TO TRAVEL; NOT IMPAIRED BY PROCLAMATION NO. 475; CASE AT BAR.— In fine, this case does not actually involve the right to travel in its essential sense contrary to what petitioners want to portray. Any bearing that Proclamation No. 475 may have on the right to travel is merely corollary to the closure of Boracay and the ban of tourists and non-residents therefrom which were necessary incidents of the island's rehabilitation. There is certainly no showing that Proclamation No. 475 deliberately meant to impair the right to travel. The questioned proclamation is clearly focused on its purpose of rehabilitating Boracay and any intention to directly restrict the right cannot, in any manner, be deduced from its import. This is contrary to the import of several laws recognized as constituting an impairment on the right to travel which **directly** impose restriction on the right. x x x Also significant to note is that the closure of Boracay was only temporary considering the categorical pronouncement that it was only for a definite period of six months. Hence, if at all, the impact of Proclamation No. 475 on the right to travel is not direct but merely consequential; and, the same is only for a reasonably short period of time or merely temporary. In this light, a discussion on whether President Duterte exercised a power legislative in nature loses its significance. Since Proclamation No. 475 does not actually impose a restriction on the right to travel, its issuance did not result to any substantial alteration of the relationship between the State and the people. The proclamation is therefore not a law and conversely, the President did not usurp the law-making power of the legislature. For obvious reason, there is likewise no more need to determine the existence in this case of the requirements for a valid impairment of the right to travel.

8. ID.; STATE; POLICE POWER; DEFINED AS THE STATE AUTHORITY TO ENACT LEGISLATION THAT MAY INTERFERE WITH PERSONAL LIBERTY OR PROPERTY IN ORDER TO PROMOTE GENERAL WELFARE; MUST BE EXERCISED WITHIN BOUNDS - LAWFUL ENDS THROUGH LAWFUL MEANS; CASE AT BAR.— Police power, amongst the three fundamental and

inherent powers of the state, is the most pervasive and comprehensive. "It has been defined as the state authority to enact legislation that may interfere with personal liberty or property in order to promote general welfare." "As defined, it consists of (1) imposition or restraint upon liberty or property, (2) in order to foster the common good. It is not capable of exact definition but has been purposely, veiled in general terms to underscore its all-comprehensive embrace." The police power "finds no specific Constitutional grant for the plain reason that it does not owe its origin to the Charter" since "it is inborn in the very fact of statehood and sovereignty." It is said to be the "inherent and plenary power of the State which enables it to prohibit all things hurtful to the comfort, safety, and welfare of the society." Thus, police power constitutes an implied limitation on the Bill of Rights. After all, "the Bill of Rights itself does not purport to be an absolute guaranty of individual rights and liberties. 'Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's will.' It is subject to the far more overriding demands and requirements of the greater number." "Expansive and extensive as its reach may be, police power is not a force without limits." "It has to be exercised within bounds – lawful ends through lawful means, *i.e.*, that the interests of the public generally, as distinguished from that of a particular class, require its exercise, and that the means employed are reasonably necessary for the accomplishment of the purpose while not being unduly oppressive upon individuals." That the assailed governmental measure in this case is within the scope of police power cannot be disputed. Verily, the statutes from which the said measure draws authority and the constitutional provisions which serve as its framework are primarily concerned with the environment and health, safety, and well-being of the people, the promotion and securing of which are clearly legitimate objectives of governmental efforts and regulations. The motivating factor in the issuance of Proclamation No. 475 is without a doubt the interest of the public in general.

9. ID.; CONSTITUTIONAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; RIGHT TO DUE PROCESS; ONLY RIGHTS WHICH HAVE COMPLETELY AND DEFINITELY ACCRUED AND SETTLED ARE ENTITLED TO PROTECTION UNDER THE DUE PROCESS CLAUSE; CASE AT BAR.— Petitioners argue that Proclamation No.

475 impinges on their constitutional right to due process since they were deprived of the corollary right to work and earn a living by reason of the issuance thereof. Concededly, "[a] profession, trade or calling is a property right within the meaning of our constitutional guarantees. One cannot be deprived of the right to work and the right to make a living because these rights are property rights, the arbitrary and unwarranted deprivation of which normally constitutes an actionable wrong." Under this premise, petitioners claim that they were deprived of due process when their right to work and earn a living was taken away from them when Boracay was ordered closed as a tourist destination. It must be stressed, though, that "when the conditions so demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to general welfare." x x x In any case, petitioners, particularly Zabal and Jacosalem, cannot be said to have already acquired vested rights to their sources of income in Boracay. As heretofore mentioned, they are part of the informal sector of the economy where earnings are not guaranteed. x x x Here, Zabal and Jacosalem's asserted right to whatever they may earn from tourist arrivals in Boracay is merely an inchoate right or one that has not fully developed and therefore cannot be claimed as one's own. An inchoate right is a mere expectation, which may or may not come into fruition. "It is contingent as it only comes 'into existence on an event or condition which may not happen or be performed until some other event may prevent their vesting."' Clearly, said petitioners' earnings are contingent in that, even assuming tourists are still allowed in the island, they will still earn nothing if no one avails of their services. Certainly, they do not possess any vested right on their sources of income, and under this context, their claim of lack of due process collapses. To stress, only rights which have completely and definitely accrued and settled are entitled protection under the due process clause.

CARPIO, *J., separate concurring opinion*:

POLITICAL LAW; CONSTITUTIONAL LAW; EXECUTIVE DEPARTMENT; THE PRESIDENT, IN THE EXERCISE OF HIS CONTROL OVER THE EXECUTIVE BRANCH OF GOVERNMENT, CAN DIRECTLY EXERCISE THE FUNCTIONS OF SUBORDINATE OFFICIALS TASKED

TO IMPLEMENT VARIOUS EXISTING LAWS; CASE AT BAR.— Clearly, the condition of Boracay Island during the six-month rehabilitation period justified the prohibition on travelers and tourists from entering Boracay Island because of the physical impediment to traveling around the island resulting from the massive road, sewerage and drainage construction, the lack of accommodations, and the ban on swimming and other water recreational activities. Thus, Proclamation No. 475 is a valid exercise of various existing laws, that is, Presidential Decree No. 1586, Commonwealth Act No. 548, Clean Water Act of 2004 (Republic Act No. 9275), Clean Air Act of 1999 (Republic Act No. 8749), National Building Code of the Philippines (Republic Act No. 6541), Ecological Solid Waste Management Act of 2000 (Republic Act No. 9003), and the Code on Sanitation of the Philippines (Presidential Decree No. 856). These are laws pursuant to the police power of the state. There is no claim that these laws are unconstitutional. The President, in the exercise of his control over the Executive branch of government, can directly exercise the functions of subordinate officials tasked to implement these laws.

PERLAS-BERNABE, *J., separate concurring opinion*:

1. **POLITICAL LAW; CONSTITUTION; BILL OF RIGHTS; RIGHT TO TRAVEL; GUARANTEE OF FREE MOVEMENT ON "FREEDOM FROM RESTRAINT OF THE PERSON", NOT VIOLATED BY CLOSURE OF BORACAY PURSUANT TO PROCLAMATION NO. 475 PROHIBITING ENTRY OF TOURIST AND NON-RESIDENTS THERETO BECAUSE THESE PERSONS ARE STILL FREE TO MOVE ABOUT IN OTHER PLACES; CASE AT BAR.—** Among other points, I agree with the *ponencia* that "this case does not actually involve the right to travel in its essential sense contrary to what petitioners want to portray." In my view, there can be no violation of the right to travel because, in the first place, Proclamation No. 475 is not an issuance that substantively regulates such right. To expound, the right to travel has been regarded as integral to personal liberty, which Blackstone defines as "freedom from **restraint of the person**." The guarantee of free movement may be historically traced to the Magna Carta of 1215 which assured the liberty for ***anyone***, except those imprisoned, outlawed, and

the natives of an enemy country, safe and secure entry to and exit from England. It likewise assured ***merchants***, that they may enter, leave, stay, and move about England "unharmed and without fear." Much later, or in 1948, the Universal Declaration of Human Rights (UDHR) recognized ***everyone's*** right to freedom of movement within the borders of each state, as well as the one's right to leave and return to his country. The guarantee was likewise incorporated in the 1966 International Covenant on Civil and Political Rights, which the Philippines signed in the same year. This guarantee was incorporated in our fundamental law in the 1973 Constitution, and now appears in the 1987 Constitution. An examination of local cases wherein the right to travel was involved will support the premise that the right to travel – if one were to understand the same in its proper sense – ought to pertain to government regulations that directly affect the individual's freedom of locomotion or movement. x x x Even the statutes recognized as validly impairing the right to travel have, for its proper object, a palpably direct restraint on a person's freedom of movement. x x x In all these instances, the restrictions on the right to travel **were imposed on a person or group of persons**, seemingly attaching unto them some form of "ball and chain" to limit their movement. **Clearly, this is not the situation presented in this case.** While the closure of Boracay pursuant to Proclamation No. 475 prohibited the entry of tourists and non-residents thereto, these people still remained free to move about in other parts of the country without arbitrary restraint. Thus, whatever effect such regulation may have on a person's ability to travel to such a specific place is merely incidental in nature and accordingly, is conceptually remote from the right's proper sense. To my mind, Proclamation No. 475 is more akin to government regulations that amount to the "cordoning-off" of areas ravaged by flood, fire, or other calamities, where access by people thereto may indeed be prohibited pursuant to considerations of safety and general welfare based on circumstantial exigencies.

2. ID.; ID.; EXECUTIVE DEPARTMENT; THE PRESIDENT, TO WHOM ALL EXECUTIVE POWERS ARE VESTED BY THE CONSTITUTION, HAS AUTHORITY TO ISSUE PROCLAMATION NO. 475 TO IMPLEMENT BORACAY'S ENVIRONMENTAL REHABILITATION PROGRAM, AS RECOMMENDED BY THE RELEVANT STATE

AGENCY.— Ultimately, the agglomeration of the above-stated laws reveals that the Executive Department has sufficient statutory authority to clean up the Island. Since the Constitution vests all executive power in the President, and on this score, grants him the power of control over all executive departments, he can, within the bounds of law, integrate and take on the above-stated functions, and in the exercise of which, issue a directive to implement an environmental rehabilitation program as recommended by the relevant state agency. At the risk of sounding repetitive, the temporary closure of the Island to tourists was necessary to effectively execute Boracay's rehabilitation program pursuant to a declaration of a state of calamity. Therefore, the President had sufficient authority from both the Constitution and statutes to issue Proclamation No. 475. That being said, and as a point of clarification, I find it unnecessary to situate such authority in his unstated residual powers.

3. ID.; ID.; ID.; ID.; EXECUTIVE'S POWER TO EXECUTE THE LAWS INCLUDES AUTHORITY TO PERFORM ALL NECESSARY AND INCIDENTAL ACTS TO EFFECTUATE THE STATUTORY OBJECTIVE; CASE AT BAR.— While it appears that the above-cited statutes do not spell out in "black- and-white" the President's power to temporarily close-off an area, it is my opinion that a logical complement to the Executive's power to faithfully execute the laws is the authority to perform all necessary and incidental acts that are reasonably germane to the statutory objective that the President is, after all, tasked to execute. What comes to mind is the doctrine of necessary implication which evokes that "[e]very statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms. *Ex necessitate legis.* And every statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege." This principle, in its general sense, holds true in this case. By and large, I find it unreasonable that a President who declares a state of calamity, and who has been further prompted by a specialized government agency created for disaster operations pursuant to existing laws to effect a viable plan of action is nonetheless impotent to pursue the necessary

steps to effect a viable plan of action. Surely, the President must be given reasonable leeway to address calamitous situations, else he be reduced to a mere mouthpiece of doom.

4. ID.; ID.; BILL OF RIGHTS; RIGHT TO PROPERTY; INCLUDES THE RIGHT TO WORK AND THE RIGHT TO EARN A LIVING; NOT ABSOLUTE AS IT MUST YIELD TO THE GENERAL WELFARE.— Petitioners Mark Anthony V. Zabal (Zabal) and Thiting Estoso Jacosalem (Jacosalem) assail the validity of Proclamation No. 475 on the ground that it violated their right as persons earning a living in the Boracay Island. As alleged, Zabal earns a living by making sandcastles while Jacosalem works as a driver for tourists. Accordingly, they submit that the exclusion of tourists from the Island drastically affected their trade or livelihood. Under the auspices of Section 1, Article III of the 1987 Constitution, protected property includes the right to work and the right to earn a living. The purpose of the due process guaranty is "to prevent arbitrary governmental encroachment against the life, liberty, and property of individuals." While the right to property is sheltered by due process provision, it is by no means absolute as it must yield to the general welfare. Thus, the State may deprive persons of property rights provided that the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. In this case, although the exclusion of tourists from the Island drastically affected the trade or livelihood of those reliant on them, including petitioners, I submit that the government had a **legitimate State interest** in rehabilitating the affected localities of Boracay given the Island's current critical state. x x x To effectively remedy the Island's environmental woes, "expeditious rehabilitation" thereof became crucial, and in line therewith, the entry of tourists became necessary to suspend. x x x Moreover, the limited six (6)-month period shows that the closure was not unduly oppressive upon individuals, and was put in place only to implement the desired State objective. Therefore, all things considered, Proclamation No. 475 cannot be said to have been issued with grave abuse of discretion, and as such, remains constitutional.

JARDELEZA, *J., concurring and dissenting opinion*:

1. REMEDIAL LAW; JURISDICTION; SUPREME COURT; NOT A TRIER OF FACTS; ITS ORIGINAL JURISDICTION CANNOT BE INVOKED TO RESOLVE ISSUES WHICH ARE INEXTRICABLY CONNECTED WITH UNDERLYING QUESTIONS OF FACT.— Before going into the substance of the issues raised in the petition, I note that petitioners sought direct recourse with this Court on the ground, among others, that "[t]here are no factual issues raised in this case, only questions of law x x x." Indeed, this Court exercises original jurisdiction over petitions for prohibition and mandamus concurrently with the Court of Appeals (CA) and the Regional Trial Courts (RTCs). The doctrine of hierarchy of courts, however, dictates that such actions first be filed before the trial courts. Save for the specific instance provided under the Constitution, this Court is not a trier of facts. Its original jurisdiction cannot be invoked to resolve issues which are inextricably connected with underlying questions of fact. **This Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the Constitution. Direct recourse to this Court may, as petitioners correctly suggest, be allowed only to resolve questions which do not require the prior adjudication of factual issues. It is thus on this basis that I will examine and resolve the present petition.**

2. POLITICAL LAW; REPUBLIC ACT NO. 10121 (PHILIPPINE DISASTER RISK REDUCTION AND MANAGEMENT ACT OF 2010); BASIS OF THE PRESIDENT'S AUTHORITY TO ISSUE PROCLAMATION NO. 475 AS AN EXERCISE OF HIS POWER OF SUBORDINATE LEGISLATION; CASE AT BAR.— The primary legal question therefore is whether there is a law which allows for a restriction on the right to travel to Boracay. If the Court finds that there is none, then this litigation should end with the grant of the petition. If, however, the Court finds that such a law exists, it must then determine whether there was a valid delegation to the President of the power to restrict travel. I find that the President has the authority, under Republic Act No. (RA) 10121, to issue the challenged Proclamation as an exercise of his power of subordinate legislation. *First*, the text of the Proclamation

clearly counts RA 10121 among its legal bases for the temporary closure of Boracay Island. x x x *Second*, RA 10121 allows for a restriction on the right to travel *under certain circumstances.* The expressed legislative intention in RA 10121 was "for the development of policies and plans and **the implementation of actions and measures pertaining to all aspects of disaster risk reduction and management**." x x x Disaster risk reduction and management measures can run the gamut from disaster prevention to disaster mitigation, disaster preparedness, and disaster response, all of which are also defined under RA 10121. x x x Thus, within the range of disaster risk reduction and management measures can be found **forced or preemptive evacuation and prohibitions against settlement in high-risk zones**, both of which necessarily implicate some restriction on a person's liberty of movement to ensure public safety. *Third*, in obvious recognition of its inability to "cope directly with the myriad problems" attending the matter, the Congress created administrative agencies, such as the National Disaster Risk Reduction and Management Council (NDRRMC) and the Local Disaster Risk Reduction and Management Councils (LDRRMCs), to help implement the legislative policy of disaster risk reduction and management under RA 10121. Under the law, the NDRRMC, for example, was tasked to, among others, **develop** a national disaster risk reduction and management framework (NDRRMF), which shall serve as "the principal guide to disaster risk reduction and management efforts in the country," **advise** the President on the status of disaster preparedness, **recommend** the declaration (and lifting) by the President of a state of calamity in certain areas, and **submit proposals** to restore normalcy in affected areas. Under Section 25, it was also expressly tasked to come up with "the necessary rules and regulations for the effective implementation of [the] Act." These, to me, are evidence of a general grant of quasi-legislative power, or the power of subordinate legislation, in favor of the implementing agencies. With this power, administrative bodies may implement the broad policies laid down in a statute by "filling in" the details which the Congress may not have the opportunity or competence to provide.

3. ID.; CONSTITUTIONAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; RIGHT TO TRAVEL AND RIGHT TO DUE PROCESS OF LAW; WHILE THEY ARE FUNDAMENTAL

RIGHTS, THEY ARE NOT ABSOLUTE, AS THEY CAN BE VALIDLY RESTRICTED.— Indeed, the rights to travel and due process of law are rights explicitly guaranteed under the Bill of Rights. These rights, while fundamental, are not absolute. Section 6, Article III of the Constitution itself provides for three instances when the right to travel may be validly impaired: Sec. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. **Neither shall the right to travel be impaired <u>except in the interest of national security, public safety, or public health, as may be provided by law</u>.** Even prior to the Constitution, this Court, in the 1919 case of *Rubi v. Provincial Board of Mindoro*, has held that there is no absolute freedom of locomotion. The right of the individual is necessarily subject to reasonable restraint for the common good, in the interest of the public health or public order and safety. x x x Similarly, the right of a person to his labor is deemed to be property within the meaning of constitutional guarantees, that is, he cannot be deprived of his means of livelihood, a property right, without due process of law. Nevertheless, this property right, not unlike the right to travel, is not absolute. It may be restrained or burdened, through the exercise of police power, to secure the general comfort, health, and prosperity of the State. To justify such interference, two requisites must concur: (a) the interests of the public generally, as distinguished from those of a particular class, require the interference of the State; and (b) the means employed are reasonably necessary to the attainment of the object sought to be accomplished and not unduly oppressive upon individuals. In other words, the proper exercise of the police power requires the concurrence of a lawful subject and a lawful method.

4. REMEDIAL LAW; QUESTIONS OF FACT; SOME FACTUAL CONSIDERATIONS OF PROCLAMATION NO. 475 INVOLVE QUESTIONS OF FACT WHICH CANNOT BE ENTERTAINED BY THE SUPREME COURT.— [Some of Proclamation No. 475's factual considerations] involve questions of fact which cannot be entertained by this Court. Questions of fact indispensable to the disposition of a case, as in this case, are cognizable by the trial courts; petitioners should thus have filed the petition before

them. Failure to do so, in fact, is sufficient to warrant the Court's dismissal of the case.

5. ID.; ID.; ISSUE OF WHETHER PROCLAMATION NO. 475 VIOLATES THE PRINCIPLE OF LOCAL AUTONOMY IS A QUESTION OF FACT THAT CANNOT BE ENTERTAINED BY THE SUPREME COURT; CASE AT BAR.— For similar reasons, I find that the Court should also decline to resolve the fourth issue raised by petitioners, that is, whether Proclamation No. 475 violates the principle of local autonomy insofar as it orders local government units to implement the closure. Similar with the *ponencia's* finding, I find that, contrary to petitioners' arguments, the text of RA 10121 actually recognizes and even empowers the local government unit in disaster risk reduction and management. I also hasten to add that whether or not Proclamation No. 475 did, in fact, cause an *actual* intrusion into an affected local government unit's powers is still largely a question of fact. In fact, even assuming that petitioners are able to show such intrusion, again it seems to me that their issue against such would involve a question into the reasonableness of the same under the circumstances. This issue, as already shown, *still* involves the resolution of underlying issues of fact. For example, petitioners would have to present evidence to show, among others, that the local government unit concerned had recommended a *less drastic* course of action to address the situation than those taken under the Proclamation, and that this recommendation was not considered and/or actually overruled by the President and/or NDRRMC.

6. ID.; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; THE BURDEN OF PROVING THE UNCONSTITUTIONALITY OF A LAW RESTS ON THE PARTY ASSAILING THE GOVERNMENTAL REGULATIONS AND ADMINISTRATIVE ISSUANCES; CASE AT BAR.— [M]ere invocation of a fundamental right, or an alleged restriction thereof, would not operate to excuse a pleader from proving his case. Lest petitioners forget, Proclamation No. 475, issued by the President pursuant to his power of subordinate legislation under RA 10121, enjoys the presumption of constitutionality and legality. To overcome this, facts establishing *invalidity* must be proven through the presentation of evidence. In *Ermita-Malate Hotel and Motel*

Operators Association, Inc. v. City Mayor of Manila, citing *O'Gorman & Young v. Hartford Fire Insurance Co.*, this Court stressed: It admits of no doubt therefore that there being a presumption of validity, **the necessity for evidence to rebut it is unavoidable**, unless the statute or ordinance is void on its [face,] which is not the case here. x x x Thus, and until it is set aside with finality in an appropriate case by a competent court, Proclamation No. 475 has the force and effect of law and must be enforced accordingly. The burden of proving its unconstitutionality rests on the party assailing the governmental regulations and administrative issuances.

7. ID.; COURTS; DOCTRINE OF HIERARCHY OF COURTS; REQUIRES THAT FACTUAL QUESTIONS FIRST BE SUBMITTED TO TRIAL COURTS WHO ARE MORE PROPERLY EQUIPPED TO RECEIVE EVIDENCE ON, AND ULTIMATELY RESOLVE, ISSUES OF FACT; RESOLUTION OF THE ISSUE ON CONSTITUTIONALITY REQUIRES THE DETERMINATION AND EVALUATION OF EXTANT FACTUAL CIRCUMSTANCES; CASE AT BAR.— More importantly, the doctrine of hierarchy of courts requires that factual questions first be submitted to trial courts who are more properly equipped to receive evidence on, and ultimately resolve, issues of fact. Where, as in this case, the resolution of the issue on constitutionality requires the determination and evaluation of extant factual circumstances, this Court should decline to exercise its original jurisdiction and, instead, reserve judgment until such time that the question is properly brought before it on appeal.

LEONEN, *J., dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; DUE PROCESS CLAUSE IMPLIES A SPHERE OF INDIVIDUAL AUTONOMY THAT IS CONSTITUTIONALLY PROTECTED; RIGHT TO LIFE AND LIBERTY IS THE RIGHT TO EXIST AND THE RIGHT TO BE FREE FROM ARBITRARY RESTRAINT OR SERVITUDE.— The due process clause is written as a proscription. It implies a sphere of individual autonomy that is constitutionally protected. As early as 1890, in the seminal work of Louis D. Brandeis and

Samuel Warren, this sphere was referred to as the "right to be left alone" from interference by the State. x x x The structure of the due process clause and the primordial value it conceals do not limit protection of life only to one's corporeal existence. Liberty is more than just physical restraint. Even property can be incorporeal. x x x *City of Manila v. Laguio, Jr*. reiterated the broad conception of the right to life and liberty: [T]he right to exist and the right to be free from arbitrary restraint or servitude. The term cannot be dwarfed into mere freedom from physical restraint of the person of the citizen, but is deemed to embrace the *right of man to enjoy the faculties with which he has been endowed by his Creator*, subject only to such restraint as are necessary for the common welfare. The rights to life and liberty are inextricably woven. Life is nothing without liberties. Without a full life, the fullest of liberties protected by our constitutional order will not happen.

2. ID.; ID.; ID.; ID.; RIGHT TO LIVELIHOOD FALLS WITHIN THE SPECTRUM OF THE ALMOST INVIOLABLE RIGHT TO LIFE AND LIBERTY; CASE AT BAR.— The right invoked is not merely the right to property. The right to livelihood falls within the spectrum of the almost inviolable right to life and liberty. The ability to answer a calling, evolve, and create a better version of oneself, in the process of serving others, is a quintessential part of one's life. The right to life is not a mere corporeal existence, but includes one's choice of occupation. This is as important as to those who belong to the informal sector. It is an aspect of social justice that their right to be able to earn a livelihood should be protected by our Constitution. In the hierarchy of rights, the right to life and the right to liberty sit higher than the right to property.

3. ID.; ID.; ID.; ID.; IF THE LIBERTY INVOLVED WAS FREEDOM OF THE MIND OR THE PERSON, THE STANDARD FOR THE VALIDITY OF GOVERNMENTAL ACTS IS MUCH MORE RIGOROUS AND EXACTING, BUT WHERE THE LIBERTY CURTAILED AFFECTS AT THE MOST RIGHTS OF PROPERTY, THE PERMISSIBLE SCOPE OF REGULATORY MEASURES IS WIDER; CASE AT BAR.— As early as in *Ermita-Malate Hotel and Motel Operators Association v. City of Manila*, this Court already emphasized that if the liberty involved were "freedom of the

mind or the person, the standard for the validity of governmental acts is much more rigorous and exacting, but where the liberty curtailed affects at the most rights of property, the permissible scope of regulatory measures is wider." We are not confronted with a situation where the government simply regulates one's occupation. Here, the shutdown contemplated in Proclamation No. 475 is complete. The total deprivation of their right to exercise their occupation was curtailed. x x x There is a fundamental difference in treatment between a business and human labor under our Constitution. Human labor is given more protection. x x x Here, what happened was not a mere regulation of a business. It was a closure of an entire island that ceased to make any of the means to a livelihood known to them possible.

4. ID.; ID.; ID.; ANY INTRUSION ON THE LIFE AND LIBERTY OF A PERSON MUST BE WITH DUE PROCESS OF LAW; THREE MODES OF DUE PROCESS REVIEW.— The breadth of the constitutional protection of life and liberty may continue to evolve with contemporary realities. However, the textual basis in the Constitution is fixed: any intrusion must be with due process of law. x x x In *Spark v. Quezon City*, I reviewed in a Concurring Opinion the extent of the three (3) modes of due process review: An appraisal of due process and equal protection challenges against government regulation must admit that the gravity of interests invoked by the government and the personal liberties or classification affected are not uniform. Hence, the three (3) levels of analysis that demand careful calibration: the rational basis test, intermediate review, and strict scrutiny. Each level is typified by the dual considerations of: first, the interest invoked by the government; and second, the means employed to achieve that interest. The rational basis test requires only that there be a legitimate government interest and that there is a reasonable connection between it and the means employed to achieve it. Intermediate review requires an important government interest. Here, it would suffice if government is able to demonstrate substantial connection between its interest and the means it employs. In accordance with *White Light*, "the availability of less restrictive measures [must have been] *considered*." This demands a conscientious effort at devising the least restrictive means for attaining its avowed interest. It is enough that the means employed is

conceptually the least restrictive mechanism that the government may apply. Strict scrutiny applies when what is at stake are fundamental freedoms or what is involved are suspect classifications. It requires that there be a compelling state interest and that the means employed to effect it are narrowly-tailored, *actually* — not only conceptually — being the least restrictive means for effecting the invoked interest. Here, it does not suffice that the government contemplated on the means available to it. Rather, it must show an active effort at demonstrating the inefficacy of all possible alternatives. Here, it is required to not only explore all possible avenues but to even debunk the viability of alternatives so as to ensure that its chosen course of action is the sole effective means. To the extent practicable, this must be supported by sound data gathering mechanisms. x x x Cases involving strict scrutiny innately favor the preservation of fundamental rights and the non-discrimination of protected classes. Thus, in these cases, the burden falls upon the government to prove that it was impelled by a compelling state interest and that there is actually no other less restrictive mechanism for realizing the interest that it invokes: Applying strict scrutiny, the focus is on the presence of compelling, rather than substantial, governmental interest and on the absence of less restrictive means for achieving that interest, and the burden befalls upon the State to prove the same.

5. **ID.; ID.; ID.; ID.; PROCLAMATION NO. 475, S. 2018 FAILS DUE PROCESS SCRUTINY.—** Even with the lowest level of scrutiny—the reasonability of the means to achieve a legitimate purpose test—the Proclamation should have failed judicial review for three (3) basic reasons. First, the coercive remedial measures contained in the Proclamation was so broad as to affect those who are innocent bystanders or those who are compliant with the law. Second, the Proclamation is vague and contradicts at least the DILG Guidelines and existing statutes; namely, our Civil Code and Republic Act No. 9275. Third, the Proclamation is not justified and is contradictory to Republic Act No. 10121.

6. **ID.; ID.; LEGISLATIVE DEPARTMENT; LEGISLATIVE POWER; TWO TESTS TO DETERMINE WHETHER THERE IS A VALID DELEGATION OF LEGISLATIVE POWER.—** To determine whether there is a valid delegation of legislative power, it must pass the completeness test and the

sufficient standard test. The first test requires that the law must be complete in all its terms and conditions when it leaves the legislature, so much so that when it reaches the delegate, the only thing left is to enforce the law. The second test requires adequate guidelines in law to provide the boundaries of the delegate's authority. These tests ensure that the delegate does not step into the shoes of the legislature and exercise legislative power. In *Belgica v. Ochoa*, this Court reminded the parties that "the powers of the government must be divided to avoid concentration of these powers in any one branch, the division, it is hoped, would avoid any single branch from lording its power over the other branches of the citizenry."

7. POLITICAL LAW; REPUBLIC ACT NO. 10121 (PHILIPPINE DISASTER RISK REDUCTION AND MANAGEMENT ACT OF 2010); STATE OF CALAMITY; DEFINED; NOT ALL MAN-MADE INTRUSIONS AND POLLUTION INTO OUR ENVIRONMENT JUSTIFY AS SEVERE AN INTERVENTION AS THE STATE OF CALAMITY ENVISIONED THEREIN; CASE AT BAR.— The majority, accepting the premise of respondents, cites Republic Act No. 10121 as statutory basis for the validity of Proclamation No. 475. Such reliance is erroneous. Republic Act No. 10121 defines state of calamity as: x x x *a condition involving mass casualty and/or major damages to property, disruption of means of livelihoods, roads and normal way of life of people in the affected areas as a result of the occurrence of natural or human-induced hazard*. Not all man-made intrusions and pollution into our environment justify as severe an intervention as the "state of calamity envisioned in Republic Act 10121. The environmental disaster must (a) be of such gravity, (b) its cause so known that (c) the response required under that law is necessary. x x x Yet, not all of this evolving disasters—as the disaster involving fecal coliform in the beaches of Boracay—would be the state of calamity envisioned by Republic Act No. 10121. Rather, the problem of coliform formation may be due to many other factors that should be addressed by our building codes, sanitation codes, and other environmental laws. Each of these laws provide the means of redress as well as the process of weeding out the source of the disasters. Furthermore, in situations where the violations are rampant, the government may also

want to invoke our anti-corruption laws to weed out the causes at its roots.

8. ID.; ID.; REPUBLIC ACT NO. 10121 IS A LEGISLATION THAT LIMITS THE EXPANSION OF EXECUTIVE POWERS DURING EMERGENCIES; EXPRESS AND IMPLIED POWERS CONTAINED IN PROCLAMATION 475 EXCEED THAT WHICH ARE GRANTED BY REPUBLIC ACT NO. 10121; GRANT OF POWER GIVEN TO THE PRESIDENT WHEN A CALAMITY IS DECLARED SHOULD BE READ IN A LIMITED FASHION.— The express and implied powers contained in the Proclamation exceeds that which is granted by Republic Act No. 10121. Section 17 of that law contains a listing of the competences that may be exercised during states of calamities. x x x The law expands the power of the executive branch during emergencies. In passing Republic Act No. 10121, the legislature did not contemplate allowing the President to exercise any and all powers amounting to a suspension of existing legislation. Precisely, Republic Act No. 10121 is the legislation that limits that expansion of executive powers during that emergency. The acknowledgement of the possible abuse of the executive's power to declare a state of calamity and to exercise powers not contemplated in the law is seen with two (2) salient features of the law. First, the declaration of a state of calamity may not be done without a recommendation. x x x Second, the limited powers granted in Section 17 of Republic Act No. 10121 is also implied in other provisions, which guard against the possibility for abuse. The law contains both active Congressional Oversight as well as a sunset provision. x x x The provisions in statutes should not be read in isolation from the purpose of the legislation and in light of its other provisions. The grant of power given to the president when a state of calamity is declared should thus be read in a limited fashion. *Expressio unius est exclusio alterius*. Definitely, a total closure of an entire island is not contemplated in the law invoked by Proclamation No. 475.

9. ID.; ID.; PROCLAMATION NO. 475 IS VIOLATIVE OF REPUBLIC ACT NO. 10121, THE PERIOD OF THE STATE OF CALAMITY MADE DEPENDENT EXCLUSIVELY ON THE PRESIDENT; EXECUTIVE ISSUANCES CANNOT AMEND STATUTES UNDER WHICH THEY ARE

ISSUED; CASE AT BAR.— More disturbingly, the Proclamation's violations of specific provisions contained in Republic Act No. 10121 patently shows that the latter cannot be the statutory basis for the exercise of executive power. The period of the state of calamity provided in Proclamation No. 475 contravenes Republic Act No. 10121. In the Proclamation, it is made dependent exclusively on the President. x x x However, in Republic Act No. 10121, the period is conditioned on several factors. x x x Executive issuances cannot amend statutes under which they are issued. It is clear in Proclamation No. 475 that it only grants the President the power to lift the state of calamity. The power of the President to lift the state of calamity is not qualified in the Proclamation, and neither is there a standard. Likewise, it does not mention any other authority that can lift the state of calamity. Incidentally, there is also no standard for the six (6)-month closure of the island. However, Republic Act No. 10121, under which the Proclamation claims authority, allows the Municipal Sanggunian, upon the recommendation of its Local Disaster Risk Reduction and Management Council, to lift the state of calamity based on a "damage assessment and needs analysis." The Proclamation and the law are clearly contradictory.

10. POLITICAL LAW; 1987 CONSTITUTION; LOCAL GOVERNMENT; THE PRESIDENT'S POWER OVER LOCAL GOVERNMENT UNITS IS MERELY OF GENERAL SUPERVISION AND EXCLUDES CONTROL; IN ISSUING PROCLAMATION NO. 475, THE PRESIDENT EXERCISED CONTROL OVER THE LOCAL GOVERNMENT UNITS; POWERS OF CONTROL AND SUPERVISION, DISTINGUISHED.— Article X, Section 2 of the Constitution grants local autonomy to all territorial and political subdivisions. Section 4 of the same article provides that the president's power over local government units is merely of general supervision and excludes control. x x x In issuing Proclamation No. 475, the President exercised control over the local government units. The Proclamation orders affected local government units to implement and execute the closure. This is definitely a measure of control, not mere supervision. The distinction between supervision and control of local government units is settled in jurisprudence. In *Pimentel v. Aguirre*, this Court clarified the connection between supervision and control.

The Constitution provides a president only with the power of supervision and not control over local government units. This power enables him or her to see to it that local government officials perform tasks within the bounds of law. He or she may not impair or infringe upon the power given to local government units by law. This Court differentiated the powers of control and supervision in *Drilon v. Lim*. The power of control is the power to lay rules in the performance of an act. This power includes the ability to order the act done and redone, while supervisory power only necessitates that rules are followed. Under the power of supervision, there is no discretion to alter the rules. In short, supervisory power entails that rules are observed and nothing more.

11. ID.; STATE; POLICE POWER; PROCLAMATION NO. 475, BEING CONTRARY TO THE VERY LAW IT ALLEGES TO BE ITS FRAMEWORK, IS NOT A VALID EXERCISE OF POLICE POWER.— Significantly, the Proclamation is even contrary to the law that it alleges to implement. It totally misunderstands the statutory approach for disaster risk and reduction management. x x x The President cannot take over what has been statutorily granted to local governments units. To allow him to do so would be to violate his oath of office under Article VII, Section 5 of the Constitution. Republic Act No. 10121 itself creates a whole structure to address preparation and management of the kinds of disasters envisioned in that law. x x x Even if we assume that the Proclamation was a valid exercise of police power, only the Municipality of Malay, Aklan has been directly affected by the calamity. This means that, statutorily, the Municipality's Local Disaster Risk Reduction and Management Council should take charge. Yet, the Proclamation reduces the local government unit into a minor player in the rehabilitation of the island. Being contrary to the very law it alleges to be its framework, Proclamation No. 475 is not a valid exercise of police power.

CAGUIOA, *J., dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; RIGHT TO TRAVEL; REFERS TO THE RIGHT TO MOVE FREELY

FROM THE PHILIPPINES TO OTHER COUNTRIES OR WITHIN THE PHILIPPINES AND COVERS, AMONG OTHERS, THE POWER OF LOCOMOTION.— The right to travel is a chief element of the constitutional guarantee of liberty which was first introduced by the Congress of the United States to the Philippines during the early days of the American regime. In *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City* (*Spark*), the Court held that the right to travel refers to "the right to move freely from the Philippines to other countries or **within** the Philippines" and covers, among others, "the power of locomotion". In the simplest of terms, it is the freedom to move where one chooses to go. As a fundamental constitutional right, the protection afforded by the right to travel inures to **every** citizen. The provision granting such right is self-executing; its *exercise* is not contingent upon further legislation governing its enforcement.

2. ID.; ID.; ID.; ID.; MUST NOT BE IMPAIRED EXCEPT IN THE INTEREST OF NATIONAL SECURITY, PUBLIC SAFETY, OR PUBLIC HEALTH, AS MAY BE PROVIDED BY LAW; PROCLAMATION NO. 475 POSES AN ACTUAL RESTRICTION ON THE RIGHT TO TRAVEL AND MUST COMPLY WITH THE REQUIREMENTS SET FORTH UNDER SECTION 6, ARTICLE III.— The impairment of the right to travel, while permissible, is subject to the **strict requirements** set forth under Section 6, Article III of the Constitution. x x x The import of the provision is crystal clear — the right to travel may **only** be impaired in the interest of national security, public safety or public health, **on the basis of a law *explicitly* providing for the impairment**. x x x The dismissal of the Petition is primarily grounded on the premise that any effect which Proclamation 475 may have on the right to travel is "merely corollary to the closure of Boracay," and as such, a necessary incident of the island's rehabilitation. This premise gives rise to the conclusion that Proclamation 475 need not comply with the requirements set forth under Section 6, Article III, as its effect on the right to travel is only indirect and merely incidental. I disagree. The requirements under the Constitution are spelled out in clear and absolute terms — **neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.** The provision does not distinguish between

measures that *directly* restrict the right to travel and those which do so *indirectly*, in the furtherance of another State purpose. *Ubi lex non distinguit, nec nos distinguere debemus.* This interpretation is grounded on the text of the Constitution and finds basis in case law both here and in the United States. x x x The afore-cited cases tell us that measures which impede the right to travel in furtherance of other state interests, whether impermissible (as in *Shapiro*) or even permissible (as in *Burnett* and *Spark*), are treated in the same manner as those which *directly* restrict the right. The foregoing cases, taken together with the text of the Constitution, unequivocally negate the assertion that Proclamation 475 does not cause a substantive impairment on the right to travel so as to exempt it from the requirements set forth in Section 6, Article III. In this regard, I disagree with the contention that the effect of the closure of Boracay on a person's ability to travel is merely incidental in nature; hence, conceptually remote from the right's proper sense. To my mind, that an assailed government act only *indirectly* or *incidentally* affects a constitutional right is inconsequential as *any* impairment of constitutionally-protected rights must strictly comply with the mandate of the Constitution.

3. ID.; ID.; ID.; ID.; THERE IS NO LAW WHICH GRANTS THE PRESIDENT ANY FORM OF POLICE POWER SO AS TO AUTHORIZE THE IMPAIRMENT OF THE RIGHT TO TRAVEL DURING A STATE OF CALAMITY; PROCLAMATION NO. 475 IS NOT VALID AS A POLICE POWER MEASURE; CASE AT BAR.— [T]he *ponencia* argues that "the statutes from which [Proclamation 475] draws authority and the constitutional provisions which serve as its framework are primarily concerned with the environment and health, safety, and well-being of the people, the promotion and securing of which are clearly legitimate objectives of governmental efforts and regulations." The *ponencia* then concludes that Proclamation 475 is a valid police power measure. I differ. *First*, the afore-cited provisions of RA 10121 only empower the NDRRMC to *recommend* to the President the declaration of a "state of calamity" and submit to him "proposals to restore normalcy in the affected areas." In turn, the actions or programs to be undertaken by the President during a state of calamity, to be valid, **must still be within the powers granted to him under the Constitution and other laws.** To be sure,

there is absolutely nothing in RA 10121 from which it could reasonably be inferred that the law empowers the NDRRMC or the President to close an entire island. *In fact, RA 10121 does not even refer to the President*, except in connection with the declaration of a state of calamity in Section 16. x x x *Second*, police power is an inherent attribute of sovereignty which has been defined as the power to "make, ordain, and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the commonwealth, and for the subjects of the same." Our Constitutional design, however, lodges police power primarily on the Legislature. That police power is lodged primarily in the Legislature does not appear to be in dispute. This is apparent from the *ponencia* itself, which defines police power as the "state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare." Clearly, police power cannot be exercised by any group or body of individuals not possessing legislative power; its exercise, therefore, is contingent upon a valid delegation. In fact, a look at the powers at the President's disposal in times of calamity leads to the inevitable conclusion that **Proclamation 475 does <u>not</u> find basis in *any* law**. x x x From the foregoing, it is thus clear that the President has no power to close an entire island, even in a calamitous situation, and despite the blanket invocation of the State's police power.

4. ID.; ID.; ID.; ID.; THE AUTHORITY TO RESTRICT THE RIGHT TO TRAVEL CANNOT BE IMPLIED FROM THE EXECUTIVE DEPARTMENT'S POWER, UNDER REPUBLIC ACT NO. 9275, TO TAKE MEASURES NECESSARY TO UPGRADE THE WATER QUALITY; CASE AT BAR.— The *ponencia* also views RA 9275 as another statutory basis for the issuance of Proclamation 475. x x x Again, I disagree. While the language used by RA 9275 was general, such that it may include any measure to upgrade the quality of water in a particular area, the provision in question is still bound by the limitations imposed by the Constitution and other applicable laws. x x x More importantly, even if the language employed by RA 9275 was as general as it could be to allow leeway for the DENR as to the means it would undertake to clean the water, **<u>the DENR would still inarguably be bound</u>**

by Section 6, Article III of the Constitution, which, as discussed, requires that the curtailment of the right to travel be done on the basis of a law.

5. ID.; ID.; ID.; ID.; RIGHT TO TRAVEL CANNOT BE IMPAIRED BY A MERE PRESIDENTIAL PROCLAMATION; CASE AT BAR.— As discussed, the existence of a law – which may either refer to the Constitution or to a statute necessarily enacted by the Legislature – is a prerequisite for the curtailment of the right to travel. x x x In the present case, the order to close Boracay for six months was issued in a form of a **proclamation**. Title 1, Book III of Executive Order No. 292 or the Revised Administrative Code of 1987 (Administrative Code) enumerates the different powers of the Office of the President. Chapter 2 of the same – which contains the ordinance powers of the President – defines a "proclamation" as follows: x x x **SEC. 4. *Proclamations*. — Acts of the President fixing a date or declaring a status or condition of public moment or interest, upon the existence of which the operation of a specific law or regulation is made to depend, shall be promulgated in *proclamations* which shall have the force of an executive order.** x x x The declaration of a state of calamity in the present case was embodied in a "proclamation". But that is not all that was covered by the "proclamation". Along with the declaration of a state of calamity, Proclamation 475 also ordered the closure of an entire island — **an order which directly impacts fundamental rights, particularly, the right to travel and due process**. Borrowing the words of the Court in *Ople*, when an issuance "redefines the parameters of some basic rights of our citizenry *vis-a-vis* the State," then such is a subject matter that should be contained in a law. Such matters are beyond the power of the President to determine, and cannot be undertaken merely upon the authority of a proclamation.

6. ID.; ID.; ID.; ID.; THE AUTHORITY TO CURTAIL THE RIGHT TO TRAVEL IS NEITHER SUBSUMED IN THE PRESIDENT'S DUTY TO EXECUTE LAWS, NOR CAN IT BE DEEMED INHERENT IN THE PRESIDENT'S POWER TO PROMOTE THE GENERAL WELFARE.— In the absence of statutory and Constitutional basis, it is imperative to stress that the restriction of the right to travel, as imposed through Proclamation 475, cannot be justified as a necessary incident of the Executive's duty to execute laws. The

faithful execution clause is found in Section 17, Article VII of the Constitution. It states: SEC. 17. The President shall have control of all the executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed. The foregoing clause should not be understood as a grant of power, but rather, an obligation imposed upon the President. In turn, this obligation should not be construed in the narrow context of the particular statute to be carried out, but, more appropriately, in conjunction with the very document from which such obligation emanates. Hence, speaking of the faithful execution clause, the Court has ruled: [The faithful execution clause] simply underscores the rule of law and, corollarily, the cardinal principle that **the President is not above the laws but is obliged to obey and execute them**. This is precisely why the law provides that "administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution." Based on these premises, I cannot subscribe to the position that the restriction of the right to travel imposed as a consequence of Boracay's closure is valid simply because it is necessary for the island's rehabilitation. **The fact that the restriction of the right to travel is deemed necessary to achieve the avowed purpose of Proclamation 475 does not take such restriction away from the scope of the Constitutional requirements under Section 6, Article III.** As well, I cannot agree with respondents' contention that the authority to restrict the right to travel is inherent in the exercise of the President's residual power to protect and promote the general welfare. x x x Nevertheless, respondents argue, by analogy, that the authority to restrict the right to travel is inherent in the President's exercise of residual powers to protect general welfare. x x x I cannot subscribe to this position. To echo the Court's words in *Genuino*, the imposition of a restriction on the right to travel may not be justified by resorting to an analogy. A closer look at the very limited cases in which the President's unstated "residual powers" and "broad discretion" have been recognized reveals that the exercise of these residual powers can only be justified in the existence of circumstances posing a threat to the general welfare of the people so imminent that it requires **immediate** action on the part of the government. x x x In any case, the "residual powers" as referred to in Section 20, Chapter 7, Title I, Book III of the Administrative Code,

refers to the President's power to "exercise such other powers and functions vested [in the President] which are provided for under the laws and which are not specifically enumerated above, or which are not delegated by the President in accordance with law." While residual powers are, by their nature, "unstated," these powers are vested in the President in furtherance of the latter's duties under the Constitution. **To exempt residual powers from the restrictions set forth by the very same document from which they emanate is absurd. While residual powers are "unstated", they are *not* extra-constitutional**. Indeed, while the President possesses the residual powers in times of calamity, these powers are limited by, and must therefore be wielded within, the bounds set forth by the Constitution and applicable laws enabling such powers' exercise.

7. **ID.; ID.; LEGISLATIVE DEPARTMENT; THE PRESIDENT MAY CERTIFY A BILL AS URGENT TO MEET A PUBLIC CALAMITY OR EMERGENCY; PRESIDENT'S CERTIFICATION DISPENSES WITH THE REQUIREMENT OF THREE READINGS ON SEPARATE DAYS AND OF PRINTING AND DISTRIBUTION THREE DAYS BEFORE ITS PASSAGE.—** As I earlier intimated in this opinion, I concede and recognize that Boracay was facing a critical problem that necessitated its closure. I do acknowledge that there was both ***necessity*** and ***urgency*** to act on the island's problem. Nonetheless, at the risk of being repetitive, I reiterate that the closure was invalid without an enabling law enacted for the purpose — **a requirement that is neither impossible nor unreasonable to comply with.** To illustrate, under the Constitution, the President may certify a bill as urgent "to meet a public calamity or emergency." Thus: No bill passed by either House shall become a law unless it has passed three readings on separate days, and printed copies thereof in its final form have been distributed to its Members three days before its passage, **except when the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency**. Upon the last reading of a bill, no amendment thereto shall be allowed, and the vote thereon shall be taken immediately thereafter, and the *yeas* and *nays* entered in the Journal. In *Tolentino vs. Secretary of Finance*, the Court ruled that the President's certification dispenses with the requirement of (i) three readings ***on separate days*** and (ii) of printing and

distribution ***three days before its passage***. This constitutional mechanism allows the President to communicate to Congress what the government's priority measures are, and allows these same bills to "skip" what otherwise would be a rather burdensome and time-consuming procedure in the legislative process. Stated differently, this certification provides a constitutionally sanctioned procedure for the passing of urgent matters that needed to be in the form of a law. x x x This unconstitutional shortcut is, to repeat, the *raison d'etre* for this dissent. The situation in Boracay is undoubtedly dire; yet, there are constitutionally permissible measures that the government could, and should, have taken to address the problem.

8. ID.; ID.; BILL OF RIGHTS; RIGHT TO DUE PROCESS; THE PROTECTION AFFORDED BY THE RIGHT TO DUE PROCESS, AS ASSERTED IN CONNECTION WITH ONE'S RIGHT TO WORK, APPLIES WITH EQUAL FORCE TO ALL PERSONS, REGARDLESS OF THEIR PROFESSION; CASE AT BAR.— Section 1, Article III on the Bill of Rights of the Constitution provides that "[n]o person shall be deprived of life, liberty, or property without due process of law x x x." Property protected under this constitutional provision includes **the right to work and the right to earn a living**. x x x Notwithstanding this constitutional protection, the right to property is not absolute as it may be curtailed through a valid exercise of the State's police power. However, such deprivation must be done with due process. The *ponencia* concedes that one's profession or trade is considered a property right covered by the due process clause. However, the *ponencia* is of the position that petitioner Zabal and Jacosalem's right thereto is merely inchoate. x x x There is no question that petitioners have no vested right to their future income. However, what is involved here is not necessarily the right to their future income; **rather, it is petitioners' existing and present right to work and to earn a living**. To belabor the point, such right is not inchoate — on the contrary, it is constitutionally recognized and protected. The fact that petitioner Zabal and Jacosalem's professions yield variable income (as opposed to fixed income) does not, in any way, dilute the protection afforded them by the Constitution.

9. REMEDIAL LAW; JUDICIAL REVIEW; *LOCUS STANDI* OR LEGAL STANDING; DEFINED AS THE RIGHT OF

APPEARANCE IN A COURT OF JUSTICE ON A GIVEN QUESTION; IN ORDER TO POSSESS THE NECESSARY LEGAL STANDING, A PARTY MUST SHOW A PERSONAL AND SUBSTANTIAL INTEREST IN THE CASE SUCH THAT HE OR SHE SUSTAINED OR WILL SUSTAIN DIRECT INJURY AS A RESULT OF THE CHALLENGED GOVERNMENT ACT; CASE AT BAR.— I take exception to the position that petitioners Zabal and Jacosalem lack legal standing to file the present Petition. *Locus standi* or legal standing is the right of appearance in a court of justice on a given question. In order to possess the necessary legal standing, a party must show a personal and substantial interest in the case such that s/he has sustained or will sustain direct injury as a result of the challenged governmental act. This requirement of direct injury "guarantees that the party who brings suit has such personal stake in the outcome of the controversy and, in effect, assures 'that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.'" x x x Applying jurisprudential standards, the inescapable conclusion is that petitioners Zabal and Jacosalem unquestionably have legal standing. Undoubtedly, they have a personal and substantial interest in this case and they have shown that they would sustain direct injury as a result of the Boracay closure.

APPEARANCES OF COUNSEL

National Union of People's Lawyers (NUPL)- Panay for petitioners.

Neri Javier Colmenares, et al., co-counsel for petitioners.

The Solicitor General for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Paradise is a place of bliss, felicity, and delight.[1] For Filipinos and foreign nationals alike, Boracay — a small island in Malay,

[1] https://www.merriam-webster.com/dictionary/paradise; last visited on January 28, 2019.

Aklan, with its palm-fringed, pristine white sand beaches, azure waters, coral reefs, rare seashells,[2] and a lot more to offer,[3] — is indeed a piece of paradise. Unsurprisingly, Boracay is one of the country's prime tourist destinations. However, this island-paradise has been disrespected, abused, degraded, over-used, and taken advantage of by both locals and tourists. Hence, the government gave Boracay its much-needed respite and rehabilitation. However, the process by which the rehabilitation was to be implemented did not sit well with petitioners, hence, the present petition.

The Case

Before this Court is a Petition for Prohibition and Mandamus with Application for Temporary Restraining Order, Preliminary Injunction, and/or Status *Quo Ante* Order filed by petitioners Mark Anthony V. Zabal (Zabal), Thiting Estoso Jacosalem (Jacosalem), and Odon S. Bandiola (Bandiola) against respondents President Rodrigo R. Duterte (President Duterte), Executive Secretary Salvador C. Medialdea, and Secretary Eduardo M. Año of the Department of Interior and Local Government (DILG).

The Parties

Zabal and Jacosalem are both residents of Boracay who, at the time of the filing of the petition, were earning a living from the tourist activities therein. Zabal claims to build sandcastles for tourists while Jacosalem drives for tourists and workers in the island. While not a resident, Bandiola, for his part, claims to occasionally visit Boracay for business and pleasure. The three base their *locus standi* on direct injury and also from the

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[2] *Malay, Our Home...Your Destination*, http://aklan.gov.ph/tourism/malay/; last visited on January 28, 2019.

[3] The Department of Tourism's feature on Boracay posted in its website cites that aside from being a tropical heaven, Boracay also boasts of diverse culinary fare, water fun activities, beach combing, nightlife, bat caves, and its Kar-Tir Seashell museum; see http://www.experiencephilippines.org/tourism/destinations-tourism/boracay-department-of-tourism/, last visited on January 28, 2019.

transcendental importance doctrine.[4] Respondents, on the other hand, are being sued in their capacity as officials of the government.

The Facts

Claiming that Boracay has become a cesspool, President Duterte first made public his plan to shut it down during a business forum held in Davao sometime February 2018.[5] This was followed by several speeches and news releases stating that he would place Boracay under a state of calamity. True to his words, President Duterte ordered the shutting down of the island in a cabinet meeting held on April 4, 2018. This was confirmed by then Presidential Spokesperson Harry L. Roque, Jr. in a press briefing the following day wherein he formally announced that the total closure of Boracay would be for a maximum period of six months starting April 26, 2018.[6]

Following this pronouncement, petitioners contend that around 630 police and military personnel were readily deployed to Boracay including personnel for crowd dispersal management.[7] They also allege that the DILG had already released guidelines for the closure.[8]

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[4] *Rollo*, p. 5.

[5] *Duterte wants to close 'cesspool' Boracay*, http://www.pna.gov.ph/articles/1024807; last visited on January 28, 2019.

[6] *Palace: Duterte approves 6-month total closure of Boracay*, https://pcoo.gov.ph/news_releases/palace-duterte-approves-6-month-total-closure-of-boracay/; last visited on January 28, 2019.

[7] *Rollo*, p. 9.

[8] The guidelines allegedly provide as follows:

1. **No going beyond Jetty Port.** Identified tourists will not be allowed into the island and will be stopped at the Jetty Port in Malay, Aklan.
2. **No ID, no entry.** Residents/workers/resort owners will be allowed entry into the island subject to the presentation of identification cards specifying a residence in Boracay. All government-issued IDs will be recognized. Non-government IDs are acceptable as long as they are accompanied by a barangay certification of residency.

Petitioners claim that ever since the news of Boracay's closure came about, fewer tourists had been engaging the services of Zabal and Jacosalem such that their earnings were barely enough to feed their families. They fear that if the closure pushes through, they would suffer grave and irreparable damage. Hence, despite the fact that the government was then yet to release a formal issuance on the matter,[9] petitioners filed the petition on April 25, 2018 praying that:

> (a) Upon the filing of [the] petition, a TEMPORARY RESTRAINING ORDER (TRO) and/or a WRIT OF PRELIMINARY PROHIBITORY INJUNCTION be immediately issued RESTRAINING and/or ENJOINING the respondents, and all persons acting under their command, order, and responsibility from enforcing a closure of Boracay Island or from banning the petitioners, tourists, and non-residents therefrom, and a WRIT OF PRELIMINARY MANDATORY INJUNCTION directing the respondents, and all persons acting under their command, order, and responsibility to ALLOW all of the said persons to enter and/or leave Boracay Island unimpeded;

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3. **Swimming for locals only.** Generally, swimming shall not be allowed anywhere on the island. However, residents may be allowed to swim only at Angol Beach in station 3 from 6 am to 5 pm.
4. **One condition for entry.** No visitors of Boracay residents shall be allowed entry, except under emergency situations, and with the clearance of the security committee composed of DILG representative, police, and local government officials.
5. **Journalists need permission to cover.** Media will be allowed entry subject to **prior approval** from the Department of Tourism, with a definite duration and limited movement.
6. **No floating structures.** No floating structures shall be allowed up to 15 kilometers from the shoreline.
7. **Foreign residents to be checked.** The Bureau of Immigration will revalidate the papers of foreigners who have found a home in Boracay.
8. **One entry, one exit point.** There will only be one transportation point to Boracay Island. Authorities have yet to decide where.

[9] *Rollo*, p. 11.

(b) In the alternative, if the respondents enforce the closure after the instant petition is filed, that a STATUS QUO ANTE Order be issued restoring and maintaining the condition prior to such closure;

(c) After proper proceedings, a judgment be rendered PERMANENTLY RESTRAINING and/or ENJOINING the respondents, and all persons acting under their command, order, and responsibility from enforcing a closure of Boracay Island or from banning the petitioners, tourists, and non-residents therefrom, and further DECLARING the closure of Boracay Island or the ban against petitioners, tourists, and non-residents therefrom to be UNCONSTITUTIONAL.

Other reliefs just and equitable under the premises are similarly prayed for.[10]

On May 18, 2018, petitioners filed a Supplemental Petition[11] stating that the day following the filing of their original petition or on April 26, 2018, President Duterte issued Proclamation No. 475[12] formally declaring a state of calamity in Boracay and ordering its closure for six months from April 26, 2018 to October 25, 2018. The closure was implemented on even date. Thus, in addition to what they prayed for in their original petition, petitioners implore the Court to declare as unconstitutional Proclamation No. 475 insofar as it orders the closure of Boracay and ban of tourists and non-residents therefrom.[13]

In the Resolutions dated April 26, 2018[14] and June 5, 2018,[15] the Court required respondents to file their Comment on the Petition and the Supplemental Petition, respectively. Respondents

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

[11] *Id*. at 62-102.

[12] *Id*. at 103-106.

[13] *Id*. at 96.

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

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

filed their Consolidated Comment[16] on July 30, 2018 while petitioners filed their Reply[17] thereto on October 12, 2018.

On October 26, 2018, Boracay was reopened to tourism.

Petitioners' Arguments

Petitioners state that a petition for prohibition is the appropriate remedy to raise constitutional issues and to review and/or prohibit or nullify, when proper, acts of legislative and executive officials. An action for *mandamus*, on the other hand, lies against a respondent who unlawfully excludes another from the enjoyment of an entitled right or office. Justifying their resort to prohibition and *mandamus*, petitioners assert that (1) this case presents constitutional issues, *i.e.*, whether President Duterte acted within the scope of the powers granted him by the Constitution in ordering the closure of Boracay and, whether the measures implemented infringe upon the constitutional rights to travel and to due process of petitioners as well as of tourists and non-residents of the island; and, (2) President Duterte exercised a power legislative in nature, thus unlawfully excluding the legislative department from the assertion of such power.

As to the substantive aspect, petitioners argue that Proclamation No. 475 is an invalid exercise of legislative powers. They posit that its issuance is in truth a law-making exercise since the proclamation imposed a restriction on the right to travel and therefore substantially altered the relationship between the State and its people by increasing the former's power over the latter. Simply stated, petitioners posit that Proclamation No. 475 partakes of a law the issuance of which is not vested in the President. As such, Proclamation No. 475 must be struck down for being the product of an invalid exercise of legislative power.

Likewise, petitioners argue that Proclamation No. 475 is unconstitutional for infringing on the constitutional rights to travel and to due process.

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[16] *Id*. at 141-201.

[17] *Id*. at 235-287.

Petitioners point out that although Section 6, Article III of the Constitution explicitly allows the impairment of the right to travel, two conditions, however, must concur to wit: (1) there is a law restricting the said right, and (2) the restriction is based on national security, public safety or public health. For petitioners, neither of these conditions have been complied with. For one, Proclamation No. 475 does not refer to any specific law restricting the right to travel. Second, it has not been shown that the presence of tourists in the island poses any threat or danger to national security, public safety or public health.

As to the right to due process, petitioners aver that the same covers property rights and these include the right to work and earn a living. Since the government, through Proclamation No. 475, restricted the entry of tourists and non-residents into the island, petitioners claim that they, as well as all others who work, do business, or earn a living in the island, were deprived of the source of their livelihood as a result thereof. Their right to work and earn a living was curtailed by the proclamation. Moreover, while Proclamation No. 475 cites various violations of environmental laws in the island, these, for the petitioners, do not justify disregard of the rights of thousands of law-abiding people. They contend that environmental laws provide for specific penalties intended only for violators. Verily, to make those innocent of environmental transgressions suffer the consequences of the Boracay closure is tantamount to violating their right to due process.

Petitioners likewise argue that the closure of Boracay could not be anchored on police power. For one, police power must be exercised not by the executive but by legislative bodies through the creation of statutes and ordinances that aim to promote the health, moral, peace, education, safety, and general welfare of the people. For another, the measure is unreasonably unnecessary and unduly oppressive.

In their Supplemental Petition, petitioners aver that Proclamation No. 475 unduly impinges upon the local autonomy of affected Local Government Units (LGUs) since it orders the said LGUs to implement the closure of Boracay and the

ban of tourists and non-residents therefrom. While petitioners acknowledge the President's power of supervision over LGUs, they nevertheless point out that he does not wield the power of control over them. As such, President Duterte can only call the attention of the LGUs concerned with regard to rules not being followed, which is the true essence of supervision, but he cannot lay down the rules himself as this already constitutes control.

Finally, petitioners state that this case does not simply revolve on the need to rehabilitate Boracay, but rather, on the extent of executive power and the manner by which it was wielded by President Duterte. To them, necessity does not justify the President's abuse of power.

Respondents' Arguments

At the outset, respondents assert that President Duterte must be dropped as party-respondent in this case because he is immune from suit. They also argue that the petition should be dismissed outright for lack of basis. According to respondents, prohibition is a preventive remedy to restrain future action. Here, President Duterte had already issued Proclamation No. 475 and in fact, the rehabilitation of the island was then already ongoing. These, according to respondents, have rendered improper the issuance of a writ of prohibition considering that as a rule, prohibition does not lie to restrain an act that is already *fait accompli*. Neither is *mandamus* proper. Section 3, Rule 65 of the Rules of Court provides that a *mandamus* petition may be resorted to when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station. Respondents argue that *mandamus* will not lie in this case because they were not neglectful of their duty to protect the environment; on the contrary, they conscientiously performed what they were supposed to do by ordering the closure of Boracay to give way to its rehabilitation. Thus, to them, *mandamus* is obviously inappropriate.

At any rate, respondents contend that there is no real justiciable controversy in this case. They see no clash between the right

of the State to preserve and protect its natural resources and the right of petitioners to earn a living. Proclamation No. 475 does not prohibit anyone from being gainfully employed.

Respondents moreover maintain that the petition is in the nature of a Strategic Lawsuit Against Public Participation (SLAPP) under Rule 6 of A.M. No. 09-6-8-SC or the Rules of Procedure for Environmental Cases, or a legal action filed to harass, vex, exert undue pressure or stifle any legal recourse that any person, institution or the government has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights. Respondents thus assert that the petition must be dismissed since it was filed for the said sole purpose.

With regard to the substantive aspect, respondents contend that the issuance of Proclamation No. 475 is a valid exercise of delegated legislative power, it being anchored on Section 16 of Republic Act (RA) No. 10121, otherwise known as the Philippine Disaster Risk Reduction and Management Act of 2010, or the authority given to the President to declare a state of calamity, *viz.*:

> SECTION 16. *Declaration of State of Calamity*.— The National Council shall recommend to the President of the Philippines the declaration of a cluster of barangays, municipalities, cities, provinces, and regions under a state of calamity, and the lifting thereof, based on the criteria set by the National Council. The President's declaration may warrant international humanitarian assistance as deemed necessary.
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They likewise contend that Proclamation No. 475 was issued pursuant to the President's executive power under Section 1, Article VII of the Constitution. As generally defined, executive power is the power to enforce and administer laws. It is the power of implementing the laws and enforcing their due observance. And in order to effectively discharge the enforcement and administration of the laws, the President is granted administrative power over bureaus and offices, which includes

the power of control. The power of control, in turn, refers to the authority to direct the performance of a duty, restrain the commission of acts, review, approve, reverse or modify acts and decisions of subordinate officials or units, and prescribe standards, guidelines, plans and programs. Respondents allege that President Duterte's issuance of Proclamation No. 475 was precipitated by his approval of the recommendation of the National Disaster Risk Reduction and Management Council (NDRRMC) to place Boracay under a state of calamity. By giving his *imprimatur,* it is clear that the President merely exercised his power of control over the executive branch.

In any case, respondents assert that the President has residual powers which are implied from the grant of executive power and which are necessary for him to comply with his duties under the Constitution as held in the case of *Marcos v. Manglapus*.[18]

In sum, respondents emphasize that the issuance of Proclamation No. 475 is within the ambit of the powers of the President, not contrary to the doctrine of separation of powers, and in accordance with the mechanism laid out by the Constitution.

Further, respondents dispute petitioners' allegation that Proclamation No. 475 infringes upon the rights to travel and to due process. They emphasize that the right to travel is not an absolute right. It may be impaired or restricted in the interest of national security, public safety, or public health. In fact, there are already several existing laws which serve as statutory limitations to the right to travel.

Anent the alleged violation of the right to due process, respondents challenge petitioners' claim that they were deprived of their livelihood without due process. Respondents call attention to the fact that Zabal as sandcastle maker and Jacosalem as driver are freelancers and thus belong to the informal economy sector. This means that their source of livelihood is never guaranteed and is susceptible to changes in regulations and the

[18] 258 Phil. 479 (1989).

over-all business climate. In any case, petitioners' contentions must yield to the State's exercise of police power. As held in *Ermita-Malate Hotel & Motel Operators Association, Inc. v. The Hon. City Mayor of Manila*,[19] the mere fact that some individuals in the community may be deprived of their present business or of a particular mode of living cannot prevent the exercise of the police power of the State. Indeed, to respondents, private interests should yield to the reasonable prerogatives of the State for the public good and welfare, which precisely are the primary objectives of the government measure herein questioned.

Lastly, respondents insist that Proclamation No. 475 does not unduly transgress upon the local autonomy of the LGUs concerned. Under RA 10121, it is actually the Local Disaster Risk Reduction Management Council concerned which, subject to several criteria, is tasked to take the lead in preparing for, responding to, and recovering from the effects of any disaster when a state of calamity is declared. In any case, the devolution of powers upon LGUs pursuant to the constitutional mandate of ensuring their autonomy does not mean that the State can no longer interfere in their affairs. This is especially true in this case since Boracay's environmental disaster cannot be treated as a localized problem that can be resolved by the concerned LGUs only. The magnitude and gravity of the problem require the intervention and assistance of different national government agencies in coordination with the concerned LGUs.

As a final point, respondents aver that the bottom line of petitioners' lengthy discourse and constitutional posturing is their intention to re-open Boracay to tourists and non-residents for the then remainder of the duration of the closure and thus perpetuate and further aggravate the island's environmental degradation. Respondents posit that this is unacceptable since Boracay cannot be sacrificed for the sake of profit and personal convenience of the few.

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[19] 128 Phil. 473 (1967).

Our Ruling

First, we discuss the procedural issues.

President Duterte is dropped as respondent in this case

As correctly pointed out by respondents, President Duterte must be dropped as respondent in this case. The Court's pronouncement in *Professor David v. President Macapagal-Arroyo*[20] on the non-suability of an incumbent President cannot be any clearer, *viz*.:

> x x x Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government.[21]

Accordingly, President Duterte is dropped as respondent in this case.

Propriety of Prohibition and Mandamus

Section 2, Rule 65 of the Rules of Court provides for a petition for prohibition as follows:

> SEC. 2. *Petition for prohibition*. – When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess

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[20] 522 Phil. 705 (2006).

[21] *Id*. at 763-764.

of its or his jurisdiction, or with grave abuse of discretion amounting to lack or in excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

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"Indeed, prohibition is a preventive remedy seeking that a judgment be rendered directing the defendant to desist from continuing with the commission of an act perceived to be illegal. As a rule, the proper function of a writ of prohibition is to prevent the performance of an act which is about to be done. It is not intended to provide a remedy for acts already accomplished."[22]

Mandamus, on the other hand, is provided for by Section 3 of the same Rule 65:

SEC. 3. *Petition for mandamus*. – When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

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[22] *Vivas v. The Monetary Board of the Bangko Sentral ng Pilipinas*, 716 Phil. 132, 145 (2013).

"As the quoted provision instructs, *mandamus* will lie if the tribunal, corporation, board, officer, or person unlawfully neglects the performance of an act which the law enjoins as a duty resulting from an office, trust, or station."[23]

It is upon the above-discussed contexts of prohibition and *mandamus* that respondents base their contention of improper recourse. Respondents maintain that prohibition is not proper in this case because the closure of Boracay is already a *fait accompli*. Neither is *mandamus* appropriate since there is no neglect of duty on their part as they were precisely performing their duty to protect the environment when the closure was ordered.

Suffice it to state, however, that the use of prohibition and *mandamus* is not merely confined to Rule 65. These extraordinary remedies may be invoked when constitutional violations or issues are raised. As the Court stated in *Spouses Imbong v. Hon. Ochoa, Jr.*:[24]

> As far back as *Tañada v. Angara*, the Court has unequivocally declared that *certiorari*, **prohibition and *mandamus* are appropriate remedies to raise constitutional issues and to review and/or prohibit/nullify, when proper, acts of legislative and executive officials, as there is no other plain, speedy or adequate remedy in the ordinary course of law.** This ruling was later on applied in *Macalintal v. COMELEC, Aldaba v. COMELEC, Magallona v. Ermita*, and countless others. In *Tañada,* the Court wrote:
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> > In seeking to nullify an act of the Philippine Senate on the ground that it contravenes the Constitution, the petition no doubt raises a justiciable controversy. Where an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. 'The question thus posed is judicial rather than political. The duty (to adjudicate) remains to assure that the supremacy of the Constitution is upheld.' Once a 'controversy as to the application or interpretation of constitutional provision

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[23] *Uy Kiao Eng v. Lee*, 624 Phil. 200, 206-207 (2010).

[24] 732 Phil. 1 (2014).

> is raised before this Court, as in the instant case, it becomes a legal issue which the Court is bound by constitutional mandate to decide. x x x[25] (Citations omitted; emphasis supplied)

It must be stressed, though, that resort to prohibition and *mandamus* on the basis of alleged constitutional violations is not without limitations. After all, this Court does not have unrestrained authority to rule on just about any and every claim of constitutional violation.[26] The petition must be subjected to the four exacting requisites for the exercise of the power of judicial review, *viz*.: (a) there must be an actual case or controversy; (b) the petitioners must possess *locus standi*; (c) the question of constitutionality must be raised at the earliest opportunity; and (d) the issue of constitutionality must be the *lis mota* of the case.[27] Hence, it is not enough that this petition mounts a constitutional challenge against Proclamation No. 475. It is likewise necessary that it meets the aforementioned requisites before the Court sustains the propriety of the recourse.

Existence of Requisites for Judicial Review

In *La Bugal-B'laan Tribal Association, Inc. v. Sec. Ramos*,[28] an actual case or controversy was characterized as a "case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory, lest the decision of the court would amount to an advisory opinion. The power does not extend to hypothetical questions since any attempt at abstraction could only lead to dialectics and barren legal question and to sterile conclusions unrelated to actualities."[29]

The existence of an actual controversy in this case is evident. President Duterte issued Proclamation No. 475 on April 26,

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

[26] *Id*. at 122.

[27] *Id*.

[28] 465 Phil. 860 (2004).

[29] *Id*. at 889-890.

2018 and, pursuant thereto, Boracay was temporarily closed the same day. Entry of non-residents and tourists to the island was not allowed until October 25, 2018. Certainly, the implementation of the proclamation has rendered legitimate the concern of petitioners that constitutional rights may have possibly been breached by this governmental measure. It bears to state that when coupled with sufficient facts, "reasonable certainty of the occurrence of a perceived threat to any constitutional interest suffices to provide a basis for mounting a constitutional challenge".[30] And while it may be argued that the reopening of Boracay has seemingly rendered moot and academic questions relating to the ban of tourists and non-residents into the island, abstention from judicial review is precluded by such possibility of constitutional violation and also by the exceptional character of the situation, the paramount public interest involved, and the fact that the case is capable of repetition.[31]

As to legal standing, petitioners assert that they were directly injured since their right to travel and, their right to work and earn a living which thrives solely on tourist arrivals, were affected by the closure. They likewise want to convince the Court that the issues here are of transcendental importance since according to them, the resolution of the same will have far-reaching consequences upon all persons living and working in Boracay; upon the Province of Aklan which is heavily reliant on the island's tourism industry; and upon the whole country considering that fundamental constitutional rights were allegedly breached.

"Legal standing or *locus standi* is a party's personal and substantial interest in a case such that he has sustained or will sustain direct injury as a result of the governmental act being challenged. It calls for more than just a generalized grievance. The term 'interest' means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in

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[30] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 481 (2010).

[31] *Funa v. Acting Secretary Agra*, 704 Phil. 205, 219-220 (2013).

the question involved, or a mere incidental interest."[32] There must be a present substantial interest and not a mere expectancy or a future, contingent, subordinate, or consequential interest.[33]

In *Galicto v. Aquino III*,[34] the therein petitioner, Jelbert B. Galicto (Galicto) questioned the constitutionality of Executive Order No. 7 (EO7) issued by President Benigno Simeon C. Aquino III, which ordered, among others, a moratorium on the increases in the salaries and other forms of compensation of all government-owned and controlled corporations (GOCCs) and government financial institutions. The Court held that Galicto, an employee of the GOCC Philhealth, has no legal standing to assail EO7 for his failure to demonstrate that he has a personal stake or material interest in the outcome of the case. His interest, if any, was speculative and based on a mere expectancy. Future increases in his salaries and other benefits were contingent events or expectancies to which he has no vested rights. Hence, he possessed no *locus standi* to question the curtailment thereof.

Here, as mentioned, Zabal is a sandcastle maker and Jacosalem, a driver. The nature of their livelihood is one wherein earnings are not guaranteed. As correctly pointed out by respondents, their earnings are not fixed and may vary depending on the business climate in that while they can earn much on peak seasons, it is also possible for them not to earn anything on lean seasons, especially when the rainy days set in. Zabal and Jacosalem could not have been oblivious to this kind of situation, they having been in the practice of their trade for a considerable length of time. Clearly, therefore, what Zabal and Jacosalem could lose in this case are mere projected earnings which are in no way guaranteed, and are sheer expectancies characterized as contingent, subordinate, or consequential interest, just like in *Galicto*. Concomitantly, an assertion of direct injury on the

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[32] *Jumamil v. Café,* 507 Phil. 455, 465 (2005).

[33] *Galicto v. H.E. President Aquino III*, 683 Phil. 141, 171 (2012).

[34] *Id*.

basis of loss of income does not clothe Zabal and Jacosalem with legal standing.

As to Bandiola, the petition is bereft of any allegation as to his substantial interest in the case and as to how he sustained direct injury as a result of the issuance of Proclamation No. 475. While the allegation that he is a non-resident who occasionally goes to Boracay for business and pleasure may suggest that he is claiming direct injury on the premise that his right to travel was affected by the proclamation, the petition fails to expressly provide specifics as to how. "It has been held that a party who assails the constitutionality of a statute must have a direct and personal interest. [He] must show not only that the law or any governmental act is invalid, but also that [he] sustained or is in immediate danger of sustaining some direct injury as a result of its enforcement, and not merely that [he] suffers thereby in some indefinite way. [He] must show that [he] has been or is about to be denied some right or privilege to which [he] is lawfully entitled or that [he] is about to be subjected to some burdens or penalties by reason of the statute or act complained of."[35] Indeed, the petition utterly fails to demonstrate that Bandiola possesses the requisite legal standing to sue.

Notwithstanding petitioners' lack of *locus standi*, this Court will allow this petition to proceed to its ultimate conclusion due to its transcendental importance. After all, the rule on *locus standi* is a mere procedural technicality, which the Court, in a long line of cases involving subjects of transcendental importance, has waived or relaxed, thus allowing non-traditional plaintiffs such as concerned citizens, taxpayers, voters and legislators to sue in cases of public interest, albeit they may not have been personally injured by a government act.[36] More importantly, the matters raised in this case, involved on one hand, possible violations of the Constitution and, on the other, the need to rehabilitate the country's prime tourist destination.

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[35] *Anak Mindanao Party-List Group v. Executive Secretary Ermita*, 558 Phil. 338, 351 (2007).

[36] *Funa v. Chairman Villar*, 686 Phil. 571, 585 (2012).

Undeniably, these matters affect public interests and therefore are of transcendental importance to the people. In addition, the situation calls for review because as stated, it is capable of repetition, the Court taking judicial notice of the many other places in our country that are suffering from similar environmental degradation.

As to the two other requirements, their existence is indubitable. It will be recalled that even before a formal issuance on the closure of Boracay was made by the government, petitioners already brought the question of the constitutionality of the then intended closure to this Court. And, a day after Proclamation No. 475 was issued, they filed a supplemental petition impugning its constitutionality. Clearly, the filing of the petition and the supplemental petition signals the earliest opportunity that the constitutionality of the subject government measure could be raised. There can also be no denying that the very *lis mota* of this case is the constitutionality of Proclamation No. 475.

Defense of SLAPP

Suffice it to state that while this case touches on the environmental issues in Boracay, the ultimate issue for resolution is the constitutionality of Proclamation No. 475. The procedure in the treatment of a defense of SLAPP provided for under Rule 6 of the Rules of Procedure for Environmental Cases should not, therefore, be made to apply.

Now as to the substantive issues.

We first quote in full Proclamation No. 475.

PROCLAMATION No. 475

DECLARING A STATE OF CALAMITY IN THE BARANGAYS OF BALABAG, MANOC-MANOC AND YAPAK (ISLAND OF BORACAY) IN THE MUNICIPALITY OF MALAY, AKLAN, AND TEMPORARY CLOSURE OF THE ISLAND AS A TOURIST DESTINATION

WHEREAS, Section 15, Article II of the 1987 Constitution states that the State shall protect and promote the right to health of the people and instill health consciousness among them;

WHEREAS, Section 16, Article II of the 1987 Constitution provides that it is the policy of the State to protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature;

WHEREAS, Section 2, Article XII of the 1987 Constitution provides that the State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone;

WHEREAS, an Inter-Agency Task Force, composed of the Department of Environment and Natural Resources (DENR), the [DILG] and the Department of Tourism (DOT), was established to evaluate the environmental state of the Island of Boracay, and investigate possible violations of existing environmental and health laws, rules and regulations;

WHEREAS, the investigations and validation undertaken revealed that:

a. There is a high concentration of fecal coliform in the Bolabog beaches located in the eastern side of Boracay Island due to insufficient sewer lines and illegal discharge of untreated waste water into the beach, with daily tests conducted from 6 to 10 March 2018 revealing consistent failure in compliance with acceptable water standards, with an average result of 18,000 most probable number (MPN)/100ml, exceeding the standard level of 400 MPN/100ml;

b. Most commercial establishments and residences are not connected to the sewerage infrastructure of Boracay Island, and waste products are not being disposed through the proper sewerage infrastructures in violation of environmental law, rules, and regulations;

c. Only 14 out of 51 establishments near the shores of Boracay Island are compliant with the provision of Republic Act (RA) No. 9275 or the Philippine Clean Water Act of 2004;

d. Dirty water results in the degradation of the coral reefs and coral cover of Boracay Island, which declined by approximately 70.5% from 1988 to 2011, with the highest decrease taking place between 2008 and 2011 during a period of increased tourist arrivals (approximately 38.4%);

e. Solid waste within Boracay Island is at a generation rate of 90 to 115 tons per day, while the hauling capacity of the

local government is only 30 tons per day, hence, leaving approximately 85 tons of waste in the Island daily;

f. The natural habitats of Puka shells, nesting grounds of marine turtles, and roosting grounds of flying foxes or fruit bats have been damaged and/or destroyed; and

g. Only four (4) out of nine (9) wetlands in Boracay Island remain due to illegal encroachment of structures, including 937 identified illegal structures constructed on forestlands and wetlands, as well as 102 illegal structures constructed on areas already classified as easements, and the disappearance of the wetlands, which acts as natural catchments, enhances flooding in the area;

WHEREAS, the findings of the Department of Science and Technology (DOST) reveal that beach erosion is prevalent in Boracay Island, particularly along the West Beach, where as much as 40 meters of erosion has taken place in the past 20 years from 1993 to 2003, due to storms, extraction of sand along the beach to construct properties and structures along the foreshore, and discharge of waste water near the shore causing degradation of coral reefs and seagrass meadows that supply the beach with sediments and serve as buffer to wave action;

WHEREAS, the DOST also reports that based on the 2010-2015 Coastal Ecosystem Conservation and Adaptive Management Study of the Japan International Cooperation Agency, direct discharge of waste water near the shore has resulted in the frequent algal bloom and coral deterioration, which may reduce the source of sand and cause erosion;

WHEREAS, the data from the Region VI — Western Visayas Regional Disaster Risk Reduction and Management Council shows that the number of tourists in the island in a day amounts to 18,082, and the tourist arrival increased by more than 160% from 2012 to 2017;

WHEREAS, the continuous rise of tourist arrivals, the insufficient sewer and waste management system, and environmental violations of establishments aggravate the environmental degradation and destroy the ecological balance of the Island of Boracay, resulting in major damage to property and natural resources, as well as the disruption of the normal way of life of the people therein;

WHEREAS, it is necessary to implement urgent measures to address the abovementioned human-induced hazards, to protect and promote the health and well-being of its residents, workers and tourists, and to rehabilitate the Island in order to ensure the sustainability of the area and prevent further degradation of its rich ecosystem;

WHEREAS, RA No. 9275 provides that the DENR shall designate water bodies, or portions thereof, where specific pollutants from either natural or man-made source have already exceeded water quality guidelines as non-attainment areas for the exceeded pollutants and shall prepare and implement a program that will not allow new sources of exceeded water pollutant in non-attainment areas without a corresponding reduction in discharges from existing sources;

WHEREAS, RA No. 9275 also mandates the DENR, in coordination with other concerned agencies and the private sectors, to take such measures as may be necessary to upgrade the quality of such water in non-attainment areas to meet the standards under which it has been classified, and the local government units to prepare and implement contingency plans and other measures including relocation, whenever necessary, for the protection of health and welfare of the residents within potentially affected areas;

WHEREAS, Proclamation No. 1064 (s. 2006) classified the Island of Boracay into 377.68 hectares of reserved forest land for protection purposes and 628.96 hectares of agricultural land as alienable and disposable land;

WHEREAS, pursuant to the Regalian Doctrine, and as emphasized in recent jurisprudence, whereby all lands not privately owned belong to the State, the entire island of Boracay is state-owned, except for lands already covered by existing valid titles;

WHEREAS, pursuant to RA No. 10121, or the Philippine Disaster Risk Reduction and Management Act of 2010, the National Disaster Risk Reduction and Management Council has recommended the declaration of a State of Calamity in the Island of Boracay and the temporary closure of the Island as a tourist destination to ensure public safety and public health, and to assist the government in its expeditious rehabilitation, as well as in addressing the evolving socio-economic needs of affected communities;

NOW, THEREFORE, I, RODRIGO ROA DUTERTE, President of the Philippines, by virtue of the powers vested in me by the Constitution and existing laws, do hereby declare a State of Calamity

in the barangays of Balabag, Manoc-Manoc and Yapak (Island of Boracay) in the Municipality of Malay, Aklan. In this regard, the temporary closure of the Island as a tourist destination for six (6) months starting 26 April 2018, or until 25 October 2018, is hereby ordered subject to applicable laws, rules, regulations and jurisprudence.

Concerned government agencies shall, as may be necessary or appropriate, undertake the remedial measures during a State of Calamity as provided in RA No. 10121 and other applicable laws, rules and regulations, such as control of the prices of basic goods and commodities for the affected areas, employment of negotiated procurement and utilization of appropriate funds, including the National Disaster Risk Reduction and Management Fund, for relief and rehabilitation efforts in the area. All departments and other concerned government agencies are also hereby directed to coordinate with, and provide or augment the basic services and facilities of affected local government units, if necessary.

The State of Calamity in the Island of Boracay shall remain in force and effect until lifted by the President, notwithstanding the lapse of the six-month closure period.

All departments, agencies and offices, including government-owned or controlled corporations and affected local government units are hereby directed to implement and execute the abovementioned closure and the appropriate rehabilitation works, in accordance with pertinent operational plans and directives, including the Boracay Action Plan.

The Philippine National Police, Philippine Coast Guard and other law enforcement agencies, with the support of the Armed Forces of the Philippines, are hereby directed to act with restraint and within the bounds of the law in the strict implementation of the closure of the Island and ensuring peace and order in the area.

The Municipality of Malay, Aklan is also hereby directed to ensure that no tourist will be allowed entry to the island of Boracay until such time that the closure has been lifted by the President.

All tourists, residents and establishment owners in the area are also urged to act within the bounds of the law and to comply with the directives herein provided for the rehabilitation and restoration of the ecological balance of the Island which will be for the benefit of all concerned.

It must be noted at the outset that petitioners failed to present and establish the factual bases of their arguments because they went directly to this Court. In ruling on the substantive issues in this case, the Court is, thus, constrained to rely on, and uphold the factual bases, which prompted the issuance of the challenged proclamation, as asserted by respondents. Besides, executive determinations, such as said factual bases, are generally final on this Court.[37]

The Court observes that the meat of petitioners' constitutional challenge on Proclamation No. 475 is the right to travel.

Clearly then, the one crucial question that needs to be preliminarily answered is — *does Proclamation No. 475 constitute an impairment on the right to travel?*

The Court answers in the negative.

Proclamation No. 475 does not pose an actual impairment on the right to travel

Petitioners claim that Proclamation No. 475 impairs the right to travel based on the following provisions:

> **NOW, THEREFORE, I, RODRIGO ROA DUTERTE,** President of the Philippines, by virtue of the powers vested in me by the Constitution and existing laws, do hereby declare a State of Calamity in the barangays of Balabag, Manoc-Manoc and Yapak (Island of Boracay) in the Municipality of Malay, Aklan. In this regard, **the temporary closure of the Island as a tourist destination for six (6) months starting 26 April 2018, or until 25 October 2018, is hereby ordered** subject to applicable laws, rules, regulations and jurisprudence.
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> x x x x x x x x x
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> The Municipality of Malay, Aklan is also hereby directed to ensure that **no tourist will be allowed entry to the island of Boracay** until such time that the closure has been lifted by the President.

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[37] *Philippine Association of Service Exporters, Inc. v. Hon. Drilon*, 246 Phil. 393, 401 (1988).

x x x x x x x x x

The activities proposed to be undertaken to rehabilitate Boracay involved inspection, testing, demolition, relocation, and construction. These could not have been implemented freely and smoothly with tourists coming in and out of the island not only because of the possible disruption that they may cause to the works being undertaken, but primarily because their safety and convenience might be compromised. Also, the contaminated waters in the island were not just confined to a small manageable area. The excessive water pollutants were all over Bolabog beach and the numerous illegal drainpipes connected to and discharging wastewater over it originate from different parts of the island. Indeed, the activities occasioned by the necessary digging of these pipes and the isolation of the contaminated beach waters to give way to treatment could not be done in the presence of tourists. Aside from the dangers that these contaminated waters pose, hotels, inns, and other accommodations may not be available as they would all be inspected and checked to determine their compliance with environmental laws. Moreover, it bears to state that a piece-meal closure of portions of the island would not suffice since as mentioned, illegal drainpipes extend to the beach from various parts of Boracay. Also, most areas in the island needed major structural rectifications because of numerous resorts and tourism facilities which lie along easement areas, illegally reclaimed wetlands, and of forested areas that were illegally cleared for construction purposes. Hence, the need to close the island in its entirety and ban tourists therefrom.

In fine, this case does not actually involve the right to travel in its essential sense contrary to what petitioners want to portray. Any bearing that Proclamation No. 475 may have on the right to travel is merely corollary to the closure of Boracay and the ban of tourists and non-residents therefrom which were necessary incidents of the island's rehabilitation. There is certainly no showing that Proclamation No. 475 deliberately meant to impair the right to travel. The questioned proclamation is clearly focused on its purpose of rehabilitating Boracay and any intention to directly restrict the right cannot, in any manner, be deduced

from its import. This is contrary to the import of several laws recognized as constituting an impairment on the right to travel which **directly** impose restriction on the right, *viz.*:

> [1] *The Human Security Act of 2010 or Republic Act (R.A.) No. 9372.*The law restricts the right to travel of an individual charged with the crime of terrorism even though such person is out on bail.
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> [2] *The Philippine Passport Act of 1996 or R.A. No. 8239*. Pursuant to said law, the Secretary of Foreign Affairs or his authorized consular officer may refuse the issuance of, restrict the use of, or withdraw, a passport of a Filipino citizen.
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> [3] *The 'Anti-Trafficking in Persons Act of 2003' or RA 9208.* Pursuant to the provisions thereof, the Bureau of Immigration, in order to manage migration and curb trafficking in persons, issued Memorandum Order Radjr No. 2011-011, allowing its Travel Control and Enforcement Unit to 'offload passengers with fraudulent travel documents, doubtful purpose of travel, including possible victims of human trafficking' from our ports.
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> [4] *The Migrant Workers and Overseas Filipinos Act of 1995 or R.A. No. 8042, as amended by R.A. No. 10022*. In enforcement of said law, the Philippine Overseas Employment Administration (*POEA*) may refuse to issue deployment permit[s] to a specific country that effectively prevents our migrant workers to enter such country.
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> [5] *The Act on Violence Against Women and Children or R.A. No. 9262.* The law restricts movement of an individual against whom the protection order is intended.
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> [6] *Inter-Country Adoption Act of 1995 or R.A. No. 8043.* Pursuant thereto, the Inter-Country Adoption Board may issue rules restrictive of an adoptee's right to travel 'to protect the Filipino child from abuse, exploitation, trafficking and/or sale or any other practice in connection with adoption which is harmful, detrimental, or prejudicial to the child.'[38]

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[38] *Leave Division, Office of the Administrative Services (OAS)-Office of the Court Administrator (OCA) v. Heusdens*, 678 Phil. 328, 339-340 (2011).

In *Philippine Association of Service Exporters, Inc. v. Hon. Drilon,*[39] the Court held that the consequence on the right to travel of the deployment ban implemented by virtue of Department Order No. 1, Series of 1998 of the Department of Labor and Employment does not impair the right.

Also significant to note is that the closure of Boracay was only temporary considering the categorical pronouncement that it was only for a definite period of six months.

Hence, if at all, the impact of Proclamation No. 475 on the right to travel is not direct but merely consequential; and, the same is only for a reasonably short period of time or merely temporary.

In this light, a discussion on whether President Duterte exercised a power legislative in nature loses its significance. Since Proclamation No. 475 does not actually impose a restriction on the right to travel, its issuance did not result to any substantial alteration of the relationship between the State and the people. The proclamation is therefore not a law and conversely, the President did not usurp the law-making power of the legislature.

For obvious reason, there is likewise no more need to determine the existence in this case of the requirements for a valid impairment of the right to travel.

Even if it is otherwise, Proclamation No. 475 must be upheld for being in the nature of a valid police power measure

Police power, amongst the three fundamental and inherent powers of the state, is the most pervasive and comprehensive.[40] "It has been defined as the state authority to enact legislation that may interfere with personal liberty or property in order to

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[39] *Supra* note 37.

[40] Gorospe, Rene, B., *Constitutional Law, Notes and Readings on the Bill of Rights, Citizenship and Suffrage*, Volume I (2006), p. 9.

promote general welfare."[41] "As defined, it consists of (1) imposition or restraint upon liberty or property, (2) in order to foster the common good. It is not capable of exact definition but has been, purposely, veiled in general terms to underscore its all-comprehensive embrace."[42] The police power "finds no specific Constitutional grant for the plain reason that it does not owe its origin to the Charter"[43] since "it is inborn in the very fact of statehood and sovereignty."[44] It is said to be the "inherent and plenary power of the State which enables it to prohibit all things hurtful to the comfort, safety, and welfare of the society."[45] Thus, police power constitutes an implied limitation on the Bill of Rights.[46] After all, "the Bill of Rights itself does not purport to be an absolute guaranty of individual rights and liberties. 'Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's will.' It is subject to the far more overriding demands and requirements of the greater number."[47]

"Expansive and extensive as its reach may be, police power is not a force without limits."[48] "It has to be exercised within bounds – lawful ends through lawful means, *i.e.*, that the interests of the public generally, as distinguished from that of a particular class, require its exercise, and that the means employed are reasonably necessary for the accomplishment of the purpose while not being unduly oppressive upon individuals."[49]

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[41] *Id*., citing *Edu v. Ericta*, 146 Phil. 469 (1970).

[42] *Id*.

[43] *Philippine Association of Service Exporters, Inc. v. Hon. Drilon*, *supra* note 37 at 398.

[44] *Id*.

[45] *Id*. at 399.

[46] *Id*.

[47] *Id*.

[48] Gorospe, Rene, B., *Constitutional Law, Notes and Readings on the Bill of Rights, Citizenship and Suffrage*, Volume I (2006), p. 12.

[49] *Id*.

That the assailed governmental measure in this case is within the scope of police power cannot be disputed. Verily, the statutes[50] from which the said measure draws authority and the constitutional provisions[51] which serve as its framework are primarily concerned with the environment and health, safety, and well-being of the people, the promotion and securing of which are clearly legitimate objectives of governmental efforts and regulations. The motivating factor in the issuance of Proclamation No. 475 is without a doubt the interest of the public in general. The only question now is whether the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.

The pressing need to implement urgent measures to rehabilitate Boracay is beyond cavil from the factual milieu that precipitated the President's issuance of Proclamation No. 475. This necessity is even made more critical and insistent by what the Court said in *Oposa v. Hon. Factoran, Jr.*[52] in regard the rights to a balanced and healthful ecology and to health, which rights are likewise integral concerns in this case. *Oposa* warned that unless the rights to a balanced and healthful ecology and to health are given continuing importance and the State assumes its solemn obligation to preserve and protect them, the time will come that nothing will be left not only for this generation but for the generations to come as well.[53] It further taught that the right to a balanced and healthful ecology carries with it the correlative duty to refrain from impairing the environment.[54]

Against the foregoing backdrop, we now pose this question: *Was the temporary closure of Boracay as a tourist destination for six months reasonably necessary under the circumstances?* The answer is in the affirmative.

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[50] RA 10121 and RA 9275 or The Philippine Clean Water Act.

[51] CONSTITUTION, Article II, Sections 15 and 16 and Article XII, Section 2.

[52] 296 Phil. 694 (1993).

[53] *Id*. at 713.

[54] *Id*.

As earlier noted, one of the root causes of the problems that beset Boracay was tourist influx. Tourist arrivals in the island were clearly far more than Boracay could handle. As early as 2007, the DENR had already determined this as the major cause of the catastrophic depletion of the island's biodiversity.[55] Also part of the equation is the lack of commitment to effectively enforce pertinent environmental laws. Unfortunately, direct action on these matters has been so elusive that the situation reached a critical level. Hence, by then, only bold and sweeping steps were required by the situation.

Certainly, the closure of Boracay, albeit temporarily, gave the island its much needed breather, and likewise afforded the government the necessary leeway in its rehabilitation program. Note that apart from review, evaluation and amendment of relevant policies, the bulk of the rehabilitation activities involved inspection, testing, demolition, relocation, and construction. These works could not have easily been done with tourists present. The rehabilitation works in the first place were not simple, superficial or mere cosmetic but rather quite complicated, major, and permanent in character as they were intended to serve as long-term solutions to the problem.[56] Also, time is of the essence. Every precious moment lost is to the detriment of Boracay's environment and of the health and well-being of the people thereat. Hence, any unnecessary distraction or disruption is most unwelcome. Moreover, as part of the rehabilitation efforts, operations of establishments in Boracay had to be halted in the course thereof since majority, if not all of them, need to comply with environmental and regulatory requirements in order to align themselves with the government's goal to restore Boracay into normalcy and develop its sustainability. Allowing tourists into the island while it was undergoing necessary rehabilitation would

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[55] *Rollo*, p. 145.

[56] See Executive Order No. 53, *CREATING A BORACAY INTER-AGENCY TASK FORCE, PROVIDING FOR ITS POWERS AND FUNCTIONS AND THOSE OF THE MEMBER-AGENCIES THEREOF, AND OTHER MEASURES TO REVERSE THE DEGRADATION OF BORACAY ISLAND*, *id*. at 202-207.

therefore be pointless as no establishment would cater to their accommodation and other needs. Besides, it could not be said that Boracay, at the time of the issuance of the questioned proclamation, was in such a physical state that would meet its purpose of being a tourist destination. For one, its beach waters could not be said to be totally safe for swimming. In any case, the closure, to emphasize, was only for a definite period of six months, *i.e.*, from April 26, 2018 to October 25, 2018. To the mind of the Court, this period constitutes a reasonable time frame, if not to complete, but to at least put in place the necessary rehabilitation works to be done in the island. Indeed, the temporary closure of Boracay, although unprecedented and radical as it may seem, was reasonably necessary and not unduly oppressive under the circumstances. It was the most practical and realistic means of ensuring that rehabilitation works in the island are started and carried out in the most efficacious and expeditious way. Absent a clear showing of grave abuse of discretion, unreasonableness, arbitrariness or oppressiveness, the Court will not disturb the executive determination that the closure of Boracay was necessitated by the foregoing circumstances. As earlier noted, petitioners totally failed to counter the factual bases of, and justification for the challenged executive action.

Undoubtedly, Proclamation No. 475 is a valid police power measure. To repeat, police power constitutes an implied limitation to the Bill of Rights, and that even liberty itself, the greatest of all rights, is subject to the far more overriding demands and requirements of the greater number.

For the above reasons, petitioners' constitutional challenge on Proclamation No. 475 anchored on their perceived impairment of the right to travel must fail.

Petitioners have no vested rights on their sources of income as to be entitled to due process

Petitioners argue that Proclamation No. 475 impinges on their constitutional right to due process since they were deprived of the corollary right to work and earn a living by reason of the issuance thereof.

Concededly, "[a] profession, trade or calling is a property right within the meaning of our constitutional guarantees. One cannot be deprived of the right to work and the right to make a living because these rights are property rights, the arbitrary and unwarranted deprivation of which normally constitutes an actionable wrong."[57] Under this premise, petitioners claim that they were deprived of due process when their right to work and earn a living was taken away from them when Boracay was ordered closed as a tourist destination. It must be stressed, though, that "when the conditions so demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to general welfare."[58] Otherwise, police power as an attribute to promote the common good would be diluted considerably if on the mere plea of petitioners that they will suffer loss of earnings and capital, government measures implemented pursuant to the said state power would be stymied or invalidated.[59]

In any case, petitioners, particularly Zabal and Jacosalem, cannot be said to have already acquired vested rights to their sources of income in Boracay. As heretofore mentioned, they are part of the informal sector of the economy where earnings are not guaranteed. In *Southern Luzon Drug Corporation v. Department of Social Welfare and Development*,[60] the Court elucidated on vested rights, as follows:

x x x Vested rights are 'fixed, unalterable, or irrevocable.' More extensively, they are depicted as follows:

> Rights which have so completely and definitely accrued to or settled in a person that they are not subject to be defeated or cancelled by the act of any other private person, and which

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[57] *JMM Promotion and Management, Inc. v. Court of Appeals*, 329 Phil. 87, 99-100 (1996).

[58] *Carlos Superdrug Corporation v. Department of Social Welfare and Development*, 553 Phil. 120, 132 (2007).

[59] *Id*.

[60] G.R. No. 199669, April 25, 2017, 824 SCRA 164.

> it is right and equitable that the government should recognize and protect, as being lawful in themselves, and settled according to the then current rules of law, and of which the individual could not be deprived arbitrarily without injustice, or of which he could not justly be deprived otherwise than by the established methods of procedure and for the public welfare. x x x A right is not 'vested' unless it is more than a mere expectancy based on the anticipated continuance of present laws; it must be an established interest in property, not open to doubt. x x x To be vested in its accurate legal sense, a right must be complete and consummated, and one of which the person to whom it belongs cannot be divested without his consent. x x x[61]

Here, Zabal and Jacosalem's asserted right to whatever they may earn from tourist arrivals in Boracay is merely an inchoate right or one that has not fully developed and therefore cannot be claimed as one's own. An inchoate right is a mere expectation, which may or may not come into fruition. "It is contingent as it only comes 'into existence on an event or condition which may not happen or be performed until some other event may prevent their vesting.'"[62] Clearly, said petitioners' earnings are contingent in that, even assuming tourists are still allowed in the island, they will still earn nothing if no one avails of their services. Certainly, they do not possess any vested right on their sources of income, and under this context, their claim of lack of due process collapses. To stress, only rights which have completely and definitely accrued and settled are entitled protection under the due process clause.

Besides, Proclamation No. 475 does not strip Zabal and Jacosalem of their right to work and earn a living. They are free to work and practice their trade elsewhere. That they were not able to do so in Boracay, at least for the duration of its closure, is a necessary consequence of the police power measure to close and rehabilitate the island.

Also clearly untenable is petitioners' claim that they were being made to suffer the consequences of the environmental

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[61] *Id*. at 211.

[62] *Id*. at 212.

transgressions of others. It must be stressed that the temporary closure of Boracay as a tourist destination and the consequent ban of tourists into the island were not meant to serve as penalty to violators of environmental laws. The temporary closure does not erase the environmental violations committed; hence, the liabilities of the violators remain and only they alone shall suffer the same. The temporary inconvenience that petitioners or other persons may have experienced or are experiencing is but the consequence of the police measure intended to attain a much higher purpose, that is, to protect the environment, the health of the people, and the general welfare. Indeed, any and all persons may be burdened by measures intended for the common good or to serve some important governmental interest.[63]

No intrusion into the autonomy of the concerned LGUs

The alleged intrusion of the President into the autonomy of the LGUs concerned is likewise too trivial to merit this Court's consideration. Contrary to petitioners' argument, RA 10121 recognizes and even puts a premium on the role of the LGUs in disaster risk reduction and management as shown by the fact that a number of the legislative policies set out in the subject statute recognize and aim to strengthen the powers decentralized to LGUs.[64] This role is echoed in the questioned proclamation.

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[63] *Manila Memorial Park, Inc. v. Secretary of the Department of Social Welfare and Development*, 722 Phil. 538, 590 (2013).

[64] Relevant legislative polices of RA 10121 state, *viz*.:

SECTION 2. *Declaration of Policy*. — It shall be the policy of the State to:

x x x x x x x x x

(e) Develop, promote, and implement a comprehensive National Disaster Risk Reduction and Management Plan (NDRRMP) **that aims to strengthen the capacity** of the national government and **the local government units (LGUs)**, together with partner stakeholders, to build the disaster resilience of communities, and to institutionalize arrangements and measures for reducing disaster risks, including projected climate risks, and enhancing disaster preparedness and response capabilities at all levels;

x x x x x x x x x

The fact that other government agencies are involved in the rehabilitation works does not create the inference that the powers and functions of the LGUs are being encroached upon. The respective roles of each government agency are particularly defined and enumerated in Executive Order No. 53[65] and all are in accordance with their respective mandates. Also, the situation in Boracay can in no wise be characterized or labelled as a mere local issue as to leave its rehabilitation to local actors. Boracay is a prime tourist destination which caters to both local and foreign tourists. Any issue thereat has corresponding effects, direct or otherwise, at a national level. This, for one, reasonably takes the issues therein from a level that concerns only the local officials. At any rate, notice must be taken of the fact that even if the concerned LGUs have long been fully aware of the problems afflicting Boracay, they failed to effectively remedy it. Yet still, in recognition of their mandated roles and involvement in the rehabilitation of Boracay, Proclamation No. 475 directed "*[a]ll departments, agencies and offices, including government-owned or controlled corporations and* ***affected local government units*** *x x x to implement and execute x x x the closure [of Boracay] and the appropriate rehabilitation works, in accordance with pertinent operational plans and directives, including the Boracay Action Plan.*"

As a final note, the Court in *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*,[66] called out the concerned government agencies for their cavalier attitude towards solving environmental destruction despite hard evidence and clear signs of climate crisis. It equated the failure to put

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(k) Recognize the local risk patterns across the country and **strengthen the capacity of LGUs** for disaster risk reduction and management through decentralized powers, responsibilities, and resources at the regional and local levels; [and]

(l) **Recognize and strengthen the capacities of LGUs** and communities in mitigating and preparing for, responding to, and recovering from the impact of disasters;

x x x x x x x x x

[65] *Supra* note 56.

[66] 595 Phil. 305 (2008).

environmental protection on a plane of high national priority to the then lacking level of bureaucratic efficiency and commitment. Hence, the Court therein took it upon itself to put the heads of concerned department-agencies and the bureaus and offices under them on continuing notice and to enjoin them to perform their mandates and duties towards the clean-up and/or restoration of Manila Bay, through a "continuing *mandamus*." It likewise took the occasion to state, *viz*.:

> In the light of the ongoing environmental degradation, the Court wishes to emphasize the extreme necessity for all concerned executive departments and agencies to immediately act and discharge their respective official duties and obligations. Indeed, time is of the essence; hence, there is a need to set timetables for the performance and completion of the tasks, some of them as defined for them by law and the nature of their respective offices and mandates.
>
> The importance of the Manila Bay as a sea resource, playground and as a historical landmark cannot be over-emphasized. It is not yet too late in the day to restore the Manila Bay to its former splendor and bring back the plants and sea life that once thrived in its blue waters. But the tasks ahead, daunting as they may be, could only be accomplished if those mandated, with the help and cooperation of all civic-minded individuals, would put their minds to these tasks and take responsibility. This means that the State, through [the concerned department-agencies], has to take the lead in the preservation and protection of the Manila Bay.
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> The era of delays, procrastination, and *ad hoc* measures is over. [The concerned department-agencies] must transcend their limitations, real or imaginary, and buckle down to work before the problem at hand becomes unmanageable. Thus, we must reiterate that different government agencies and instrumentalities cannot shirk from their mandates; they must perform their basic functions in cleaning up and rehabilitating the Manila Bay. x x x[67]

There is an obvious similarity in *Metropolitan Manila Development Authority* and in the present case in that both involve the restoration of key areas in the country which were once glowing with radiance and vitality but are now in shambles

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[67] *Id*. at 346-347.

due to abuses and exploitation. What sets these two cases apart is that in the former, those mandated to act still needed to be enjoined in order to act. In this case, the bold and urgent action demanded by the Court in *Metropolitan Manila Development Authority* is now in the roll out. Still, the voice of cynicism, naysayers, and procrastinators heard during times of inaction can still be heard during this time of full action – demonstrating a classic case of "damn if you do, damn if you don't". Thus, in order for the now staunch commitment to save the environment not to fade, it behooves upon the courts to be extra cautious in invalidating government measures meant towards addressing environmental degradation. Absent any clear showing of constitutional infirmity, arbitrariness or grave abuse of discretion, these measures must be upheld and even lauded and promoted. After all, not much time is left for us to remedy the present environmental situation. To borrow from *Oposa*, unless the State undertakes its solemn obligation to preserve the rights to a balanced and healthful ecology and advance the health of the people, "the day would not be too far when all else would be lost not only for the present generation, but also for those to come – generations which stand to inherit nothing but parched earth incapable of sustaining life."[68]

All told, the Court sustains the constitutionality and validity of Proclamation No. 475.

WHEREFORE, the Petition for Prohibition and *Mandamus* is **DISMISSED.**

SO ORDERED.

Bersamin, *C.J., Peralta, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando*, and *Carandang, JJ.*, concur.

Carpio and *Perlas-Bernabe, JJ.*, see separate concurring opinions.

Jardeleza, J., see concurring and dissenting opinion.

Leonen and Caguioa, JJ., dissent, see separate dissenting opinions.

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[68] *Oposa v. Hon. Factoran, Jr.*, *supra* note 52 at 713.

SEPARATE CONCURRING OPINION

CARPIO, *J.*:

This case involves the constitutionality of Proclamation No. 475,[1] declaring a state of calamity in Barangays Balabag, Manoc-Manoc and Yapak in 1,032-hectare Boracay Island and ordering the temporary closure of the island as a tourist destination for six months, starting 26 April 2018 until 25 October 2018.

I vote to dismiss the petition.

Proclamation No. 475 was issued because of the environmental degradation and destruction of the ecological balance of Boracay Island, which was aggravated by the continuing rise of tourist arrivals.[2] Under Section 4[3] of Presidential Decree

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[1] DECLARING A STATE OF CALAMITY IN THE BARANGAYS OF BALABAG, MANOC-MANOC AND YAPAK (ISLAND OF BORACAY) IN THE MUNICIPALITY OF MALAY, AKLAN, AND TEMPORARY CLOSURE OF THE ISLAND AS A TOURIST DESTINATION.

[2] The WHEREAS clauses of Proclamation No. 475 cites the result of the evaluation and investigation of the Inter-Agency Task Force composed of the DENR, DILG, and DOT, which revealed, among others, (1) high concentration of fecal coliform in some of the beaches in Boracay; (2) insufficient sewer and waste management system resulting in improper disposal of waste products, including discharge of waste water near the shores; (3) 937 illegal structures constructed on forestlands and wetlands, as well as 102 illegal structures on areas classified as easements.

[3] Section 4. *Presidential Proclamation of Environmentally Critical Areas and Projects.* – The President of the Philippines may, on his own initiative or upon recommendation of the National Environmental Protection Council, by proclamation declare certain projects, undertakings or areas in the country as environmentally critical. No person, partnership or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate issued by the President or his duly authorized representative. For the proper management of said critical project or area, the President may by his proclamation reorganize such government offices, agencies, institutions, corporations or instrumentalities including the re-alignment of government personnel, and their specific functions and responsibilities.

For the same purpose as above, the Ministry of Human Settlements shall: (a) prepare the proper land or water use pattern for said critical project(s)

No. 1586,[4] the President may declare certain areas in the country as environmentally critical. To pave the way for the rehabilitation of Boracay Island and prevent further degradation of its rich ecosystem, the proclamation ordered the temporary closure of the island as a tourist destination for six months[5] during which period the government would undertake massive road, drainage, and sewerage construction, as well as require all establishments to comply with the Clean Water Act, Clean Air Act, Code on Sanitation of the Philippines, Ecological Solid Waste Management Act of 2000, and other relevant laws. **However, local residents of Boracay Island were not prohibited from entering or leaving the island during the rehabilitation period as the prohibition applied only to travelers and tourists.**

The rehabilitation of Boracay Island resulted in the closure of almost all of the hotels because of non-compliance with the Clean Water Act, Clean Air Act, National Building Code of the Philippines, Code on Sanitation of the Philippines, Ecological Solid Waste Management Act of 2000, and the Environmental Compliance Certificate requirement.[6] The Department of Tourism

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or area(s); (b) establish ambient environmental quality standards; (c) develop a program of environmental enhancement or protective measures against calamitous factors such as earthquake, floods, water erosion and others, and (d) perform such other functions as may be directed by the President from time to time.

[4] ESTABLISHING AN ENVIRONMENTAL IMPACT STATEMENT SYSTEM INCLUDING OTHER ENVIRONMENTAL MANAGEMENT RELATED MEASURES AND FOR OTHER PURPOSES.

[5] https://news.abs-cbn.com/specials/the-boracay-project (visited 9 November 2018); https://news.abs-cbn.com/news/05/10/18/duterte-creates-boracay-inter-agency-rehab-task-force (visited 9 November 2018); http://www.officialgazette.gov.ph/downloads/2018/05may/20180508-EO-53-RRD-2.pdf (visited 9 November 2018).

[6] "The Environmental Management Bureau (EMB)-6 has issued 478 notices of violations to establishments in Boracay Island for violating environmental laws." https://pia.gov.ph/news/articles/1010563 (visited 12 November 2018); http://visayas.politics.com.ph/ang-dami-nga-denr-issues-478-violation-notices-to-boracay-businesses/ (visited 12 November 2018); https://businessmirror.com.ph/new-denr-list-reveals-more-boracay-businesses-violated-environment-laws/ (visited 12 November 2018).

suspended the accreditation of hotels and resorts in Boracay Island for six months to stop the disposal of wastewater into the seas.[7] Some establishments have also built illegal structures on Boracay's wetlands and forestlands which had to be dismantled.[8] Furthermore, some companies were operating without Environmental Compliance Certificate (ECC), in violation of Presidential Decree No. 1586 which established the Environmental Impact Statement System.[9]

Swimming in the waters of Boracay Island was generally not allowed during the six-month rehabilitation period.[10] The illegal discharge of untreated wastewater into the sea and the insufficient sewerage system caused the high concentration of fecal coliform in some of the beaches in Boracay Island.[11] The extremely high level of coliform bacteria which reached 47,460 mpn (most probable number) per 100 ml.[12] of water sample was alarming considering that the safe level for swimming and other activities is just 1,000 mpn/100ml. of water sample.[13]

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[7] https://news.abs-cbn.com/news/02/26/18/tourism-dept-to-suspend-accreditation-of-non-compliant-boracay-hotels (visited 9 November 2018).

[8] http://cnnphilippines.com/news/2018/03/02/senate-boracay-probe.html (visited 9 November 2018).

[9] https://businessmirror.com.ph/new-denr-list-reveals-more-boracay-businesses-violated-environment-laws/ (visited 12 November 2018).

[10] https://www.rappler.com/nation/200719-no-total-swimming-fishing-ban-boracay-residents (visited 16 November 2018).

[11] https://www.bworldonline.com/denr-to-fast-track-approvals-for-boracay-sewage-treatment-plants/ (visited 12 November 2018); https://businessmirror.com.ph/water-from-boracay-hidden-pipes-found-positive-for-coliform-bacteria/ (visited 12 November 2018).

[12] https://newsinfo.inquirer.net/979944/environmental-issues-have-been-hounding-boracay-for-20-years (visited 16 November 2018). https://www.philstar.com/headlines/2015/02/21/1426419/government-raises-concern-over-high-bacteria-levels-boracay-water (visited 16 November 2018).

[13] Section 6.2.1 of the Implementing Rules and Regulations of Chapter VIII — "Public Swimming or Bathing Places" of the Code on Sanitation of the Philippines states:

6.2 *Natural Bathing Places*

Thus, the ban on swimming imposed by the government was justified and necessary considering the high coliform level in the waters of Boracay Island, which was clearly unsafe for swimming and posed serious health and sanitation hazards.[14]

Many roads were closed for rehabilitation, widening, and construction, including the main road network which is the primary access to many establishments in the island.[15] Not only were the roads widened, sewage pipes were also laid to prevent sewage from flowing into the beach waters, and drainage pipes were installed to prevent clogged waterways which caused flooding before the closure.[16] As such, traveling around Boracay

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6.2.1 The quality of water for natural bodies of water used for swimming, bathing, or other contact recreation purposes shall be within the standard set by the Department of Environment and Natural Resources.

a. *Inland Waters*. — For inland water, total coliform shall not exceed 1,000 MPN per 100 ml of water sample, fecal coliform shall not exceed 200 MPN per 100 ml of water sample, and a pH range of 6.5-8.5.

b. *Marine and Estuarine Waters*. — For marine water, total coliform shall not exceed 1,000 MPN per 100 ml of water sample, fecal coliform shall not exceed 200 MPN per 100 ml of water sample, and a pH range of 6.0-8.5.

[14] Section 5.2.1 of the Implementing Rules and Regulations of Chapter VIII — "Public Swimming or Bathing Places" of the Code on Sanitation of the Philippines states:

5.2 *Safety Precautions at Public Natural Bathing Places*

5.2.1 No public bathing place shall be maintained on a natural body of water that has been determined and declared by the Department of Health or the local health office to be unsafe for bathing or may pose to be a menace to health of the bathers.

[15] https://businessmirror.com.ph/dpwh-fast-tracks-completion-of-boracay-islands-road-infrastructure/ (visited 9 November 2018); https://www.rappler.com/nation/210011-photo-boracay-to-open-war-zone-like-roads (visited 12 November 2018).

[16] https://news.mb.com.ph/2018/09/25/dpwh-speeds-up-completion-of-boracay-main-road/ (visited 12 November 2018); https://news.abs-cbn.com/focus/multimedia/slideshow/08/16/18/this-is-how-boracay-looks-like-then-and-now (visited 12 November 2018).

Island was severely restricted even for the local residents. Under Section 1 of Commonwealth Act No. 548,[17] "[national] roads may be temporarily closed to any or all classes of traffic by the Director of Public Works or his duly authorized representative whenever the condition of the road or the traffic thereon makes such action necessary or advisable in the public interest, or for a specified period, with the approval of the Secretary of Public Works and Communications."

The rehabilitation of Boracay Island as a consequence of Proclamation No. 475, declaring a state of calamity in Boracay Island, resulted in: (1) the closure of majority of the hotels and other business establishments for non-compliance with environmental laws; (2) the closure of many roads for repair, widening, and installation of drainage pipes; and (3) the ban on swimming in the beaches of Boracay Island due to the unsafe level of coliform bacteria.

Given such a situation in Boracay Island, the invocation on behalf of non-residents of Boracay Island of the right to travel, which includes the right to move freely within the country,[18] is misplaced. First, the valid closure of roads severely restricted movement around the island. Second, the closure of hotels and establishments pending investigation and accreditation left tourists and non-locals with no accommodations. Third, the valid ban on swimming in Boracay beaches for sanitary and health considerations made unavailable the main tourist attraction of Boracay Island.

Clearly, the condition of Boracay Island during the six-month rehabilitation period justified the prohibition on travelers and tourists from entering Boracay Island because of the physical impediment to traveling around the island resulting from the

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[17] AN ACT TO REGULATE AND CONTROL THE USE AND TRAFFIC ON NATIONAL ROADS AS WELL AS CONSTRUCTIONS ALONG THE SAME, PRESCRIBING PENALTIES FOR THE VIOLATION THEREOF.

[18] *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*, G.R. No. 225442, 8 August 2017, 835 SCRA 350, citing *Marcos v. Manglapus*, 258 Phil. 479, 497-498 (1989).

massive road, sewerage and drainage construction, the lack of accommodations, and the ban on swimming and other water recreational activities. Thus, Proclamation No. 475 is a valid exercise of various existing laws, that is, Presidential Decree No. 1586, Commonwealth Act No. 548, Clean Water Act of 2004 (Republic Act No. 9275), Clean Air Act of 1999 (Republic Act No. 8749), National Building Code of the Philippines (Republic Act No. 6541), Ecological Solid Waste Management Act of 2000 (Republic Act No. 9003), and the Code on Sanitation of the Philippines (Presidential Decree No. 856). These are laws pursuant to the police power of the state. There is no claim that these laws are unconstitutional. The President, in the exercise of his control over the Executive branch of government,[19] can directly exercise the functions of subordinate officials tasked to implement these laws.

Accordingly, I vote to **DISMISS** the petition.

SEPARATE CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur.

Among other points, I agree with the *ponencia* that "this case does not actually involve the right to travel in its essential sense contrary to what petitioners want to portray."[1] In my view, there can be no violation of the right to travel because, in the first place, Proclamation No. 475[2] is not an issuance that substantively regulates such right.

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[19] Section 17, Article VII, 1987 Constitution.

[1] *Ponencia,* p. 20.

[2] Entitled "DECLARING A STATE OF CALAMITY IN THE BARANGAYS OF BALABAG, MANOC-MANOC AND YAPAK (ISLAND OF BORACAY) IN THE MUNICIPALITY OF MALAY, AKLAN, AND TEMPORARY CLOSURE OF THE ISLAND AS A TOURIST DESTINATION," signed on April 26, 2018.

To expound, the right to travel has been regarded as integral to personal liberty,[3] which Blackstone defines as "freedom from **restraint of the person**."[4] The guarantee of free movement may be historically traced[5] to the Magna Carta of 1215 which assured the liberty for ***anyone***, except those imprisoned, outlawed, and the natives of an enemy country, safe and secure entry to and exit from England. It likewise assured ***merchants***, that they may enter, leave, stay, and move about England "unharmed and without fear."[6] Much later, or in 1948, the Universal Declaration of Human Rights (UDHR) recognized ***everyone's*** right to freedom of movement within the borders of each state, as well as the one's right to leave and return to his country.[7] The guarantee was likewise incorporated in the 1966 International Covenant on Civil and Political Rights,[8] which

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[3] See McAdam, Jane "*An Intellectual History of Freedom of Movement in International Law: The Right to Leave as a Personal Liberty*." Melbourne Journal of International Law, Vol. 12 (2011), p. 6.

[4] Shattuck, Charles E. "*The True Meaning of the Term 'Liberty' in Those Clauses in the Federal and State Constitutions Which Protect 'Life, Liberty, and Property*." Harvard Law Review, Vol. 4, No. 8 (1891), p. 377; citing William Blackstone, "*Absolute Right of Individuals*"; emphasis supplied. < www.jstor.org/stable/1322046 > (visited February 12, 2019).

[5] See Gould, William B. "*Right to Travel and National Security*," 1961 Wash. U. L. Q. 334 (1961). < http://openscholarship.wustl.edu/law_lawreview/vol1961/iss4/2 > (visited February 12, 2019).

[6] See English translation of the Magna Carta of 1215 < https://www.bl.uk/magna-carta/articles/magna-carta-english-translation > (visited February 12, 2019).

[7] Adopted on December 10, 1948. < https://www.ohchr.org/EN/UDHR/Documents/UDHR Translations/eng.pdf. > (visited February 12, 2019). Article 13 of the UDHR provides:

> Article 13.
>
> 1. Everyone has the right to freedom of movement and residence within the borders of each State.
>
> 2. Everyone has the right to leave any country, including his own, and to return to his country.

[8] Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force

the Philippines signed in the same year.[9] This guarantee was incorporated in our fundamental law in the 1973 Constitution,[10] and now appears in the 1987 Constitution.[11]

An examination of local cases wherein the right to travel was involved will support the premise that the right to travel – if one were to understand the same in its proper sense – ought to pertain to government regulations that directly affect the individual's freedom of locomotion or movement. For instance, in *Samahan ng mga Progresibong Kabataan v. Quezon City*,[12] the minors' exercise of travel rights was restricted by the curfew ordinances. In several cases,[13] the accused in a criminal case,

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23 March 1976, in accordance with Article 49. < https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx > (February 12, 2019).

Article 12, Part III of the 1966 International Covenant on Civil and Political Rights states:

Article 12.

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

[9] The Philippines signed on December 19. 1966. < https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280004bf5&clang=_en > (February 12, 2019).

[10] Section 5, Article IV of the 1973 CONSTITUTION provides:

Section 5. The liberty of abode and of travel shall not be impaired except upon lawful order of the court, or when necessary in the interest of national security, public safety, or public health.

[11] See Section 6, Article III of the 1987 CONSTITUTION.

[12] G.R. No. 225442, August 8, 2017, 835 SCRA 350.

[13] See *Manotoc, Jr. v. Court of Appeals*, 226 Phil. 75 (1986), *Silverio v. Court of Appeals*, 273 Phil. 128 (1991). In *Marcos v. Sandiganbayan*

especially those released on bail, were held to be validly prevented from departing from the Philippines. In *Philippine Association of Service Exporters, Inc. v. Drilon*,[14] the deployment ban was imposed on female domestic overseas workers. Further, during medical emergencies, a person may be isolated or quarantined to prevent the spread of communicable diseases.[15]

Even the statutes recognized as validly impairing the right to travel have, for its proper object, a palpably direct restraint on a person's freedom of movement, *viz.*: (1) in the Human Security Act,[16] the 1aw restricts the right to travel of an **individual charged** with the crime of terrorism even though such person is out on bail; (2) in the Philippine Passport Act of 1996,[17] the Secretary of Foreign Affairs or his authorized consular officer may refuse the issuance of, restrict the use of, or withdraw, a passport of a **Filipino citizen**; (3) in the Anti-Trafficking in Persons Act of 2003,[18] the Bureau of Immigration, in order to manage migration and curb trafficking in persons, issued

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(317 Phil. 149, 167 [1995]), the Court stated that "a person's right to travel is subject to the usual constraints imposed by the very necessity of safeguarding the system of justice." See also *Lee v. The State* (474 S.E.2d 281 [1996]), wherein the Court of Appeals of Georgia held that an arrest restrains a person's liberty to come and go as he pleases.

[14] See 246 Phil. 393 (1988).

[15] See Internal Health Regulations of the World Health Organization, 3rd Edition (2005), pp. 23-24 < https://apps.who.int/iris/bitstream/handle/10665/246107/9789241580496-eng.pdf; jsessionid= 7B5FCF4B030035B953CDCDEE7F92D6EC?sequence=1 > (February 12, 2019).

[16] Republic Act No. (RA) 9372, entitled "AN ACT TO SECURE THE STATE AND PROTECT OUR PEOPLE FROM TERRORISM," approved on March 6, 2007.

[17] RA 8239, approved on November 22, 1996.

[18] RA 9208, entitled "AN ACT TO INSTITUTE POLICIES TO ELIMINATE TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND CHILDREN, ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THE PROTECTION AND SUPPORT OF TRAFFICKED PERSONS, PROVIDING PENALTIES FOR ITS VIOLATIONS, AND FOR OTHER PURPOSES," approved on May 26, 2003.

Memorandum Order RADJR No. 2011-011,[19] allowing its Travel Control and Enforcement Unit to "offload **passengers** with fraudulent travel documents, doubtful purpose of travel, including possible victims of human trafficking" from the Philippine ports; and (4) in the Inter-Country Adoption Act of 1995,[20] the Inter-Country Adoption Board may issue rules restrictive of an **adoptee**'s right to travel "to protect the Filipino child from abuse, exploitation, trafficking, and/or sale or any other practice in connection with adoption which is harmful, detrimental, or prejudicial to the child."[21]

In all these instances, the restrictions on the right to travel **were imposed on a person or group of persons**,[22] seemingly attaching unto them some form of "ball and chain" to limit their movement. **Clearly, this is not the situation presented in this case.** While the closure of Boracay pursuant to Proclamation No. 475 prohibited the entry of tourists and non-residents thereto, these people still remained free to move about in other parts of the country without arbitrary restraint. Thus, whatever effect such regulation may have on a person's ability

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[19] Entitled "STRENGTHENING THE TRAVEL CONTROL AND ENFORCEMENT UNIT (TCEU) UNDER AIRPORT OPERATIONS DIVISION (AOD) AND DEFINING THE DUTIES AND FUNCTIONS THEREOF" dated June 30, 2011.

[20] RA 8043, entitled "AN ACT ESTABLISHING THE RULES TO GOVERN INTER-COUNTRY ADOPTION OF FILIPINO CHILDREN, AND FOR OTHER PURPOSES," approved on June 7, 1995.

[21] See *Leave Division, Office of Administrative Services, Office of the Court Administrator v. Heusdens*, 678 Phil. 328, 339-340 (2011).

[22] See also the United Nations Convention relating to the Status of Refugees, adopted in 1951 and entered into force on 22 April 1954, which stresses refugees' freedom of movement, to wit:

> *Article 26*
> *Freedom of Movement*
>
> Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

to travel to such a specific place is merely incidental in nature and accordingly, is conceptually remote from the right's proper sense. To my mind, Proclamation No. 475 is more akin to government regulations that amount to the "cordoning-off" of areas ravaged by flood, fire, or other calamities, where access by people thereto may indeed be prohibited pursuant to considerations of safety and general welfare based on circumstantial exigencies. Thus, as the right to travel is not the correct vantage point to resolve this case, there is no need to determine whether or not an explicit statutory enactment exists to justify the impairment of said right as required under Section 6, Article III of the 1987 Constitution.[23]

Lest it be misunderstood, the extrication of this case from a "right to travel analysis" does not necessarily mean that the President is, by his sole accord, both ***authorized and justified*** in issuing Proclamation No. 475.

Fundamentally speaking, the President is the Chief of the Executive Department whose main task is to faithfully execute the laws. In its simple sense, his duty is not to make law, but rather, implement the law. Proclamation No. 475 is not law, but rather, an executive issuance which derives statutory imprimatur from existing laws and hence, has the "force and effect" of law. As its titular heading denotes, Proclamation No. 475 is a **declaration of a state of calamity** in the *barangays* of Balabag, Manoc-Manoc, and Yapak (Island of Boracay) in the Municipality of Malay, Aklan. In order to address the situation declared thereunder, it was necessary for the Executive to effect "expeditious rehabilitation," and to implement this objective, the President had to direct the area's temporary closure.

To be sure, insofar as this case is concerned, the power of the President to declare a state of calamity over a particular locality may be sourced from the Administrative Code of 1987[24]

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[23] See *Genuino v. De Lima* (G.R. Nos. 197930, 199034, and 199046, April 17, 2018) in relation to Section 6, Article III of the 1987 Constitution.

[24] Executive Order No. 292, entitled "INSTITUTING THE ADMINISTRATIVE CODE OF 1987" (August 3, 1988). The President's

in relation to the Philippine Disaster Risk Reduction and Management Act of 2010.[25] Based on these laws, the President, pursuant to the recommendation of the National Disaster Risk Reduction and Management Council (NDRRMC), is authorized to "declare a state of calamity[26] in areas extensively damaged," as well as to approve "proposals to restore normalcy in the affected areas."[27] On this basis, the NDRRMC recommended to the President not only the declaration of a state of calamity in Boracay but also, as a means to restore normalcy therein, the "temporary closure of the Island as a tourist destination" for the purpose of assisting the government in the "expeditious rehabilitation" of the same.[28] Thus, as an off-shoot of the

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ordinance power is explicitly stated in Section 4, Chapter 2, Title I, Book III of the Administrative Code of 1987, to wit:

Section 4. *Proclamations*. – Acts of the President fixing a date or declaring a status or condition of public moment or interest, upon the existence of which the operation of a specific law or regulation is made to depend, shall be promulgated in proclamations which shall have the force of an executive order. (Underscoring supplied)

[25] RA 10121, entitled "AN ACT STRENGTHENING THE PHILIPPINE DISASTER RISK REDUCTION AND MANAGEMENT SYSTEM, PROVIDING FOR THE NATIONAL DISASTER RISK REDUCTION AND MANAGEMENT FRAMEWORK AND INSTITUTIONALIZING THE NATIONAL DISASTER RISK REDUCTION AND MANAGEMENT PLAN, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES," May 27, 2010.

[26] Section 2 (II) of RA 10121 defines "**State of Calamity**" as "a condition involving mass casualty and/or major damages to property, disruption of means of livelihoods, roads and normal way of life of people in the affected areas as a result of the occurrence of natural or human-induced hazard."

[27] See Section 6 (c) of RA 10121 which states:

> Section 6. *Powers and Functions of the NDRRMC*. x x x
>
> x x x x x x x x x
>
> (c) x x x recommend to the President the declaration of a state of calamity in areas extensively damaged; and submit **proposals to restore normalcy in the affected areas**, to include calamity fund allocation[.] (Emphasis and underscoring supplied)

[28] The last whereas clause of Proclamation No. 475 reads:

declaration of a state of calamity, and acting upon the recommendation of the NDRRMC, the President found it necessary to decree the temporary closure of the affected areas if only to ensure the Island's proper rehabilitation.

While it appears that the above-cited statutes do not spell out in "black- and-white" the President's power to temporarily close-off an area, it is my opinion that a logical complement to the Executive's power to faithfully execute the laws is the authority to perform all necessary and incidental acts that are reasonably germane to the statutory objective that the President is, after all, tasked to execute. What comes to mind is the doctrine of necessary implication which evokes that "[e]very statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms. *Ex necessitate legis.* And every statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege."[29] This principle, in its general sense, holds true in this case. By and large, I find it unreasonable that a President who declares a state of calamity, and who has been further prompted by a specialized government agency created for disaster operations pursuant to existing laws to effect a viable plan of action is nonetheless impotent to pursue the necessary steps to effect a viable plan of action. Surely, the President must be given reasonable leeway to address calamitous situations, else he be reduced to a mere mouthpiece of doom.

WHEREAS, pursuant to [RA 10121] x x x, the [NDRRMC] has recommended the declaration of a State of Calamity in the Island of Boracay and the temporary closure of the Island as a tourist destination to ensure public safety and public health, and to assist the government in its expeditious rehabilitation, as well as in addressing the evolving socio-economic needs of the affected communities[.] (Underscoring supplied)

[29] See *Robustum Agricultural Corporation v. Department of Agrarian Reform and Land Bank of the Philippines*, G.R. No. 221484, November 19, 2018.

At this juncture, it is apt to state that Proclamation No. 475 explicitly recognizes in its "whereas clauses" the State's constitutional duty to protect and advance the rights to health and to a balanced and healthful ecology,[30] which duty has been translated in numerous legislative enactments, such as the Philippine Clean Water Act of 2004,[31] and as mentioned, the Philippine Disaster Risk Reduction and Management Act of 2010, as well as the Administrative Code of 1987. The Philippine Clean Water Act of 2004 authorizes the Department of Environment and Natural Resources (DENR) to undertake emergency clean-up operations[32] to counter water pollution. As earlier mentioned, the Philippine Disaster Risk Reduction and Management Act of 2010 empowers the NDRRMC to recommend the declaration of a state of calamity in areas extensively damaged by either natural or human-induced hazards such as environment degradation, as well as proposals to restore normalcy in the affected areas, such as through **rehabilitation**[33]

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[30] In *Oposa v. Factoran, Jr.* (G.R. No. 101083, July 30, 1993, 224 SCRA 792, 804-805), the Court held that "[w]hile the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation — aptly and fittingly stressed by the petitioners — the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind." The Court also exclaimed that the right to a balanced and healthful ecology "unites with the right to health."

[31] RA 9275, entitled "AN ACT PROVIDING FOR A COMPREHENSIVE WATER QUALITY MANAGEMENT AND FOR OTHER PURPOSES," approved on March 22, 2004.

[32] Section 16, Article 3 of RA 9275 reads:

Section 16. *Clean-Up Operations.* – x x x *Provided*, That in the event emergency clean-up operations are necessary x x x **the Department**, in coordination with other government agencies concerned, shall **conduct containment, removal and clean-up operations**. x x x. (Emphasis supplied)

[33] Section 3 (ee) of RA 10121 defines "**Rehabilitation**" as "measures that ensure the ability of affected communities/areas to restore their normal

or the rebuilding of damaged infrastructures. Further, the Administrative Code of 1987 grants the DENR the power to "exercise supervision and control over [alienable public lands],"[34] such as Boracay, and the Department of Interior and Local Government the authority to implement programs "to meet national or local emergencies arising from natural or man-made disasters,"[35] such as environmental destruction.

Ultimately, the agglomeration of the above-stated laws reveals that the Executive Department has sufficient statutory authority to clean up the Island. Since the Constitution vests all executive power in the President, and on this score, grants him the power of control over all executive departments, he can, within the bounds of law, integrate and take on the above-stated functions, and in the exercise of which, issue a directive to implement an environmental rehabilitation program as recommended by the relevant state agency. At the risk of sounding repetitive, the temporary closure of the Island to tourists was necessary to effectively execute Boracay's rehabilitation program pursuant to a declaration of a state of calamity. Therefore, the President had sufficient authority from both the Constitution and statutes to issue Proclamation No. 475. That being said, and as a point of clarification, I find it unnecessary to situate such authority in his unstated residual powers.[36]

Having discussed the President's authority, the final question to be traversed is whether or not there was ample justification for the issuance of Proclamation No. 475.

As previously mentioned, this case should not be assessed against the parameters of the right to travel. As Proclamation

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level of functioning by rebuilding livelihood and damaged infrastructures and increasing the communities' organizational capacity."

[34] See Section 4 (4), Chapter I, Title XIV, Book IV of the Administrative Code of 1987.

[35] See Section 3 (5), Chapter I, Title XII, Book IV of the Administrative Code of 1987.

[36] In response to the discussions in Justice Alfredo Benjamin S. Caguioa's Dissenting Opinion, pp. 17-27.

No. 475 constitutes a restriction not against a person's freedom of movement, but rather, a "place-based" regulation, I deem it appropriate to instead examine the issuance's validity under the lens of petitioners' right to property under Section 1, Article III of the 1987 Constitution. After all, this approach specifically corresponds to petitioners' line of argumentation. In particular, as found in the petition, petitioners Mark Anthony V. Zabal (Zabal) and Thiting Estoso Jacosalem (Jacosalem) assail the validity of Proclamation No. 475 on the ground that it violated their right as persons earning a living in the Boracay Island. As alleged, Zabal earns a living by making sandcastles while Jacosalem works as a driver for tourists.[37] Accordingly, they submit that the exclusion of tourists from the Island drastically affected their trade or livelihood.[38]

Under the auspices of Section 1, Article III of the 1987 Constitution, protected property includes the right to work and the right to earn a living.[39] The purpose of the due process guaranty is "to prevent arbitrary governmental encroachment against the life, liberty, and property of individuals."[40] While the right to property is sheltered by due process provision, it is by no means absolute as it must yield to the general welfare.[41] Thus, the State may deprive persons of property rights provided that the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.[42]

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[37] See Petition, p. 3.

[38] See *id*. at 20 and 22.

[39] See Senior Associate Justice Antonio T. Carpio's Separate Concurring Opinion in *Serrano v. Gallant Maritime Services, Inc*., 601 Phil. 245, 307 (2009).

[40] *White Light Corporation v. City of Manila*, 596 Phil. 444, 461 (2009).

[41] See *Carlos Superdrug Corporation v. Department of Social Welfare and Development*, 553 Phil. 120, 132 (2007).

[42] In *Social Justice Society v. Atienza, Jr.* (568 Phil. 658, 702 [2008]), the Court held that the State "may be considered as having properly exercised [its] police power only if the following requisites are met: (1) the interests

In this case, although the exclusion of tourists from the Island drastically affected the trade or livelihood of those reliant on them, including petitioners, I submit that the government had a **legitimate State interest** in rehabilitating the affected localities of Boracay given the Island's current critical state. Findings of various government agencies in the Island reveal its precarious environmental condition, to wit: (*a*) high concentration of fecal coliform due to improper sewage infrastructure and sewer waste management system; (*b*) dirty water resulting in the degradation of coral reefs and coral cover; (*c*) improper solid waste management; (*d*) destruction of natural habitats in the island; (*e*) beach erosion caused by illegal extraction of sand along the beach; (*f*) illegal structures along the foreshore; and (*g*) unauthorized discharge of untreated waste water near the shore.[43] Notably, these environmental problems were found to have been aggravated by "tourist influx."[44]

To effectively remedy the Island's environmental woes, "expeditious rehabilitation" thereof became crucial, and in line therewith, the entry of tourists became necessary to suspend. As aptly rationalized in the *ponencia*:

> Certainly, the closure of Boracay, albeit temporarily, gave the island its much needed breather, and likewise afforded the government the necessary leeway in its rehabilitation program. Note that apart from review, evaluation and amendment of relevant policies, **the bulk of the rehabilitation activities involved inspection, testing, demolition, relocation, and construction. These works could not have easily been done with tourists present. The rehabilitation**

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of the public generally, as distinguished from those of a particular class, require its exercise and (2) **the means employed are reasonably necessary for the accomplishment of the purpose** and **not unduly oppressive upon individuals**. In short, there must be a concurrence of a lawful subject and a lawful method." (Emphasis supplied)

[43] See 4th-7th whereas clauses of Proclamation No. 475.

[44] See 8th and 9th whereas clauses of Proclamation No. 475.

works in the first place were not simple, superficial or mere cosmetic but rather quite complicated, major, and permanent in character as they were intended to serve as long term solutions to the problem. x x x Moreover, as part of the rehabilitation efforts, operations of establishments in Boracay had to be halted in the course thereof since majority, if not all of them, need to comply with environmental and regulatory requirements in order to align themselves with the government's goal to restore Boracay into normalcy and develop its sustainability. **Allowing tourists into the island while it was undergoing necessary rehabilitation would therefore be pointless as no establishment would cater to their accommodation and other needs.** Besides, it could not be said that Boracay, at the time of the issuance of the questioned proclamation, was in such a physical state that would meet its purpose of being a tourist destination. For one, its beach waters could not be said to be totally safe for swimming. x x x Indeed, the temporary closure of Boracay, although unprecedented and radical as it may seem, was reasonably necessary and not unduly oppressive under the circumstances. **It was the most practical and realistic means of ensuring that rehabilitation works in the island are started and carried out in the most efficacious and expeditious way.**[45] (Emphases supplied)

Moreover, the limited six (6)-month period shows that the closure was not unduly oppressive upon individuals, and was put in place only to implement the desired State objective. Therefore, all things considered, Proclamation No. 475 cannot be said to have been issued with grave abuse of discretion, and as such, remains constitutional.

Accordingly, I vote to **DISMISS** the petition.

CONCURRING AND DISSENTING OPINION

JARDELEZA, *J.*:

The following are the basic facts of the case:

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[45] *Ponencia*, pp. 23-24.

On April 26, 2018, President Rodrigo R. Duterte issued Proclamation No. 475 declaring a state of calamity in the Island of Boracay in Malay, Aklan, and ordered the closure of the island as a tourist destination for six months, or until October 25, 2018. Petitioners Mark Anthony Zabal (Zabal), Thiting Estoso Jacosalem (Jacosalem), and Odon S. Bandiola (Bandiola) filed this special civil action for prohibition and *mandamus* (with application for temporary restraining order, preliminary injunction and/or *status quo ante* order) seeking to, among others, enjoin the implementation of Proclamation No. 475 and compel public respondents to allow the entry of both tourists and residents into Boracay Island.

Before going into the substance of the issues raised in the petition, I note that petitioners sought direct recourse with this Court on the ground, among others, that "[t]here are no factual issues raised in this case, only questions of law x x x."[1] Indeed, this Court exercises original jurisdiction over petitions for prohibition and mandamus concurrently with the Court of Appeals (CA) and the Regional Trial Courts (RTCs).[2] The doctrine of hierarchy of courts, however, dictates that such actions first be filed before the trial courts. Save for the specific instance provided under the Constitution,[3] this Court is not a trier of facts.[4] Its original jurisdiction cannot be invoked to resolve issues which are inextricably connected with underlying questions of fact.

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[1] *Rollo*, p. 6.

[2] CONSTITUTION, Art. VIII, Sec. 5(1); and Sections 9(1) and 21(1) of Batas Pambansa Bilang 129, otherwise known as The Judiciary Reorganization Act of 1980.

[3] Third paragraph, Sec. 18, Art. VII of the Constitution provides:

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ [of *habeas corpus*] or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

[4] Sec. 2, Rule 3 of the Internal Rules of the Supreme Court (A.M. No. 10-4-20-SC). See *Mafinco Trading Corporation v. Ople*, G.R. No. L-37790, March 25, 1976, 70 SCRA 139, 161.

This Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the Constitution.[5] Direct recourse to this Court may, as petitioners correctly suggest, be allowed only to resolve questions which do not require the prior adjudication of factual issues. It is thus on this basis that I will examine and resolve the present petition.

Petitioners challenge the legality of Proclamation No. 475[6] insofar as it ordered the closure of Boracay Island on the following grounds: (1) it is an invalid exercise by the President of legislative power; (2) it violates the right to travel insofar as it seeks to restrict the entry of tourists and non-residents into the island; (3) it operates to deprive persons working in the island of their means of livelihood without due process of law; and (4) it violates the principle of local autonomy insofar as affected local government units are ordered to implement the closure.[7]

My examination of the issues raised and arguments offered by petitioners shows that, of the four principal issues raised

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[5] *Vergara, Sr. v. Suelto*, G.R. No. 74766, December 21, 1987, 156 SCRA 753, 766.

[6] I find that petitioners have legal standing to file the present suit. In *Agan, Jr. v. Philippine International Air Terminals Co., Inc.* (G.R. Nos. 155001, 155547, & 155661, May 5, 2003, 402 SCRA 612), an interest to protect oneself from financial prejudice and loss of source of income has been held sufficient to confer petitioners therein with legal standing to challenge the contracts of Philippine International Air Terminals Co., Inc. Here, Zabal and Jacosalem have shown that, with the closure of Boracay Island, they are also in imminent danger of losing their sources of income, as sandcastle maker and tourist driver, respectively, operating in the said island.

Similarly, and consistent with this Court's ruling in *Samahan Ng Mga Progresibong Kabataan (SPARK) v. Quezon City* (G.R. No. 225442, August 8, 2017), I find that petitioner Bandiola also has legal standing to raise the issue affecting the right to travel insofar as he has alleged that he is a non-resident who will no longer be allowed entry to Boracay Island beginning April 26, 2018.

[7] *Rollo*, pp. 4, 58.

against the constitutionality of Proclamation No. 475, only the first issue poses a question the complete resolution of which does not involve underlying questions of fact. On the other hand, and as I shall later demonstrate, the three remaining issues involve underlying questions of fact which cannot be resolved by this Court at the first instance.

I

Petitioners claim that Proclamation No. 475 is an invalid exercise by the President of legislative power.[8] According to petitioners, access to Boracay can be validly restricted (as part of the right to travel) only through the exercise of police power, that is, by law. They maintain that no such law exists; thus, the President, by restricting and altogether prohibiting entry to Boracay Island, has arrogated unto himself legislative powers rightfully belonging to the Congress.[9]

The primary legal question therefore is whether there is a law which allows for a restriction on the right to travel to Boracay. If the Court finds that there is none, then this litigation should end with the grant of the petition. If, however, the Court finds that such a law exists, it must then determine whether there was a valid delegation to the President of the power to restrict travel.

I find that the President has the authority, under Republic Act No. (RA) 10121,[10] to issue the challenged Proclamation as an exercise of his power of subordinate legislation.

First, the text of the Proclamation clearly counts RA 10121 among its legal bases for the temporary closure of Boracay Island. I quote:

WHEREAS, pursuant to RA No. 10121, or the Philippine Disaster Risk Reduction and Management Act of 2010, the National Disaster Risk Reduction and Management Council has recommended **the**

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[8] *Id.* at 14-17, 58.

[9] *Id.* at 20, 75-76, 78.

[10] Otherwise known as the Philippine Disaster Risk Reduction and Management Act of 2010.

declaration of a State of Calamity in the Island of Boracay and the temporary closure of the Island as a tourist destination to ensure public safety and public health, and to assist the government in its expeditious rehabilitation, as well as in addressing the evolving socio-economic needs of affected communities;

x x x x x x x x x[11]

Second, RA 10121 allows for a restriction on the right to travel *under certain circumstances.*

The expressed legislative intention in RA 10121 was "for the development of policies and plans and **the implementation of actions and measures pertaining to all aspects of disaster risk reduction and management**."[12] Disaster risk reduction and management was, in turn, defined under Section 3(o) as follows:

(o) "Disaster Risk Reduction and Management" — **the systematic process of using administrative directives, organizations, and operational skills and capacities to implement strategies, policies and improved coping capacities in order to lessen the adverse impacts of hazards and the possibility of disaster**. Prospective disaster risk reduction and management refers to risk reduction and management activities that address and seek to avoid the development of new or increased disaster risks, especially if risk reduction policies are not put in place.[13]

Disaster risk reduction and management measures can run the gamut from disaster prevention to disaster mitigation, disaster preparedness, and disaster response, all of which are also defined under RA 10121 as follows:

Sec. 3. *Definition of Terms.* — For purposes of this Act, the following shall refer to:

x x x x x x x x x

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[11] Emphasis and underscoring supplied.

[12] Sec. 4 of RA 10121. Emphasis supplied.

[13] Emphasis and underscoring supplied.

(h) "Disaster" — a serious disruption of the functioning of a community or a society **involving widespread human, material, economic or environmental losses and impacts**, which exceeds the ability of the affected community or society to cope using its own resources. Disasters are often described as a result of the combination of: the exposure to a hazard; the conditions of vulnerability that are present: and insufficient capacity or measures to reduce or cope with the potential negative consequences. Disaster impacts may include loss of life, injury, disease and other negative effects on human, physical, mental and social well-being, together with damage to property, destruction of assets, loss of services, social and economic disruption and **environmental degradation**.

(i) "Disaster Mitigation" — the lessening or limitation of the adverse impacts of hazards and related disasters. Mitigation measures encompass engineering techniques and hazard-resistant construction as well as improved environmental policies and public awareness.

(j) "Disaster Preparedness" — the knowledge and capacities developed by governments, professional response and recovery organizations, communities and individuals to **effectively anticipate, respond to, and recover from, the impacts of likely, imminent or current hazard events or conditions**. Preparedness action is carried out within the context of disaster risk reduction and management and aims to build the capacities needed to efficiently manage all types of emergencies and achieve orderly transitions from response to sustained recovery. **Preparedness is based on a sound analysis of disaster risk and good linkages with early warning systems, and includes such activities as contingency planning, stockpiling of equipment and supplies, the development of arrangements for coordination, evacuation and public information, and associated training and field exercises.** These must be supported by formal institutional, legal and budgetary capacities.

(k) "Disaster Prevention" - the outright avoidance of adverse impacts of hazards and related disasters. It expresses the concept and intention to completely avoid potential adverse impacts through **action taken in advance** such as construction of dams or embankments that eliminate flood risks, **land-use regulations that do not permit any settlement in high-risk zones**, and seismic engineering designs that ensure the survival and function of a critical building in any likely earthquake.

(l) "Disaster Response" — the provision of emergency services and public assistance during or immediately after a disaster in order to

save lives, **reduce health impacts, ensure public safety** and meet the basic subsistence needs of the people affected. Disaster response is predominantly focused on immediate and short-term needs and is sometimes called "disaster relief."

x x x x x x x x x[14]

Thus, within the range of disaster risk reduction and management measures can be found **forced or preemptive evacuation and prohibitions against settlement in high-risk zones**, both of which necessarily implicate some restriction on a person's liberty of movement to ensure public safety.

Third, in obvious recognition of its inability to "cope directly with the myriad problems"[15] attending the matter, the Congress created administrative agencies, such as the National Disaster Risk Reduction and Management Council (NDRRMC) and the Local Disaster Risk Reduction and Management Councils (LDRRMCs), to help implement the legislative policy of disaster risk reduction and management under RA 10121.

Under the law, the NDRRMC, for example, was tasked to, among others, **develop** a national disaster risk reduction and management framework (NDRRMF), which shall serve as "the principal guide to disaster risk reduction and management efforts in the country,"[16] **advise** the President on the status of disaster preparedness, **recommend** the declaration (and lifting) by the President of a state of calamity in certain areas, and **submit proposals** to restore normalcy in affected areas.[17] Under Section 25, it was also expressly tasked to come up with "the necessary rules and regulations for the effective implementation of [the] Act."

These, to me, are evidence of a general grant of quasi-legislative power, or the power of subordinate legislation, in

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[14] Emphasis and underscoring supplied.

[15] *Eastern Shipping Lines, Inc. v. POEA,* G.R. No. 76633, October 18, 1988, 166 SCRA 533, 544.

[16] Sec. 6(a) of RA 10121.

[17] Sections 6(c) and 16 of RA 10121.

favor of the implementing agencies. With this power, administrative bodies may implement the broad policies laid down in a statute by "filling in" the details which the Congress may not have the opportunity or competence to provide.[18] In *Abakada Guro Party List v. Purisima*,[19] this Court explained:

> Congress has two options when enacting legislation to define national policy within the broad horizons of its legislative competence. It can itself formulate the details or it can assign to the executive branch the responsibility for making necessary managerial decisions in conformity with those standards. In the latter case, the law must be complete in all its essential terms and conditions when it leaves the hands of the legislature. Thus, what is left for the executive branch or the concerned administrative agency when it formulates rules and regulations implementing the law is to fill up details (supplementary rule-making) or ascertain facts necessary to bring the law into actual operation (contingent rule-making).[20] (Citations omitted.)

This results in *delegated legislation*[21] which, to be valid, should not only be germane to the objects and purposes of the law; it must also conform to (and not contradict) the standards prescribed by the law.[22]

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[18] *The Conference of Maritime Manning Agencies, Inc. v. Philippine Overseas Employment Administration*, G.R. No. 114714, April 21, 1995, 243 SCRA 666, 674, citing *Eastern Shipping Lines, Inc. v. POEA, supra*.

[19] G.R. No. 166715, August 14, 2008, 562 SCRA 251. On filling in the details, see *Holy Spirit Homeowners Association, Inc. v. Defensor*, G.R. No. 163980, August 3, 2006, 497 SCRA 581, 600. On ascertaining facts, see Irene R. Cortes, *Philippine Administrative Law: Cases and Materials*, Revised 2nd edition, 1984, p. 117, citing *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935), *Cruz v. Youngberg*, 56 Phil. 234 (1931), and *Lovina v. Moreno*, G.R. No. 17821, November 29, 1963, 9 SCRA 557.

[20] *Id.* at 288.

[21] Bellosillo, *J.*, Separate Opinion, *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 119761, August 29, 1996, 261 SCRA 236, 256. Also cited in *Smart Communications, Inc. (SMART) v. National Telecommunications Commission (NTC)*, G.R. Nos. 151908 & 152063, August 12, 2003, 408 SCRA 678, 686.

[22] *Smart Communications, Inc. (SMART) v. National Telecommunications Commission (NTC), supra* at 686-687.

Pursuant to the broad authority given to them, the NDRRMC and the President, following standards provided under the law, thus sought to fill in the details on how the provisions of RA 10121 may be enforced, including, but not limited to, identification of: the conditions that must exist before a state of calamity can be declared; the effects of a declaration of a state of calamity;[23] the length of time the state of calamity will be enforced; the formulation and implementation of evacuation plans, including the guidelines on when, where, how, and who will be evacuated; the agency who will implement the evacuation plan; and other details.

Fourth, Proclamation No. 475 is a valid exercise of the power of subordinate legislation.

Here, after consideration of the conditions existing in the Island of Boracay,[24] the President, upon recommendation of the NDRRMC, decided to place the island under a State of Calamity.[25] This is a power expressly lodged in the President under Section 16, which reads:

> Sec. 16. *Declaration of State of Calamity*. — The National Council shall recommend to the President of the Philippines the declaration of a cluster of barangays, municipalities, cities, provinces, and regions under a state of calamity, and the lifting thereof, based on the criteria set by the National Council. The President's declaration may warrant international humanitarian assistance as deemed necessary.

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[23] Note that Section 17 of RA 10121 provides that a declaration of a state of calamity shall make mandatory the immediate undertaking of four remedial measures. The law, however, does not expressly limit to these four remedial measures the effects and consequences of declaring an area in a state of calamity.

[24] Including high concentration of fecal coliform in the beaches, degradation of nearby coral reefs and coral cover, disproportionate level between generation of solid waste and capacity to haul/dispose, destruction of the natural habitats of animals endemic to the island, and other environmental degradation.

[25] Under Section 3(II) of RA 10121, a State of Calamity is defined thus:

> (II) "State of Calamity" — a condition involving mass casualty and/or major damages to property, disruption of means of livelihoods, roads and

The declaration and lifting of the state of calamity may also be issued by the local sanggunian, upon the recommendation of the LDRRMC, based on the results of the damage assessment and needs analysis.

As set forth in Proclamation No. 475 itself, the conditions in the island were such that it became "necessary to implement urgent measures to address x x x human-induced hazards, to protect and promote the health and well-being of its residents, workers and tourists, and to rehabilitate the Island in order to ensure the sustainability of the area and prevent further degradation of its rich ecosystem."[26] I thus find that the avowed purpose of the Proclamation, which is "to ensure public safety and public health, and to assist the government in its expeditious rehabilitation," is unarguably germane to the object and purpose of RA 10121, which is disaster risk reduction and management.

In *The Conference of Maritime Manning Agencies, Inc. v. Philippine Overseas Employment Administration*,[27] this Court, speaking through former Chief Justice Hilario Davide, Jr., noted that the following have been held sufficient standards for purposes of subordinate legislation: "public welfare," "necessary in the interest of law and order," "public interest," "justice and equity," "public convenience and welfare," "justice and equity and substantial merits of the case," "simplicity, economy and efficiency," and "national interest."[28] I find that the challenged action of the President conforms with the standards under RA 10121, which include public safety, public health, and disaster mitigation, among others.

Fifth, in carrying RA 10121 into effect, the implementing agencies have consistently interpreted their power to "evacuate"[29]

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normal way of life of people in the affected areas as a result of the occurrence of natural or human-induced hazard.

[26] [10th] WHEREAS Clause, Proclamation No. 475.

[27] *Supra* note 18.

[28] *Id.* at footnote 13. Citations omitted.

[29] "Evacuate" means "to remove from some place in an organized way, especially as a protective measure" or "to remove inhabitants of a place or

to necessarily include the power to restrict entry into a particular place.[30] This is evident in the alarm measures and systems of a number of government instrumentalities.

In the case of impending or actual volcanic eruptions, the Philippine Institute of Volcanology and Seismology (PHIVOLCS) has established alert levels in its monitoring of active volcanoes in the country. Each level has its own set of criteria and recommended course of action to be taken, including prohibiting entry into and expanding the danger zones.[31] Likewise, depending on the declared alert level, the NDRRMC, through its local counterparts, enforces forced evacuations and **prohibits entry and farming in localities found within the danger zones**.[32]

In cases of tropical cyclones or typhoons, the Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA) uses public storm warning signals to describe the existing meteorological condition and impact of the winds. Each signal also indicates the precautionary measures which must be undertaken and what the affected areas must do. For public storm warning signals 3 and 4,

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area," *Webster's Third New International Dictionary of the English Language Unabridged* (1993), p. 786.

[30] Under Section 11(b)(3) of RA 10121, local governments, through the recommendation of the NDRRMC's local counterparts, may issue pre-emptive and forced evacuation orders. See National Disaster Preparedness Plan.

See https://lga.gov.ph/media/uploads/2/Publications%20PDF/Book/NDPP%20Vol%201.pdf, last accessed January 22, 2019. For an illustration of a local government unit's evacuation guideline; see also https://www.academia.edu/23793398/EO_No._10_Forced Evac, last accessed Januarv 22, 2019.

[31] See https://www.phivolcs.dost.gov.ph/index.php/volcano-hazard/volcano-alert-level, last accessed January 2, 2019.

[32] NDRRMC Update SitRep No. 18 re: Mayon Volcano Eruption. See: http://webcache.googleusercontent.com/search?q=cache: http://www. ndrrmc.gov.ph/attachments/article/3293/SitRep_No _18 _re _Mayon _Volcano_ Eruption_as_of_27JAN2018_8AM.pdf, last accessed November 25, 2018.

evacuation and cancellation of all travel and outdoor activities are advised.[33]

Similarly, to mitigate the effects of flooding during heavy rains, Marikina City employs a three-stage alarm level system for the Marikina River, based on the depth of water in the river below the Sto. Niño Bridge:

- Alarm Level 1 (1 minute continuous airing), when the water is 15 meters above sea level, means "prepare."
- Alarm Level 2 (2 minutes intermittent airing), when the water is 16 meters above sea level, means "**evacuate**."
- Alarm Level 3 (5 minutes continuous airing), when the water is 18 meters above sea level, means "**forced evacuation**."[34]

When the river's water level rises, the local Disaster Risk Reduction and Management office uses a siren to alert surrounding communities of the current alarm level.[35]

This contemporaneous construction by the NDRRMC, the different LDRRMCs, and local government units, as well as the other agencies tasked to implement the provisions of RA 10121, of their powers ordinarily controls the construction of the courts:

> The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to the accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute. In *Asturias Sugar Central, Inc. v. Commissioner of Customs*, the Court stressed that executive officials are presumed to have familiarized themselves with

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[33] See https://www1.pagasa.dost.gov.ph/index.php/20-weather, last accessed February 12, 2019.

[34] See https://www.rappler.com/move-ph/issues/disasters/181894-guide-marikina-river-alarm-level-system, last accessed December 27, 2018.

[35] *Id.*

all the considerations pertinent to the meaning and purpose of the law, and to have formed an independent, conscientious and competent expert opinion thereon. The courts give much weight to the government agency or officials charged with the implementation of the law, their competence, expertness, experience and informed judgment, and the fact that they frequently are drafters of the law they interpret.[36]

Sixth, administrative regulations and policies enacted by administrative bodies to interpret the law which they are entrusted to enforce have the force of law and enjoy a presumption of regularity.

In *Español v. Chairman, Philippine Veterans Administration*,[37] this Court held that the Philippine Veterans Administration's (PVA) policy—which withheld the payment of pension to beneficiaries of veterans who are already receiving pension from United States (U.S.) Veterans Administration—has in its favor a presumption of validity. Thus, the Court ruled that it was only when this administrative policy was declared invalid can petitioner be said to have a cause of action to compel the PVA to pay her monthly pension.[38]

In *Rizal Empire Insurance Group v. NLRC*,[39] petitioner's appeal was dismissed for failure to follow the "no extension policy" set forth under the Rules of the National Labor Relations Commission. According to the Court, it is an elementary rule in administrative law that administrative regulations and policies, enacted by administrative bodies to interpret the law which they are entrusted to enforce, have the force of law and are entitled to great respect.[40]

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[36] *Energy Regulatory Board v. Court of Appeals*, G.R. Nos. 113079 & 114923, April 20, 2001, 357 SCRA 30, 40, citing *Nestle Philippines, Inc. v. Court of Appeals*, G.R. No. 86738, November 13, 1991, 203 SCRA 504, 510-511, citing *In re Allen*, 2 Phil. 630 (1903).

[37] G.R. No. L-44616, June 29, 1985, 137 SCRA 314.

[38] *Id.* at 319.

[39] G.R. No. 73140, May 29, 1987, 150 SCRA 565.

[40] *Id.* at 568-569.

More recently, in the case of *Alfonso v. Land Bank of the Philippines*,[41] this Court held that the formulas for the computation of just compensation, being an administrative regulation issued by the Department of Agrarian Reform pursuant to its rule-making and subordinate legislation power, have the force and effect of law. "Unless declared invalid in a case where its validity is directly put in issue, courts must consider their use and application."[42]

Even in the U.S., the government agency's own reading of a statute which it is charged with administering is given deference. In *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*,[43] the U.S. Supreme Court employed a two-step test in determining what standard of review should be applied in assessing the government agency's interpretation and gave deference to the latter's interpretation:

> When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.[44]

Finally, since the law's enactment in 2010, there has been no attempt on the part of Congress to correct or reverse the consistent contemporaneous construction of the law by the

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[41] G.R. Nos. 181912 & 183347, November 29, 2016, 811 SCRA 27.

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

[43] 467 U.S. 837 (1984).

[44] *Id.* See also *City of Arlington, Texas, et al. v. Federal Communications Commission, et al.*, 569 U.S. 290 (2013).

different agencies implementing RA 10121. This is especially noteworthy considering the existence of a Congressional Oversight Committee, composed of members from both its Houses, which was created precisely to "monitor and oversee the implementation of [RA 10121]"[45] and evaluate, among others, the performance of the law's implementing agencies.[46] That this Committee has not taken steps to correct, revise, or repeal the agencies' contemporaneous construction of RA 10121's provisions further buttresses the view that the construction given by the different administrative agencies conforms to the standards and the interpretation intended by the Legislature.

In sum, I find that the President has the authority, under RA 10121, to issue the challenged Proclamation as a valid exercise of his power of subordinate legislation. With this, I vote to DISMISS the petition. The Court should decline to resolve the remaining questions raised in the petition as, and which I shall hereafter discuss, they unavoidably involve questions of fact which this Court cannot entertain and resolve.

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[45] Sec. 26. *Congressional Oversight Committee.* — There is hereby created a Congressional Oversight Committee to monitor and oversee the implementation of the provisions of this Act. The Committee shall be composed of six (6) members from the Senate and six (6) members from the House of Representatives with the Chairpersons of the Committees on National Defense and Security of both the Senate and the House of Representatives as joint Chairpersons of this Committee. The five (5) other members from each Chamber are to be designated by the Senate President and the Speaker of the House of Representatives, respectively. The minority shall be entitled to pro rata representation but shall have at least two (2) representatives from each Chamber.

[46] Sec. 27. *Sunset Review*. — Within five (5) years after the effectivity of this Act, or as the need arises, the Congressional Oversight Committee shall conduct a sunset review. For purposes of this Act, the term "sunset review" shall mean a systematic evaluation by the Congressional Oversight Committee of the accomplishments and impact of this Act, as well as the performance and organizational structure of its implementing agencies, for purposes of determining remedial legislation.

II

Petitioners' next two remaining arguments revolve around Proclamation No. 475's alleged violation of their fundamental rights to travel and due process of law. While petitioners claim that these arguments pose questions of law, I find that they actually raise and involve underlying questions of fact.

A

Indeed, the rights to travel and due process of law are rights explicitly guaranteed under the Bill of Rights. These rights, while fundamental, are not absolute.

Section 6, Article III of the Constitution itself provides for three instances when the right to travel may be validly impaired:

> Sec. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. **Neither shall the right to travel be impaired <u>except in the interest of national security, public safety, or public health, as may be provided by law</u>.**[47]

Even prior to the Constitution, this Court, in the 1919 case of *Rubi v. Provincial Board of Mindoro*,[48] has held that there is no absolute freedom of locomotion. The right of the individual is necessarily subject to reasonable restraint for the common good, in the interest of the public health or public order and safety. *In Leave Division, Office of Administrative Services-Office of the Court Administrator (OCA) v. Heusdens*,[49] which involved an administrative case against a court employee for failure to secure authority to travel abroad in violation of OCA Circular No. 49-2003, the Court took occasion to identify the various constitutional, statutory, and inherent limitations regulating the right to travel.

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[47] Emphasis and underscoring supplied.

[48] 39 Phil. 660 (1919).

[49] A.M. No. P-11-2927, December 13, 2011, 662 SCRA 126, 134-135.

This was reiterated in *Genuino v. De Lima*,[50] where this Court invalidated Department of Justice Circular No. 41—which purported to restrict the right to travel through the issuance of hold departure and watchlist orders—for lack of legal basis.[51]

In the United States, the U.S. Supreme Court, in the case of *Zemel v. Rusk*,[52] identified circumstances which may justify the restriction on the right to travel: (1) areas ravaged by flood, fire, or pestilence can be quarantined when it can be demonstrated that unlimited travel to the area would directly and materially interfere with the safety and welfare of the area or the Nation as a whole; and (2) weightiest considerations of national security. Likewise, the case of *Alexander v. City of Gretna*[53] emphasized that compelling safety and welfare reasons, the preservation of order and safety, and health concerns can serve to justify an intrusion on the fundamental right to interstate travel. In *State v. Wright*[54] and later, in *Sim v. State Parks & Recreation*,[55] the Washington Supreme Court upheld the State Parks & Recreation Commission's authority, at reasonable times, at reasonable places, and for reasonable reasons, consistent with public safety and recreational activities, to temporarily close ocean beach highways to motor vehicular traffic.

Similarly, the right of a person to his labor is deemed to be property within the meaning of constitutional guarantees, that is, he cannot be deprived of his means of livelihood, a property right, without due process of law.[56] Nevertheless, this property

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[50] G.R. No. 197930, April 17, 2018.

[51] In this case, the Court stressed that, in addition to the three considerations provided under the Constitution, there must also be an explicit provision of statutory law which provides for the impairment of the right to travel.

[52] 381 U.S. 1 (1965).

[53] 2008 U.S. Dist. LEXIS 109090, December 3, 2008.

[54] 84 Wn. 2d 645, December 12, 1974.

[55] 94 Wn. 2d 552, October 16, 1980.

[56] *Phil. Movie Pictures Workers' Assn. v. Premiere Productions, Inc.*, 92 Phil. 843 (1953). See also *JMM Promotion Management, Inc. v. Court of Appeals*, G.R. No. 120095, August 5, 1996, 260 SCRA 319, 330.

right, not unlike the right to travel, is not absolute. It may be restrained or burdened, through the exercise of police power, to secure the general comfort, health, and prosperity of the State.[57] To justify such interference, two requisites must concur: (a) the interests of the public generally, as distinguished from those of a particular class, require the interference of the State; and (b) the means employed are reasonably necessary to the attainment of the object sought to be accomplished and not unduly oppressive upon individuals. In other words, the proper exercise of the police power requires the concurrence of a lawful subject and a lawful method.[58]

B

Having established that the rights to travel and due process are not absolute, as they can in fact be validly subject to restrictions under certain specified circumstances, it seems to me that petitioners' issues against Proclamation No. 475 respecting their rights to travel and due process hinge not so much on whether said Proclamation imposes a restriction, but whether the restrictions it imposed are *reasonable*.[59] Specifically, petitioners argue that: the ordered closure of Boracay Island is an extreme measure;[60] it is overly broad, oppressive, unreasonable, and arbitrary; and that there are more less restrictive and more narrowly drawn measures which the government can employ to protect the State's interest.[61]

What is "reasonable," however, is not subject to exact definition or scientific formulation. There is no all-embracing test of reasonableness;[62] its determination rests upon human

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[57] *United States v. Gomez Jesus*, 31 Phil. 218 (1915).

[58] *Southern Luzon Drug Corporation v. The Department of Social Welfare and Development*, G.R. No. 199669, April 25, 2017.

[59] *Mirasol v. Department of Public Works and Highways*, G.R. No. 158793, June 8, 2006, 490 SCRA 318, 349.

[60] *Rollo*, pp. 83-84.

[61] *Id.* at 20, 22-25, 82, 84-85, 89.

[62] *Mirasol v. Department of Public Works and Highways, supra* at 348, citing *City of Raleigh v. Norfolk Southern Railway Co.*, 165 S.E.2d 745 (1969).

judgment as *applied to the facts and circumstances* of each particular case.[63]

In this case, the following *factual* circumstances were considered, which led to the issuance of Proclamation No. 475:

a. High concentration of fecal coliform due to insufficient sewer lines and illegal discharge of untreated waste water into the beach, with daily tests revealing consistent failure in compliance with acceptable water standards, with an average result of 18,000 most probable number (MPN)/100 ml, exceeding the standard level of 400 MPN/ 100 ml;

b. Failure of most commercial establishments and residences to connect to the sewerage infrastructure of Boracay Island;

c. Improper waste disposal, in violation of environmental laws, rules, and regulations;

d. Majority (14 out of 51) of the establishments near the shore are not compliant with the Philippine Clean Water Act of 2004;

e. Degradation of the coral reefs and coral cover of Boracay Island as a consequence of continued exposure to dirty water caused by increased tourist arrivals;

f. Solid waste within Boracay Island is at a generation rate of 90 to 115 tons per day, while the hauling capacity of the local government is only 30 tons per day;

g. The natural habitats of Puka shells, nesting grounds of marine turtles, and roosting grounds of flying foxes or fruit bats have been damaged and/or destroyed;

h. Only four out of nine wetlands in Boracay Island remain due to illegal encroachment of structures;

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[63] *Id.*, citing *Board of Zoning Appeals of Decatur v. Decatur, Ind. Co. of Jehovah's Witnesses*, 117 N.E.2d 115 (1954). Italics supplied.

i. Beach erosion is prevalent in Boracay Island due to storms, extraction of sand along the beach to construct properties and structures along the foreshore, and discharge of waste water near the shore, causing degradation of coral reefs and seagrass meadows;

j. Direct discharge of waste water near the shore has resulted in frequent algal bloom and coral deterioration; and

k. The continuous rise of tourist arrivals, the insufficient sewer and waste management system, and environmental violations of establishments aggravate the environmental degradation and destroy the ecological balance of the Island of Boracay, resulting in major damage to property and natural resources, as well as the disruption of the normal way of life of the people therein.

After due consideration of the above, the President, upon the NDRRMC's recommendation, declared a State of Calamity in the Island of Boracay and ordered its closure as a tourist destination for a period of six months. Petitioners take issue with the reasonableness of the measures taken and seek to take the President and the implementing agencies to task on this account. Arriving at a conclusion regarding the propriety and reasonableness of the above measures, however, will necessarily require examining the *factual* circumstances which formed the premise for Proclamation No. 475's issuance.

Permit me to illustrate, using some of Proclamation No. 475's factual considerations.

On the high concentration of fecal coliform in the water: To prove unreasonableness, petitioners may present evidence to prove that closure, if at all, for a shorter period of time (less than six months) is needed for the water coliform level to return to acceptable standards. Evidence may also be presented to show that closure of the island as a tourist destination is not even necessary to address the insufficiency of sewer lines and illegal discharge of untreated waste water into the beach.

On the non-connection of the commercial establishments and residences to the island's sewerage infrastructure: To prove unreasonableness, petitioners may present evidence to show that closure of the island is not even necessary to connect all establishments to the existing sewerage infrastructure. Even assuming that *some* closure is necessary, petitioners may present evidence to show that connection may be done on a *one-barangay-at-a-time* basis (instead of simultaneously closing off all three barangays), and for a period shorter than six months.

On the establishments' non-compliance with the Philippine Clean Water Act: To prove unreasonableness, petitioners may present evidence that the simple issuance of notices of violation would be sufficient to compel establishments to comply with the requirements of the Act.

On the degradation of the coral reefs and coral cover in the island because of dirty water: To prove unreasonableness, petitioners may present evidence to show that the local government is unable to meet the waste generation rate in the island; that there is no rational relation between the environmental issues (such as the destruction of the natural habitats of the various animals, existence of illegal encroachments, beach erosion, and other conditions existing in the island) and the purported closure of the island to tourists for six months.

The foregoing, however, involve questions of fact which cannot be entertained by this Court. Questions of fact indispensable to the disposition of a case, as in this case, are cognizable by the trial courts; petitioners should thus have filed the petition before them. Failure to do so, in fact, is sufficient to warrant the Court's dismissal of the case.[64]

For similar reasons, I find that the Court should also decline to resolve the fourth issue raised by petitioners, that is, whether

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[64] *Chamber of Real Estate and Builders Associations, Inc. (CREBA) v. Secretary of Agrarian Reform*, G.R. No. 183409, June 18, 2010, 621 SCRA 295, 312; *Mangaliag v. Catubig-Pastoral*, G.R. No. 143951, October 25, 2005, 474 SCRA 153, 161-162.

Proclamation No. 475 violates the principle of local autonomy insofar as it orders local government units to implement the closure. Similar with the *ponencia's* finding, I find that, contrary to petitioners' arguments, the text of RA 10121 actually recognizes and even empowers the local government unit in disaster risk reduction and management.[65] I also hasten to add that whether or not Proclamation No. 475 did, in fact, cause an *actual* intrusion into an affected local government unit's powers is still largely a question of fact. In fact, even assuming that petitioners are able to show such intrusion, again it seems to me that their issue against such would involve a question into the reasonableness of the same under the circumstances. This issue, as already shown, *still* involves the resolution of underlying issues of fact. For example, petitioners would have to present evidence to show, among others, that the local government unit concerned had recommended a *less drastic* course of action to address the situation than those taken under the Proclamation, and that this recommendation was not considered and/or actually overruled by the President and/or NDRRMC.

Petitioners cite *White Light Corporation v. City of Manila*,[66] *Lucena Grand Central Terminal, Inc. v. JAC Liner, Inc.*,[67] and *Metropolitan Manila Development Authority v. Viron Transportation, Co, Inc*.[68] to demonstrate how this Court has stricken down measures which have been shown to be unreasonable and/or not the least restrictive means to pursue a particular government interest. To my mind, however, none of the foregoing cases are useful to further petitioners' cause. Rather than justify direct resort pursuant to this Court's original jurisdiction over certain cases, the foregoing cases all the more highlight the necessity of following the hierarchy of courts.

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[65] *Ponencia*, pp. 26-27.

[66] G.R. No. 122846, January 20, 2009, 576 SCRA 416.

[67] G.R. No. 148339, February 23, 2005, 452 SCRA 174.

[68] G.R. No. 170656, August 15, 2007, 530 SCRA 341.

In *White Light Corporation*, the validity of Manila City Ordinance No. 7774, entitled "An Ordinance Prohibiting Short-Time Admission, Short-Time Admission Rates, and Wash-Up Rate Schemes in Hotels, Motels, Inns, Lodging Houses, Pension Houses, and Similar Establishments in the City of Manila," was challenged on the ground that it violated sacred constitutional rights to liberty, due process, and equal protection of law.

In *Lucena Grand Central Terminal, Inc.*, the constitutionality of City Ordinance Nos. 1631 and 1778—which granted a franchise to petitioner and regulated entrance into the city, respectively—was challenged on the ground that they constituted an invalid exercise of police power, an undue taking of private property, and a violation of the constitutional prohibition against monopolies.

In *Metropolitan Manila Development Authority (MMDA)*, petitioners therein questioned the MMDA's authority to order the closure of provincial bus terminals along Epifanio de los Santos Avenue and major thoroughfares of Metro Manila.

It appears to escape petitioners' notice that while the above cases did involve constitutional challenges, none involved a direct recourse to this Court. The challenges were initially filed before the RTC, who had the first opportunity to evaluate and resolve the same, *after* the parties were able to thresh out the factual issues, enter into stipulations, or agree on the conduct of proceedings. By so doing, by the time the cases reached this Court, only questions of law remained to be settled.[69] This, to my mind, results in a more judicious use of the Court's limited time and resources. A strict observance of the rule on hierarchy of courts would save the Court from having to resolve factual

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[69] In *White Light Corporation*, the parties agreed to submit the case for decision without trial as the case involved a purely legal question; in *Lucena Grand Central Terminal, Inc.*, the parties agreed to dispense with the presentation of evidence and to submit the case for resolution solely on the basis of the pleadings filed; and in *Metropolitan Manila Development Authority*, the parties limited the issues, entered into stipulations, and agreed to file their respective position papers in lieu of hearings.

questions (which, in the first place, it is ill-equipped to do, much less in the first instance) and enable it to focus on the more fundamental tasks assigned to it under the Constitution.

C

It is beyond dispute that the rights to travel and to due process of law are fundamental.[70] This is significant because, traditionally, liberty interests are protected only against arbitrary government interference, that is, a claim to a liberty interest may fail upon a showing by the government of a rational basis to believe that its interference advances a legitimate legislative objective.[71] Where, however, a liberty interest has been accorded an "elevated" fundamental right status, the government is subject to a *higher* burden of proof to justify intrusions into these interests, namely, the requirements of strict scrutiny in equal protection cases[72] and that of compelling state interest in due process cases.[73]

In his Concurring Opinion in *Estrada v. Sandiganbayan*,[74] Justice Vicente Mendoza wrote:

> Petitioner cites the dictum in *Ople v. Torres* that "when the integrity of a fundamental right is at stake, this Court will give the challenged law, administrative order, rule or regulation stricter scrutiny" and that "It will not do for authorities to invoke the presumption of regularity in the performance of official duties." As will presently be shown, "strict scrutiny," as used in that decision, is not the same

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[70] See *Samahan Ng Mga Progresibong Kabataan (SPARK) v. Quezon City*, G.R. No. 225442, August 8, 2017 and *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, G.R. No. 148208, December 15, 2004, 446 SCRA 299.

[71] David Crump, "How do the Courts Really Discover Unenumerated Fundamental Rights? Cataloguing the Methods of Judicial Alchemy," 19 Harv. J. L & Pub. Pol'y 795 (1996), pp. 799-800.

[72] See *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas, supra* at footnote 16.

[73] See *Obergefell v. Hodges*, 576 U.S._ (2015), footnote 19.

[74] G.R. No. 148560, November 19, 2001, 369 SCRA 394.

thing as the "strict scrutiny" urged by petitioner. **Much less did this Court rule that because of the need to give "stricter scrutiny" to laws abridging fundamental freedoms, it will not give such laws the presumption of validity**.[75]

Similarly, mere invocation of a fundamental right, or an alleged restriction thereof, would not operate to excuse a pleader from proving his case. Lest petitioners forget, Proclamation No. 475, issued by the President pursuant to his power of subordinate legislation under RA 10121, enjoys the presumption of constitutionality and legality. To overcome this, facts establishing *invalidity* must be proven through the presentation of evidence. In *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*,[76] citing *O'Gorman & Young v. Hartford Fire Insurance Co.*,[77] this Court stressed:

> It admits of no doubt therefore that there being a presumption of validity **the necessity for evidence to rebut it is unavoidable**, unless the statute or ordinance is void on its [face,] which is not the case here. The principle has been nowhere better expressed than in the leading case of *O'Gorman & Young v. Hartford Fire Insurance Co.*, where the American Supreme Court through Justice Brandeis tersely and succinctly summed up the matter thus:
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> The statute here questioned deals with a subject clearly within the scope of the police power. We are asked to declare it void on the ground that the [specific] method of regulation prescribed is unreasonable and hence deprives the plaintiff of due process of law. As underlying questions of fact may condition the constitutionality of legislation of this character, the presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute.
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> **No such factual foundation being laid in the present case, the lower court deciding the matter on the pleadings and the stipulation**

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[75] *Id.* at 461-462. Citations omitted. Emphasis supplied.

[76] G.R. No. L-24693, July 31, 1967, 20 SCRA 849.

[77] 282 U.S. 251 (1931).

of [facts], the presumption of validity must prevail and the judgment against the ordinance set aside.[78]

Thus, and until it is set aside with finality in an appropriate case by a competent court,[79] Proclamation No. 475 has the force and effect of law and must be enforced accordingly. The burden of proving its unconstitutionality rests on the party assailing the governmental regulations and administrative issuances.[80]

More importantly, the doctrine of hierarchy of courts requires that factual questions first be submitted to trial courts who are more properly equipped to receive evidence on, and ultimately resolve, issues of fact. Where, as in this case, the resolution of the issue on constitutionality requires the determination and evaluation of extant factual circumstances, this Court should decline to exercise its original jurisdiction and, instead, reserve judgment until such time that the question is properly brought before it on appeal.

For all the foregoing reasons, I vote to **DISMISS** the petition.

DISSENTING OPINION

We can save ourselves, but only if we let go of the myth of dominance and mastery and learn to work with nature.

Naomi Klein

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[78] *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila, supra*. (Emphasis supplied). See also *Agustin v. Edu*, G.R. No. L-49112, February 2, 1979, 88 SCRA 195; Justice Teodoro R. Padilla's Separate Opinion in *Guazon v. De Villa*, G.R. No. 80508, January 30, 1990, 181 SCRA 623; and the US case of *Nashville, C. & St. LR Co. v. Walters*, 294 U.S. 405 (1935).

[79] *Abakada Guro Party List v. Purisima, supra* note 19 at 289.

[80] *Mirasol v. Department of Public Works and Highways*, G.R. No. 158793, June 8, 2006, 490 SCRA 318, 348.

The primary threat to nature and people today comes from centralizing and monopolizing power and control. Not until diversity is made the logic of production will there be a chance for sustainability, justice and peace. Cultivating and conserving diversity is no luxury in our times: it is a survival imperative.

Vandana Shiva

LEONEN, *J.*:

With respect to my esteemed colleagues, I dissent.

Proclamation No. 475, s. 2018 (or the Proclamation) is unconstitutional, as it is an impermissible exercise of police power.

It violates the right to life and liberty properly invoked by petitioners without due process of law. The Proclamation imposes a closure and a deprivation of the livelihood of those who have not been shown to have caused the high levels of fecal coliform and other human made incursions into Boracay's ecology which invited President Rodrigo Duterte's drastic actions. The specific actions and programs to be undertaken during the closure of the entire island, so as to properly advise the residents, workers, and others interested, are not clearly stated. The six (6)-month duration of the closure is arbitrary. The state of calamity will persist even after the closure expires. The lifting of the declaration of the state of calamity is not preceded by any discernible standard. The Department of the Interior and Local Government "Guidelines" (DILG Guidelines) for the closure were issued prior to the promulgation of the Proclamation. It is inconsistent with the latter, containing provisions with serious constitutional implications.

The Proclamation is unduly vague. It is unconstitutionally broad.

Proclamation No. 475 is contrary to the very statutes it allegedly implements, Republic Acts No. 10121[1] and 9275.[2] The ecological problem in Boracay is not the calamity envisioned in Republic Act No. 10121 or the Philippine Disaster Risk Reduction and Management Act of 2010. By exercising control rather than merely supervision, the Presidential exercise violates the constitutionally protected principle of local autonomy. Contrary to the Majority's view, such infringement is neither incidental nor marginal.

Assuming that a state of calamity was properly declared, the Proclamation upends the framework of locally-led remediation and rehabilitation efforts mandated by the statutes. By declaring that only the President can lift the declaration, the Proclamation violates Republic Act No. 10121.

Human induced ecological disasters need to be addressed deliberately, systematically, structurally and with all institutions of government actively engaging public participation. There are laws already in place that could have been properly enforced. The right intentions however must always be accompanied by the right and legal means. The Majority's tolerance for the dramatic and drastic actions of the Chief Executive violates the rule of law and undermines constitutional democracy.

Considering the many calamities our society has to face, upholding the framework contained in Proclamation No. 475 invites a regime that is borderline authoritarian.

I

The Petition raises questions relating to petitioners' right to travel and right to due process. I join Associate Justice Alfredo Benjamin Caguioa's view that the right to travel has been violated especially in light of the most recent unanimous decision of

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[1] Rep. Act No. 10121 (2010), Philippine Disaster Risk Reduction and Management Act of 2010.

[2] Rep. Act No. 9275 (2004), Philippine Clean Water Act of 2004.

this Court in *Genuino v. De Lima*.[3] Fundamentally, however, I vote to grant the Petition on due process grounds.

The basic rights asserted by petitioners are acknowledged in Article III, Section 1 of the Constitution:

> SECTION 1. No person shall be deprived of life, liberty or property without due process of law[.]

The due process clause is written as a proscription.[4] It implies a sphere of individual autonomy that is constitutionally protected. As early as 1890, in the seminal work of Louis D. Brandeis and Samuel Warren, this sphere was referred to as the "right to be left alone" from interference by the State. Reviewing its evolution in common law:

> That the individual shall have full protection in person and in property is a principle as old as the common law; but it has been found necessary from time to time to define anew the exact nature and extent of such protection. Political, social and economic changes entail the recognition of new rights, and the common law, in its eternal youth, grows to meet the demands of society. Thus, in very early times, the law gave a remedy only for physical interference with life and property, for trespasses *vi et armis*. Then the "right to life" served only to protect the subject from battery in its various forms; liberty meant freedom from actual restraint; and the right to property secured to the individual his lands and his cattle. Later, there came a recognition of man's spiritual nature, of his feelings and his intellect. Gradually the scope of these legal rights broadened; and now the right to life has come to mean the right to enjoy life,—the right to be let alone; the right to liberty secures the exercise of extensive civil privileges; and the term "property" has grown to comprise every form of possession—intangible, as well as tangible.

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[3] G.R. No. 197930, April 17, 2018, < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/april2018/197930.pdf > [Per *J.* Reyes, Jr., *En Banc*].

[4] See *J.* Leonen, Separate Concurring Opinion in *Subido Pagente Certeza and Mendoza Law Offices v. Court of Appeals, et al.*, 802 Phil. 314 (2016) [Per *J.* Perez, *En Banc*].

Thus, with the recognition of the legal value of sensations, the protection against actual bodily injury was extended to prohibit mere attempts to do such injury; that is, the putting another in fear of such injury. From the action of battery grew that of assault. Much later there came a qualified protection of the individual against offensive noises and odors, against dust and smoke and excessive vibration. The law of nuisance was developed. So regard for human emotions soon extended the scope of personal immunity beyond the body of the individual. His reputation, the standing among his fellow-men, was considered, and the law of slander and libel arose. Man's family relations became a part of the legal conception of his life, and the alienation of a wife's affections was held remediable. Occasionally the law halted,—as in its refusal to recognize the intrusion by seduction upon the honor of the family. But even here the demands of society were met. A mean fiction, the action per *quod servitium amisit*, was resorted to, and by allowing damages for injury to the parents' feelings, an adequate remedy was oridinarily afforded. Similar to the expansion of the right to life was the growth of the legal conception of property. From corporeal property arose the incorporeal rights issuing out of it; and then there opened the wide realm of intangible property, in the products and processes of the mind, as works of literature and art, goodwill, trade secrets, and trademarks.

This development of the law was inevitable.[5] (Citations omitted)

The structure of the due process clause and the primordial value it conceals do not limit protection of life only to one's corporeal existence.[6] Liberty is more than just physical restraint. Even property can be incorporeal.[7]

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[5] Samuel D. Warren and Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV 193-195 (1890). See also Irwin R. Kramer, *The Birth of Privacy Law: A Century Since Warren & Brandeis*, 39 CATH. U.L. REV. 703 (1990).

[6] *Secretary of National Defense, et al. v. Manalo, et al.*, 589 Phil. 1 (2008) [Per Puno *C.J.*, *En Banc*]. >See also *J.* Leonen, Separate Opinion in *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines)*, 774 Phil. 508 (2015) [Per *J.* Villarama, Jr., *En Banc*].

[7] See CIVIL CODE, Arts. 415 (10), 417, 519, 520, 521, 613, 721, and 722.

In *Secretary of National Defense, et al. v. Manalo, et al.*:[8]

> While the right to life under Article III, Section 1 guarantees essentially the right to be alive—upon which the enjoyment of all other rights is preconditioned—the right to security of person is a guarantee of the secure quality of this life, *viz.*: "The life to which each person has a right is not a life lived in fear that his person and property may be unreasonably violated by a powerful ruler. Rather, it is a life lived with the assurance that the government he established and consented to, will protect the security of his person and property. The ideal of security in life and property . . . pervades the whole history of man. It touches every aspect of man's existence." In a broad sense, the right to security of person "emanates in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation. It includes the right to exist, and the enjoyment of life while existing, and it is invaded not only by a deprivation of life but also of those things which are necessary to the enjoyment of life according to the nature, temperament and lawful desires of the individual.[9] (Citations omitted)

City of Manila v. Laguio, Jr.[10] reiterated the broad conception of the right to life and liberty:

> [T]he right to exist and the right to be free from arbitrary restraint or servitude. The term cannot be dwarfed into mere freedom from physical restraint of the person of the citizen, but is deemed to embrace the *right of man to enjoy the faculties with which he has been endowed by his Creator*, subject only to such restraint as are necessary for the common welfare.[11] (Emphasis supplied, citation omitted)

The rights to life and liberty are inextricably woven. Life is nothing without liberties. Without a full life, the fullest of liberties protected by our constitutional order will not happen. Again, in *City of Manila*:

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[8] *Secretary of National Defense, et al. v. Manalo, et al.*, 589 Phil. 1 (2008) [Per Puno *C.J.*, *En Banc*].

[9] *Id.* at 50.

[10] 495 Phil. 289 (2005) [Per *J.* Tinga, *En Banc*].

[11] *Id.* at 316-317.

While the Court has not attempted to define with exactness the liberty . . . guaranteed [by the Fifth and Fourteenth Amendments], the term denotes not merely freedom from bodily restraint but also *the right of the individual to contract, to engage in any of the common occupations of life*, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized . . . *as essential to the orderly pursuit of happiness by free men*. In a Constitution for a free people, there can be no doubt that the meaning of "liberty" must be broad indeed.[12] (Emphasis supplied)

Thereafter:

These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right *to define one's own concept of existence, of meaning, of universe, and of the mystery of human life.* Beliefs about these matters could not define the attributes of personhood where they formed under compulsion of the State.[13]

Likewise, in my Concurring Opinion in *Spark v. Quezon City*:[14]

Speaking of life and its protection does not merely entail ensuring biological subsistence. It is not just a proscription against killing. Likewise, speaking of liberty and its protection does not merely involve a lack of physical restraint. The objects of the constitutional protection of due process are better understood dynamically and from a frame of consummate human dignity. They are likewise better understood integrally, operating in a synergistic frame that serves to secure a person's integrity.

"Life, liberty and property" is akin to the United Nations' formulation of "life, liberty, and security of person" and the American formulation of "life, liberty and the pursuit of happiness." As the American Declaration of Independence postulates, they are "unalienable rights"

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[12] *Id*. at 317 citing *Roth v. Board of Regents*, 408 U.S. 572 (1972).

[13] *Id*. citing *Lawrence v. Texas*, 539 U.S. 558 (2003).

[14] G.R. No. 225442, August 8, 2017, 835 SCRA 350 [Per J. Perlas-Bernabe, *En Banc*].

for which "[g]overnments are instituted among men" in order that they may be secured. Securing them denotes pursuing and obtaining them, as much as it denotes preserving them. The formulation is, thus, an aspirational declaration, not merely operating on factual givens but enabling the pursuit of ideals.

"Life," then, is more appropriately understood as the fullness of human potential: not merely organic, physiological existence, but consummate self-actualization, enabled and effected not only by freedom from bodily restraint but by facilitating an empowering existence. "Life and liberty," placed in the context of a constitutional aspiration, it then becomes the duty of the government to facilitate this empowering existence. This is not an inventively novel understanding but one that has been at the bedrock of our social and political conceptions. As Justice George Malcolm, speaking for this Court in 1919, articulated:

> Civil liberty may be said to mean that measure of freedom which may be enjoyed in a civilized community, consistently with the peaceful enjoyment of like freedom in others. The right to liberty guaranteed by the Constitution includes the right to exist and the right to be free from arbitrary personal restraint or servitude. The term cannot be dwarfed into mere freedom from physical restraint of the person of the citizen, but is deemed to embrace the right of man to enjoy the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare. As enunciated in a long array of authorities including epoch-making decisions of the United States Supreme Court, liberty includes the right of the citizen to be free to use his faculties in lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any avocation, and for that purpose, to enter into all contracts which may be proper, necessary, and essential to his carrying out these purposes to a successful conclusion. The chief elements of the guaranty are the right to contract, the right to choose one's employment, the right to labor, and the right of locomotion.

It is in this sense that the constitutional listing of the objects of due process protection admits amorphous bounds. The constitutional protection of life and liberty encompasses a penumbra of cognate rights that is not fixed but evolves — expanding liberty — alongside the contemporaneous reality in which the Constitution operates. *People*

v. Hernandez illustrated how the right to liberty is multi-faceted and is not limited to its initial formulation in the due process clause:

> [T]he preservation of liberty is such a major preoccupation of our political system that, not satisfied with guaranteeing its enjoyment in the very first paragraph of Section (1) of the Bill of Rights, the framers of our Constitution devoted paragraphs (3), (4), (5), (6), (7), (8), (11), (12), (13), (14), (15), (16), (17), (18), and (21) of said section (1) to the protection of several aspects of freedom.[15] (Citations omitted)

Petitioners assert that due process covers the right to livelihood, to work and earn a living.[16] The pleadings were brought by a sandcastle builder, a driver, and a non-resident. The first two (2) are informal workers who have no economic resources other than their ability to provide their services. The last petitioner is a citizen claiming his right, as a Filipino, to enjoy the natural beauty of his country—his right to travel.

The majority unfortunately canisters this right as falling under the right to property. The argument is that since petitioners have no vested rights on their sources of income, they are not entitled to due process. Even if tourists were still allowed in the island, they earn nothing if no one avails of their services. Thus, since petitioners' earnings are contingent and merely inchoate, the right to property does not yet exist.

I disagree.

The right invoked is not merely the right to property. The right to livelihood falls within the spectrum of the almost inviolable right to life and liberty. The ability to answer a calling, evolve, and create a better version of oneself, in the process of serving others, is a quintessential part of one's life. The right to life is not a mere corporeal existence, but includes one's choice of occupation. This is as important as to those who belong

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[15] See J. Leonen, Concurring Opinion in *Samahan ng mga Progresibong Kabataan (SPARK), et al. v. Quezon City, et al*., G.R. No. 225442, August 8, 2017, 835 SCRA 350, 445-447 [Per J. Perlas-Bernabe, *En Banc*].

[16] *Rollo*, p. 22.

to the informal sector. It is an aspect of social justice that their right to be able to earn a livelihood should be protected by our Constitution.

In the hierarchy of rights, the right to life and the right to liberty sit higher than the right to property. This is also the import of Article II, Section 11 of the Constitution which provides:

> SECTION 11. The State values the dignity of every human person and guarantees full respect for human rights.

We recognize the primacy of human rights over property rights because these rights are "delicate and vulnerable[.]" They are so precious in our society, such that the threat of sanctions may deter their exercise almost as strongly as the actual application of sanctions. They "need breathing space to survive"; thus, government regulation is allowable only with "narrow specificity."[17]

In contrast, property rights may be readily qualified as evidenced by the many rules and laws that have been enacted on property ownership and possession. Article XII, Section 6 of the Constitution qualifies the right to property:

> SECTION 6. The use of property bears as social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.

As early as in *Ermita-Malate Hotel and Motel Operators Association v. City of Manila*,[18] this Court already emphasized that if the liberty involved were "freedom of the mind or the person, the standard for the validity of governmental acts is

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[17] *Philippine Blooming Employees Organization v. Philippine Blooming Mills*, 151-A Phil. 656, 676 (1973) [Per J. Makasiar, *En Banc*].

[18] 127 Phil. 306 (1967) [Per J. Fernando, *En Banc*].

much more rigorous and exacting, but where the liberty curtailed affects at the most rights of property, the permissible scope of regulatory measures is wider."[19]

We are not confronted with a situation where the government simply regulates one's occupation. Here, the shutdown contemplated in Proclamation No. 475 is complete. The total deprivation of their right to exercise their occupation was curtailed.

For those who have a very regular and lucrative source of income, a period of six (6) months may not be a long time. However, to those within the informal sector, losing their jobs even for a day can spell disaster not only for themselves, but also for their families. Not only do they have legal standing to challenge the Proclamation, but they also do so invoking one (1) of the most primordial of our fundamental rights.

The Proclamation deprives them of their livelihood not for a day, for a week, or for even a month, but for six (6) months. The Proclamation itself— or any law that is purportedly meant to have authorized the issuance of such proclamation—does not provide a credible means of compensation for them. It does not mention any remedial measures for those whose rights will be affected. It is not only police power that exists. Fundamental rights vested by the Constitution could only be considered collateral damage undeserving of any form of redress.

Parenthetically, even if the characterization of their plea belongs to the right to property, *Southern Luzon Drug Corporation v. Department of Social Welfare and Development,*[20] is not on point.

In *Southern Luzon Drug Corporation*, we dealt with the question as to whether the shift in tax treatment of the 20% discount given to senior citizens and persons with disability

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[19] *Id*. at 324.

[20] G.R. No. 199669, April 25, 2017, 824 SCRA 164 [Per *J.* Reyes, *En Banc*].

was a valid exercise of police power. The case did not involve the livelihood of individuals; rather, it involved the profits of an ongoing business. Furthermore, the businesses affected by the senior citizen's discount were not suspended. The case only concerned itself on the proper way of computing their taxes for incomes they have not yet received.

There is a fundamental difference in treatment between a business and human labor under our Constitution. Human labor is given more protection. This is found in Article XIII, Section 3 of the Constitution:

> SECTION 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

Here, what happened was not a mere regulation of a business. It was a closure of an entire island that ceased to make any of the means to a livelihood known to them possible.

It is unfortunate that the Majority made judicial findings accepting the government's argument that petitioners were free to move and practice their profession elsewhere.[21] This was without basis.

Not all informal workers are mobile simply because not all of them have financial resources to move from one (1) place to another. Not all of them have multiple skills that would allow them the flexibility to be employed in another line of work immediately when their current consistent source of income stops. Precisely, they become part of the informal sector because through their circumstances, they have been unable to evolve to more marketable skills. To nonchalantly assume that they can find other jobs should not be an acceptable judicial approach, as that may trivialize the rights they assert. It is an unfortunate—though perhaps unintended—display of our lack of compassion for the plight of petitioners.

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[21] *Ponencia*, p. 24.

Certainly, this is not the judicial approach sanctioned by our Constitution. Article II, Sections 9 and 10 of the Constitution call attention to sensitivity to social justice, thus:

> SECTION 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.
>
> SECTION 10. The State shall promote social justice in all phases of national development.

Together, these constitutional provisions provide that social justice cannot be achieved through an overgeneralized understanding of labor. The informal sector, represented by petitioners, does not have the same mobility of other workers who have more skills. They do not also have the same mobility as the businesses that filed the petition in *Southern Luzon Drug Corporation*.[22]

Undoubtedly, here, the total negation of petitioners' opportunity to do their livelihood was a deprivation of their right to life and liberty. Definitely, they had standing to sue.

II

The breadth of the constitutional protection of life and liberty may continue to evolve with contemporary realities. However, the textual basis in the Constitution is fixed: any intrusion must be with due process of law.

Jurisprudence evolved three (3) levels of due process analysis.

In *Ermita Malate Hotel and Motel Operators Association*,[23] where the validity of an ordinance was upheld, this Court reasoned that the ordinance was a police power measure aimed

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[22] G.R. No. 199669, April 25, 2017, 824 SCRA 164 [Per *J.* Reyes, *En Banc*].

[23] 127 Phil. 306 (1967) [Per *J.* Fernando, *En Banc*].

at safeguarding public morals, and thus, is immune from imputation of nullity:

> To hold otherwise would be to *unduly restrict and narrow the scope of police power which has been properly characterized as the most essential, insistent and the least limitable of powers*, extending as it does "to all the great public needs." It would be, to paraphrase another leading decision, to destroy the very purpose of the state if it could be deprived or allowed itself to be deprived of its competence to promote public health, public morals, public safety and the general welfare. Negatively put, police power is "that inherent and plenary power in the State which enables it to prohibit all that is hurtful to the comfort, safety, and welfare of society."[24] (Emphasis supplied)

In that case, the Court viewed due process as merely requiring that the challenged action "must not outrun the bounds of reasons and result in sheer oppression. Due process is thus hostile to any official action marred by lack of reasonableness. Correctly has it been identified as freedom from arbitrariness. It is the embodiment of the sporting idea of fair play."[25]

Decades later, in *City of Manila*,[26] an ordinance that prohibited persons and corporations from contracting and engaging in any business providing certain forms of amusement, entertainment, services, and facilities, where women were used as tools in entertainment, was struck down as unconstitutional because it affected the moral welfare of the community. This Court clearly defined the test of a valid ordinance:

> [I]t must not only be within the corporate powers of the local government unit to enact and must be passed according to the procedure prescribed by law, it must also conform to the following substantive requirements: (1) must not contravene the Constitution or any statute; (2) must not be unfair or oppressive; (3) must not be partial or discriminatory; (4) must not prohibit but may regulate trade; (5) must

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[24] *Id*. at 316.

[25] *Id*. at 319.

[26] 495 Phil. 289 (2005) [Per J. Tinga, *En Banc*].

be general and consistent with public policy; and (6) must not be unreasonable.[27]

Only a few years later, in *White Light Corporation v. City of Manila*,[28] this Court elaborated:

> The general test of the validity of an ordinance on substantive due process grounds is best tested when assessed with the evolved footnote 4 test laid down by the U.S. Supreme Court in *U.S. v. Carolene Products*. Footnote 4 of the *Carolene Products* case acknowledged that the judiciary would defer to the legislature unless there is a discrimination against a "discrete and insular" minority or infringement of a "fundamental right". Consequently, two standards of judicial review were established: strict scrutiny for laws dealing with freedom of the mind or restricting the political process, and the rational basis standard of review for economic legislation.
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> A third standard, denominated as heightened or immediate scrutiny, was later adopted by the U.S. Supreme Court for evaluating classifications based on gender and legitimacy. Immediate scrutiny was adopted by the U.S. Supreme Court in *Craig*, after the Court declined to do so in *Reed v. Reed*. While the test may have first been articulated in equal protection analysis, it has in the United States since been applied in all substantive due process cases as well.
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> We ourselves have often applied the rational basis test mainly in analysis of equal protection challenges. Using the rational basis examination, laws or ordinances are upheld if they rationally further a legitimate governmental interest. Under intermediate review, governmental interest is extensively examined and the availability of less restrictive measures is considered. Applying strict scrutiny, the focus is on the presence of compelling, rather than substantial, governmental interest and on the absence of less restrictive means for achieving that interest.
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> In terms of judicial review of statutes or ordinances, strict scrutiny refers to the standard for determining the quality and the amount of governmental interest brought to justify the regulation of fundamental freedoms. Strict scrutiny is used today to test the validity of laws

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[27] *Id*. at 307-308.

[28] 596 Phil. 444 (2009) [Per *J*. Tinga, *En Banc*].

dealing with the regulation of speech, gender, or race as well as other fundamental rights as expansion from its earlier applications to equal protection. The United States Supreme Court has expanded the scope of strict scrutiny to protect fundamental rights such as suffrage, judicial access and interstate travel.[29] (Citations omitted)

Recently, in *Fernando, et al. v. St. Scholastica's College, et al.*,[30] we again discussed the three (3) levels of tests employed when there is a breach of a fundamental right.

In *Spark v. Quezon City*,[31] I reviewed in a Concurring Opinion the extent of the three (3) modes of due process review:

An appraisal of due process and equal protection challenges against government regulation must admit that the gravity of interests invoked by the government and the personal liberties or classification affected are not uniform. Hence, the three (3) levels of analysis that demand careful calibration: the rational basis test, intermediate review, and strict scrutiny. Each level is typified by the dual considerations of: first, the interest invoked by the government; and second, the means employed to achieve that interest.

The rational basis test requires only that there be a legitimate government interest and that there is a reasonable connection between it and the means employed to achieve it.

Intermediate review requires an important government interest. Here, it would suffice if government is able to demonstrate substantial connection between its interest and the means it employs. In accordance with *White Light*, "the availability of less restrictive measures [must have been] *considered*." This demands a conscientious effort at devising the least restrictive means for attaining its avowed interest. It is enough that the means employed is *conceptually* the least restrictive mechanism that the government may apply.

Strict scrutiny applies when what is at stake are fundamental freedoms or what is involved are suspect classifications. It requires

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[29] *Id.* at 462-463.

[30] 706 Phil. 138 (2013) [Per *J.* Mendoza, *En Banc*].

[31] G.R. No. 225442, August 8, 2017, 835 SCRA 350 [Per *J.* Perlas-Bernabe, *En Banc*].

that there be a compelling state interest and that the means employed to effect it are narrowly-tailored, *actually* — not only conceptually — being the least restrictive means for effecting the invoked interest. Here, it does not suffice that the government contemplated on the means available to it. Rather, it must show an active effort at demonstrating the inefficacy of all possible alternatives. Here, it is required to not only explore all possible avenues but to even debunk the viability of alternatives so as to ensure that its chosen course of action is the sole effective means. To the extent practicable, this must be supported by sound data gathering mechanisms.

Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas further explained:

> Under most circumstances, the Court will exercise judicial restraint in deciding questions of constitutionality, recognizing the broad discretion given to Congress in exercising its legislative power. Judicial scrutiny would be based on the "rational basis" test, and the legislative discretion would be given deferential treatment.
>
> *But if the challenge to the statute is premised on the denial of a fundamental right, or the perpetuation of prejudice against persons favored by the Constitution with special protection, judicial scrutiny ought to be more strict.* A weak and watered down view would call for the abdication of this Court's solemn duty to strike down any law repugnant to the Constitution and the rights it enshrines. This is true whether the actor committing the unconstitutional act is a private person or the government itself or one of its instrumentalities. Oppressive acts will be struck down regardless of the character or nature of the actor.

Cases involving strict scrutiny innately favor the preservation of fundamental rights and the non-discrimination of protected classes. Thus, in these cases, the burden falls upon the government to prove that it was impelled by a compelling state interest and that there is actually no other less restrictive mechanism for realizing the interest that it invokes:

Applying strict scrutiny, the focus is on the presence of compelling, rather than substantial, governmental interest and on the absence of less restrictive means for achieving that interest, and the burden befalls

upon the State to prove the same.[32] (Emphasis in the original, citations omitted)

The Constitution mandates more sensitivity towards several classes and identities found within our society. Social justice at all levels of governances is an overarching state policy. This envisions a dynamic social order that will ensure prosperity and "free the people from poverty"[33] through policies which "provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all."[34] Our fundamental law "values the dignity of every human person and guarantees full respect for human rights."[35] Women, the youth, indigenous peoples, farmers and farmworkers, labor in general enjoy significant protection.

These provisions are not merely sardonic normative ornaments. Those who find themselves at the margins of society—through the operation of an oppressive political economy, or the stereotypes of contemporary culture, or as residues of our colonial past—deserve more judicial sensitivity. With respect to the due process clause, it means that when the everyday livelihood of those found within our informal sector are affected, an invocation of their fundamental right at least deserves a stricter judicial scrutiny. Unfortunately, the Majority Opinion failed to do so.

III

Even with the lowest level of scrutiny—the reasonability of the means to achieve a legitimate purpose test—the Proclamation should have failed judicial review for three (3) basic reasons. First, the coercive remedial measures contained in the Proclamation was so broad as to affect those who are innocent bystanders or those who are compliant with the law. Second,

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[32] See J. Leonen, Concurring Opinion in *Samahan ng mg Progresibong Kabataan (SPARK), et al. v. Quezon City, et al.*, G.R. No. 225442, 835 SCRA 350, 451-453 (2017) [Per J. Perlas-Bernabe, *En Banc*].

[33] CONST. Art. II, Sec. 9.

[34] CONST. Art. II, Sec. 9.

[35] CONST. Art. II, Sec. 11.

the Proclamation is vague and contradicts at least the DILG Guidelines and existing statutes; namely, our Civil Code and Republic Act No. 9275. Third, the Proclamation is not justified and is contradictory to Republic Act No. 10121.

This Court has, on many occasions struck down executive actions when it tends to unreasonably affect the rights of innocent third parties, who should not have been otherwise subjected to coercive measures.

White Light Corporation,[36] dealt with an ordinance that prohibited wash-up rates within the territory of the local government unit. It appeared that its intentions were to deprive the use of hotels and motels from commercial sex workers and those engaged in illicit affairs.

This Court, however, without going into the legitimacy of the objective of the measure, still nullified the ordinance. Other individuals, such as spouses or travelers or others who simply need a place to nap or shower, would also likely benefit from the short periods of accommodation that would charge the wash-up rates. This Court declared that "individual rights may be adversely affected only to the extent that may be required by the legitimate demands of public interest or public welfare."[37]

Proclamation No. 475 acknowledges that innocent parties and those who are compliant with existing laws will be affected. In its preambular clauses the government acknowledges:

> WHEREAS, the investigations and validation undertaken revealed that:
>
> . . . . . .
>
> b. Most commercial establishments and residences are not connected to the sewerage infrastructure of Boracay Island, and waste products are not being disposed through the proper sewerage infrastructures in violation of environmental law, rules, and regulations;

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[36] 596 Phil. 444 (2009) [Per *J.* Tinga, *En Banc*].

[37] *Id*. at 469.

c. Only 14 out of 51 establishments near the shores of Boracay Island are compliant with the provisions of Republic Act (RA) No. 9275 or the Philippine Clean Water Act of 2004;

. . . . . .

e. Solid waste within Boracay Island is at a generation rate of 90 to 115 tons per day, while the hauling capacity of the local government is only 30 tons per day, hence leaving approximately 85 tons of waste in the Island daily;

. . . . . .

g. Only four (4) out of nine (9) wetlands in Boracay Island remain due to illegal encroachment of structures, including 937 identified illegal structures constructed on forestlands and wetlands, as well as 102 illegal structures on areas already classified as easements, and the disappearance of the wetlands, which act as natural catchments, enhances flooding in the area[.][38]

There are commercial establishments and residential areas connected to the sewage infrastructure. There are at least 14 establishments who comply with Republic Act No. 9275 or the Philippine Clean Water Act of 2004. There are wetlands that are not affected by illegal structures. There are residents and commercial establishments whose garbage are collected properly. More importantly, petitioners are not shown to have contributed to the formation of fecal coliform in the targeted beaches of Boracay.

Similar to the situation in *White Light Corporation*,[39] the coercive remedial measures are too broad that it affects those who may not be responsible for the evil sought to be addressed.

IV

Secondly, the Proclamation does not pass due process scrutiny because it is vague that it does not adequately provide notice to all those affected as to what the Chief Executive, through

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[38] Proc. No. 475 (2018), Whereas clauses.

[39] 596 Phil. 444 (2009) [Per *J.* Tinga, *En Banc*].

his various departments, intend to do and how the rights of those encompassed within its broad sweep will be affected. Worse, the deployment of a massive contingent of law enforcers and the curtailment of freedom of the press may have served to stifle questions as to the specific contours of the actions of government to address the ecological situation in the island.

We review the chronological context of the government's actions as contained in the pleadings. Apparently, the closure was effected even before the Proclamation was promulgated through DILG Guidelines.

Sometime in February last year, President Duterte, in one of his speeches, described Boracay as a "cesspool" and ordered the Department of Environment and Natural Resources to clean up the island.[40] On March 6, 2018, he announced that he would be placing Boracay under a state of calamity. He warned the courts not to interfere or issue Temporary Restraining Orders and threatened to charge the local officials of Boracay with sedition if they were to resist.[41]

On April 4, 2018, during a cabinet meeting, he approved the total closure of the island for six (6) months, beginning April 26, 2018. The day after, Spokesperson Harry L. Roque confirmed the rumors that Boracay was indeed being closed on the basis of police power.[42]

On their websites, publications Rappler and ABS-CBN reported that the Department of Interior and Local Government

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[40] *Duterte slams Boracay as 'cesspool,' threatens to shut down island*, ABS-CBN NEWS, February 10, 2018, < https://news.abs-cbn.com/news/02/10/18/duterte-slams-boracay-as-cesspool-threatens-to-shut- down-island > (last accessed February 14, 2019).

[41] Pia Ranada, *Duterte to declare state of calamity in Boracay, warns courts not to interfere*, RAPPLER, March 6, 2018, < https://www.rappler.com/nation/197573-duterte-boracay-state-calamity-courts- interfere> (last accessed February 14, 2019).

[42] Nestor Corrales, *Duterte approves 6-month closure of Boracay, starting April 26*, INQUIRER.NET, April 4, 2018, < https://newsinfo.inquirer.net/980185/boracay-closure-rodrigo-duterte > (last accessed February 14, 2019).

issued guidelines for the closure,[43] and that 630 police and military personnel have been deployed on the island.[44]

The DILG Guidelines provide:

1. **No going beyond Jetty Port.** Identified tourists will not be allowed into the island and will be stopped at the Jetty Port in Malay, Aklan.
2. **No ID, no entry.** Residents/workers/resort owners will be allowed entry into the island subject to the presentation of identification cards specifying a residence in Boracay. All government-issued IDs will be recognized. Non-government IDs are acceptable as long as they are accompanied by a barangay certification of residency.
3. **Swimming for locals only.** Generally, swimming shall not be allowed anywhere on the island. However, residents may be allowed to swim only at Angol Beach in station 3 from 6 am to 5pm.
4. **One condition for entry.** No visitors of Boracay residents shall be allowed entry, except under emergency situations, and with the clearance of the security committee composed of DILG representative, police, and local government officials.
5. **Journalists need permission to cover.** Media will be allowed entry subject to prior approval from the Department of Tourism, with a definite duration and limited movement.
6. **No floating structures.** No floating structures shall be allowed up to 15 kilometers from the shoreline.

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[43] *See* Rambo Talabong, *LIST*: *New Boracay rules during 6-month closure*, RAPPLER, April 12, 2018, < https://www.rappler.com/nation/200122-list-new-rules-boracay-closure > (last accessed February 14, 2019); *see also* Dharel Placido, *No visitors, no tourists: DILG releases Boracay rules during 6-month closure*, ABS-CBN NEWS, April 17, 2018, < https://news.abs-cbn.com/news/04/17/18/no-visitors-no-tourists-dilg-releases-boracay-rules-during-6-month-closure > (last accessed February 14, 2019).

[44] Boy Ryan Zabal, *Police deployed in Boracay enough to stop crimes, lootings — PNP*, RAPPLER, May 1, 2018, < https://www.rappler.com/nation/201475-police-boracay-enough-stop-crimes-looting > (last accessed February 14, 2019).

7. **Foreign residents to be checked.** The Bureau of Immigration will revalidate the papers of foreigners who have found a home in Boracay.

8. One entry, one exit point. There will only be one transportation point to Boracay Island. Authorities have yet to decide where.[45] (Emphasis in the original)

On April 24, 2018, petitioners came to this Court. They are a sandcastle builder, a driver and a non-resident who visits the island.

Two (2) days later, President Duterte issued Proclamation No. 475 and the shutdown of the entire island commenced.

After being able to access the Proclamation, Petitioners filed a Supplemental Petition on May 10, 2018.

The DILG Guidelines are rudimentary and merely provide who may enter the island and how they are to do so. On the other hand, the Proclamation provides for the implementation of "urgent measures," the designation by Department of Environment and Natural Resources of water bodies where specific pollutants have exceeded the water quality levels, and powers to take "measures" to improve the water quality.

The DILG Guidelines, as reported, mention "identified tourists", limit swimming only to "residents" to areas which are free from malevolent bacteria. It does not allow swimming for workers of establishments or the members of law enforcement contingent sent to the island. It also curtails visitation of residents. The DILG Guidelines also require media to register without any guidance as to the basis for allowing or rejecting coverage, seriously raising issues regarding whether freedom of expression and/or the press has been abridged.

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[45] Rambo Talabong, *LIST: New Boracay rules during 6-month closure*, RAPPLER, April 12, 2018, < https://www.rappler.com/nation/200122-list-new-rules-boracay-c1osure > (last accessed February 14, 2019); *see also* Dharel Placido, *No visitors, no tourists: DILG releases Boracay rules during 6-month closure*, ABS-CBN NEWS, April 17, 2018, < https://news.abs-cbn.com/news/04/17/18/no-visitors-no- tourists-dilg-releases-boracay-rules-during-6-month-closure > (last accessed February 14, 2019).

While none of the provisions in the DILG Guidelines are contained specifically in Proclamation No. 475, the latter does not specifically repeal the former.

The programs and activities that the Proclamation puts into effect are unclear. There are no provisions to alleviate those whose rights will be affected and the remedies that will be available to those aggrieved. More than any reasonable piece of legislation, it only seems to grant amorphous powers to the President.

The Proclamation provides:

NOW, THEREFORE, I, RODRIGO ROA DUTERTE, President of the Philippines, by virtue of the powers vested in me by the Constitution and existing laws, do hereby declare a State of Calamity in the barangays of Balabag, Manoc-Manoc and Yapak (Island of Boracay) in the Municipality of Malay, Aklan. In this regard, the temporary closure of the Island as a tourist destination for six (6) months starting 26 April 2018, or until 25 October 2018, is hereby ordered, subject to applicable laws, rules, regulations and jurisprudence.

Concerned government agencies shall, as may be necessary or appropriate, undertake the remedial measures during a State of Calamity as provided in RA No. 10121 and other applicable laws, rules and regulations, such as control of the prices of basic goods and commodities for the affected areas, employment of negotiated procurement and utilization of appropriate funds, including the National Disaster Risk Reduction and Management Fund, for relief and rehabilitation efforts in the area. All departments and other concerned government agencies are also hereby directed to coordinate with and provide or augment the basic services and facilities of affected local government units, if necessary.

The State of Calamity in the Island of Boracay shall remain in force and effect until lifted by the President, notwithstanding the lapse of the six-month closure period.

All departments, agencies and offices, including government-owned or controlled corporations and affected local government units are hereby directed to implement and execute the abovementioned closure and the appropriate rehabilitation works, in accordance with pertinent operational plans and directives, including the Boracay Action Plan.

The Philippine National Police, the Philippine Coast Guard and other law enforcement agencies, with the support of the Armed Forces of the Philippines, are hereby directed to act with restraint and within the bounds of the law in the strict implementation of the closure of the Island and ensuring peace and order in the area.

The Municipality of Malay, Aklan is also hereby directed to ensure that no tourist will be allowed entry to the Island of Boracay until such time that the closure has been lifted by the President.

All tourists, residents and establishment owners in the area are also urged to act within the bounds of the law and to comply with the directives herein provided for the rehabilitation and restoration of the ecological balance of the Island which will be for the benefit of all concerned.[46] (Emphasis in the original)

The enacting clause declares a temporary closure of the island for six (6) months yet the third clause provides that the state of calamity is open ended and without a time limit. Nothing in the Proclamation justifies the period of six (6) months for the closure. The second paragraph after the enacting clause also suggests that the temporary closure may be extended because the state of calamity is indefinite. Thus:

The State of Calamity in the Island of Boracay shall remain in force and effect until lifted by the President, notwithstanding the lapse of the six-month closure period.[47]

The first paragraph after the enacting clause mentions general remedial measures to be done by the Executive. All government agencies are mandated to assist in the yet to be publicly declared programs and activities during the closure.

The third paragraph after the enacting clause only refers to "the appropriate rehabilitation works, in accordance with pertinent operational plans and directives, including the Boracay Action Plan." None of these plans however were attached to the proclamation and none were presented here by the Office of the Solicitor General on behalf of the government.

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[46] Proc. No. 475 (2018).

[47] Proc. No. 475 (2018).

The fourth paragraph after the enacting clause refers to a policy of restraint for law enforcement agencies. The fifth paragraph after the enacting clause refers to the ban for tourists to sojourn into the island without providing for the reasons why all tourists shall be banned. It also does not contain the standard for restrictions, if any, for tourism should the island be partially opened.

The sixth paragraph after the enacting clause is addressed to the residents and owners to comply with the directives for the rehabilitation of the island. Those aggrieved are not provided with a procedure for raising their claims to their livelihood and properties. There is no process to address any objections to the hidden projects or activities that are not mentioned in the Proclamation.

Proclamation No. 475 is eerily similar to the vagueness of the Martial Law Proclamation in the recent case of *Lagman v. Medialdea*.[48] We recall our discussion on void-for-vagueness:

> The doctrine of void for vagueness is a ground for invalidating a statute or a governmental regulation for being *vague*. The doctrine requires that a statute be sufficiently explicit as to inform those who are subject to it what conduct on their part will render them liable to its penalties. In *Southern Hemisphere v. Anti-Terrorism Council*:
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> > A statute or act suffers from the defect of vagueness when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ as to its application. It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.
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> In *People of the Philippines v. Piedra*, the Court explained that the rationale behind the doctrine is to give a person of ordinary intelligence a fair notice that his or her contemplated conduct is

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[48] G.R. Nos. 231658, 231771 & 231774, July 4, 2017 [Per *J.* Del Castillo, *En Banc*].

forbidden by the statute or the regulation. Thus, a statute must be declared void and unconstitutional when it is so indefinite that it encourages arbitrary and erratic arrests and convictions.

In *Estrada v. Sandiganbayan*, the Court limited the application of the doctrine in cases where the statute is "*utterly vague on its face,* i.e. that which cannot be clarified by a saving clause or construction." Thus, when a statute or act lacks comprehensible standards that men of common intelligence must necessarily guess its meaning and differ in its application, the doctrine may be invoked:

> Hence, it cannot plausibly be contended that the law does not give a fair warning and sufficient notice of what it seeks to penalize. Under the circumstances, petitioner's reliance on the "void-for-vagueness" doctrine is manifestly misplaced. The doctrine has been formulated in various ways, but is most commonly stated to the effect that a statute establishing a criminal offense must define the offense with sufficient definiteness that persons of ordinary intelligence can understand what conduct is prohibited by the statute. It can only be invoked against that specie of legislation that is utterly vague on its face, *i.e*., that which cannot be clarified either by a saving clause or by construction.
>
> A statute or act may be said to be vague when it lacks comprehensible standards that men of common intelligence must necessarily guess at its meaning and differ in its application. In such instance, the statute is repugnant to the Constitution in two (2) respects — it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of what conduct to avoid; and, it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle. But the doctrine does not apply as against legislations that are merely couched in imprecise language but which nonetheless specify a standard though defectively phrased; or to those that are apparently ambiguous yet fairly applicable to certain types of activities. The first may be "saved" by proper construction, while no challenge may be mounted as against the second whenever directed against such activities. With more reason, the doctrine cannot be invoked where the assailed statute is clear and free from ambiguity, as in this case.

In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, the Court clarified that the void for vagueness doctrine may only be invoked in *as-applied* cases. The Court explained:

> While *Estrada* did not apply the overbreadth doctrine, it did not preclude the operation of the vagueness test on the Anti-Plunder Law *as applied* to the therein petitioner, finding, however, that there was no basis to review the law "on its face and in its entirety." It stressed that "statutes found vague *as a matter of due process* typically are invalidated only 'as applied' to a particular defendant."

However, in *Disini v. Secretary of Justice*, the Court extended the application of the doctrine even to facial challenges, ruling that "when a penal statute encroaches upon the freedom of speech, a facial challenge grounded on the void-for-vagueness doctrine is acceptable." Thus, by this pronouncement the void for vagueness doctrine may also now be invoked in facial challenges as long as what it involved is freedom of speech.

On the other hand, the void for overbreadth doctrine applies when the statute or the act "offends the constitutional principle that a governmental purpose to control or prevent activities constitutionally subject to state regulations may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms."

In *Adiong v. Commission on Elections*, the Court applied the doctrine in relation to the Due Process Clause of the Constitution. Thus, in *Adiong*, the Commission on Elections issued a Resolution prohibiting the posting of decals and stickers not more than eight and one-half (8 ½) inches in width and fourteen (14) inches in length *in any place, including mobile places whether public or private* except in areas designated by the COMELEC. The Court characterized the regulation as void for being "so broad," thus:

> Verily, the restriction as to where the decals and stickers should be posted is so broad that it encompasses even the citizen's private property, which in this case is a privately-owned vehicle. In consequence of this prohibition, another cardinal rule prescribed by the Constitution would be violated. Section 1, Article III of the Bill of Rights provides "that no person shall be deprived of his property without due process of law."

> Property is more than the mere thing which a person owns, it includes the right to acquire, *use*, and dispose of it; and the Constitution, in the 14th Amendment, protects these essential attributes.
>
> Property is more than the mere thing which a person owns. It is elementary that it includes the right to acquire, use, and dispose of it. The Constitution protects these essential attributes of property. . . Property consists of the free use, enjoyment, and disposal of a person's acquisitions without control or diminution save by the law of the land.

In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, the Court held that the application of the overbreadth doctrine is limited only to free speech cases due to the rationale of a facial challenge. The Court explained:

> By its nature, the overbreadth doctrine has to necessarily apply a facial type of invalidation in order to plot areas of protected speech, inevitably almost always under situations not before the court, that are impermissibly swept by the substantially overbroad regulation. Otherwise stated, a statute cannot be properly analyzed for being substantially overbroad if the court confines itself only to facts as applied to the litigants.

The Court ruled that as regards the application of the overbreadth doctrine, it is limited only to "a facial kind of challenge and, owing to the given rationale of a facial challenge, applicable only to free speech cases."

The Court's pronouncements in *Disini v. Secretary of Justice* is also premised on the same tenor. Thus, it held:

> Also, the charge of invalidity of this section based on the overbreadth doctrine will not hold water since the specific conducts proscribed *do not intrude into guaranteed freedoms like speech*. Clearly, what this section regulates are specific actions: the acquisition, use, misuse or deletion of personal identifying data of another. There is no fundamental right to acquire another's personal data.
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> . . . . . .
>
> But this rule admits of exceptions. *A petitioner may for instance mount a "facial" challenge to the constitutionality of*

> *a statute even if he claims no violation of his own rights under the assailed statute where it involves free speech on grounds of overbreadth or vagueness of the statute*. The rationale for this exception is to counter the "chilling effect" on protected speech that comes from statutes violating free speech. A person who does not know whether his speech constitutes a crime under an overbroad or vague law may simply restrain himself from speaking in order to avoid being charged of a crime. The overbroad or vague law thus chills him into silence.
>
> It is true that in his Dissenting Opinion in *Estrada v. Sandiganbayan*, Justice V.V. Mendoza expressed the view that "the overbreadth and vagueness doctrines then have special application *only to free speech cases*. They are inapt for testing the validity of penal statutes."

However, the Court already clarified in *Southern Hemisphere Engagement Network, Inc., v. Anti-Terrorism Council*, that the primary criterion in the application of the doctrine is not whether the case is a freedom of speech case, but rather, whether the case involves an as-applied or a facial challenge. The Court clarified:

> The confusion apparently stems from the interlocking relation of the *overbreadth and vagueness* doctrines as grounds for a *facial* or *as-applied* challenge against a penal statute (under a claim of violation of due process of law) or a speech regulation (under a claim of abridgement of the freedom of speech and cognate rights).
>
> *To be sure, the doctrine of vagueness and the doctrine of overbreadth do not operate on the same plane.*
>
> . . . . . .
>
> The allowance of a facial challenge in free speech cases is justified by the aim to avert the chilling effect on protected speech, the exercise of which should not at all times be abridged. As reflected earlier, this rationale is inapplicable to plain penal statutes that generally bear an *in terrorem* effect in deterring socially harmful conduct. In fact, the legislature may even forbid and penalize acts formerly considered innocent and lawful, so long as it refrains from diminishing or dissuading the exercise of constitutionally protected rights.

The Court then concluded that due to the rationale of a facial challenge, the overbreadth doctrine is applicable only to free speech cases. Thus:

> By its nature, the overbreadth doctrine has to necessarily apply a facial type of invalidation in order to plot areas of protected speech, inevitably almost always under situations not before the court, that are impermissibly swept by the substantially overbroad regulation. Otherwise stated, a statute cannot be properly analyzed for being substantially overbroad if the court confines itself only to facts as applied to the litigants.
>
> . . . . . .
>
> In restricting the overbreadth doctrine to free speech claims, the Court, in at least two cases, observed that the US Supreme Court has not recognized an overbreadth doctrine outside the limited context of the First Amendment, and that claims of facial overbreadth have been entertained in cases involving statutes which, by their terms, seek to regulate only spoken words. In *Virginia v. Hicks,* it was held that rarely, if ever, will an overbreadth challenge succeed against a law or regulation that is not specifically addressed to speech or speech-related conduct. Attacks on overly broad statutes are justified by the "transcendent value to all society of constitutionally protected expression."

As regards the application of the void for vagueness doctrine, the Court held that vagueness challenges must be examined in light of the specific facts of the case and not with regard to the statute's facial validity. Notably, the case need not be a freedom of speech case as the Court cited previous cases where the doctrine was applied:

> In this jurisdiction, the void-for-vagueness doctrine asserted under the due process clause has been utilized in examining the constitutionality of criminal statutes. In at least three cases, the Court brought the doctrine into play in analyzing an ordinance penalizing the non-payment of municipal tax on fishponds, the crime of illegal recruitment punishable under Article 132 (b) of the Labor Code, and the vagrancy provision under Article 202 (2) of the Revised Penal Code. Notably, the petitioners in these three cases, similar to those in the two *Romualdez* and *Estrada* cases, were actually charged with the therein assailed penal statute, unlike in the present case.

From these pronouncements, it is clear that what is relevant in the application of the void-for-vagueness doctrine is not whether it is a freedom of speech case, but rather whether it violates the Due Process Clause of the Constitution for failure to accord persons a fair notice of which conduct to avoid; and whether it leaves law enforcers unbridled discretion in carrying out their functions.[49] (Emphasis in the original, citations omitted)

V

The inability of the Proclamation to provide fair notice and "whether it leaves law enforcers unbridled discretion in carrying out their function"[50] is readily demonstrated by the contradiction in the provisions of the Proclamation with existing laws.

The Civil Code acknowledges the concept of nuisance, thus:

ARTICLE 694. A nuisance is any act, omission, establishment, business, condition of property, or anything else which:

(1) Injures or endangers the health or safety of others; or

(2) Annoys or offends the senses; or

(3) Shocks, defies or disregards decency or morality; or

(4) Obstructs or interferes with the free passage of any public highway or street, or any body of water; or

(5) Hinders or impairs the use of property.

ARTICLE 695. Nuisance is either public or private. A public nuisance affects a community or neighborhood or any considerable number of persons, although the extent of the annoyance, danger or damage upon individuals may be unequal. A private nuisance is one that is not included in the foregoing definition.

The responsibility to abate a nuisance lies with the owner or possessor of a property:

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[49] *J.* Leonen, Dissenting Opinion in *Lagman v. Medialdea*, G.R. No. 231658, July 4, 2017, 829 SCRA 1, 531-538 [Per *J.* Del Castillo, *En Banc*].

[50] *Id*.

ARTICLE 696. Every successive owner or possessor of property who fails or refuses to abate a nuisance in that property started by a former owner or possessor is liable therefor in the same manner as the one who created it.

ARTICLE 697. The abatement of a nuisance does not preclude the right of any person injured to recover damages for its past existence.[51]

Being a public nuisance, the remedy for the discharge of coliform within private properties or properties possessed by private persons are:

ARTICLE 699. The remedies against a public nuisance are:

(1) A prosecution under the Penal Code or any local ordinance: or

(2) A civil action; or

(3) Abatement, without judicial proceedings.[52]

Abatement of a public nuisance is provided, thus:

ARTICLE 698. Lapse of time cannot legalize any nuisance, whether public or private.

ARTICLE 700. The district health officer shall take care that one or all of the remedies against a public nuisance are availed of.

ARTICLE 701. If a civil action is brought by reason of the maintenance of a public nuisance, such action shall be commenced by the city or municipal mayor.

ARTICLE 702. The district health officer shall determine whether or not abatement, without judicial proceedings, is the best remedy against a public nuisance.

ARTICLE 703. A private person may file an action on account of a public nuisance, if it is specially injurious to himself.

ARTICLE 704. Any private person may abate a public nuisance which is specially injurious to him by removing, or if necessary, by

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[51] CIVIL CODE, Arts. 696 and 697.

[52] CIVIL CODE, Art. 699.

destroying the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury. But it is necessary:

(1) That demand be first made upon the owner or possessor of the property to abate the nuisance;

(2) That such demand has been rejected;

(3) That the abatement be approved by the district health officer and executed with the assistance of the local police; and

(4) That the value of the destruction does not exceed three thousand pesos.[53]

Nothing in the Proclamation relates to or is in accordance with these statutory procedures and standards of the Civil Code.

Significantly, the Proclamation also contravenes Republic Act No. 9275 or the Philippine Clean Water Act of 2004.

Section 6 of the Philippine Clean Water Act of 2004 provides a systematic procedure for the management of water bodies which are heavily polluted or referred to as "non-attainment areas." Thus:

SECTION 6. *Management of Non-attainment Areas*. — The Department shall designate water bodies, or portions thereof, where specific pollutants from either natural or man-made source have already exceeded water quality guidelines as non-attainment areas for the exceeded pollutants. It shall prepare and implement a program that will not allow new sources of exceeded water pollutant in non-attainment areas without a corresponding reduction in discharges from existing sources: *Provided*, That if the pollutant is naturally occurring, e.g. naturally high boron and other elements in geothermal areas, discharge of such pollutant may be allowed: *Provided, further*, That the effluent concentration of discharge shall not exceed the naturally occurring level of such pollutant in the area: *Provided, finally*, That the effluent concentration and volume of discharge shall not adversely affect water supply, public health and ecological protection.

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[53] CIVIL CODE, Arts. 698, 700, 701, 702, 703 and 704.

The Department shall, in coordination with NWRB, Department of Health (DOH), Department of Agriculture (DA), governing board and other concerned government agencies and private sectors shall take such measures as may be necessary to upgrade the quality of such water in non-attainment areas to meet the standards under which it has been classified.

Upgrading of water quality shall likewise include undertakings which shall improve the water quality of a water body to a classification that will meet its projected or potential use.

The LGUs shall prepare and implement contingency plans and other measures including relocation, whenever necessary, for the protection of health and welfare of the residents within potentially affected areas.

Complementing these procedures to identify heavily polluted waters, and therefore considered non-attainment areas, are the enforcement mechanisms in the law. Should clean-up of the waters become necessary, Section 16 of Republic Act No. 9275 will apply, thus:

SECTION 16. *Clean-Up Operations*. — Notwithstanding the provisions of Sections 15 and 26 hereof, any person who causes pollution in or pollutes water bodies in excess of the applicable and prevailing standards shall be responsible to contain, remove and clean-up any pollution incident at his own expense to the extent that the same water bodies have been rendered unfit for utilization and beneficial use: *Provided,* That in the event emergency clean-up operations are necessary and the polluter fails to immediately undertake the same, the Department, in coordination with other government agencies concerned, shall conduct containment, removal and clean-up operations. Expenses incurred in said operations shall be reimbursed by the persons found to have caused such pollution upon proper administrative determination in accordance with this Act. Reimbursements of the cost incurred shall be made to the Water Quality Management Fund or to such other funds where said disbursements were sourced.

This applies to the containment, removal, and clean-up operations for the body of water that is polluted. To prevent further discharge from a private source, Section 27 of Republic Act No. 9275 prohibits:

SECTION 27. *Prohibited Acts*. — The following acts are hereby prohibited:

a) Discharging, depositing or causing to be deposited material of any kind directly or indirectly into the water bodies or along the margins of any surface water, where, the same shall be liable to be washed into such surface water, either by tide action or by storm, floods or otherwise, which could cause water pollution or impede natural flow in the water body;

. . . . . .

e) Unauthorized transport or dumping into sea waters of sewage sludge or solid waste as defined under Republic Act No. 9003;

. . . . . .

g) Operate facilities that discharge or allow to seep, willfully or through gross negligence, prohibited chemicals, substances or pollutants listed under Republic Act No. 6969, into water bodies or wherein the same shall be liable to be washed into such surface, ground, coastal, and marine water;

h) Undertaking activities or development and expansion of projects, or operating wastewater/sewerage facilities in violation of Presidential Decree No. 1586 and its implementing rules and regulations;

i) Discharging regulated water pollutants without the valid required discharge permit pursuant to this Act or after the permit was revoked or any violation of any condition therein;

j) Noncompliance of the LGU with the Water Quality Framework and Management Area Action Plan. In such a case, sanctions shall be imposed on the local government officials concerned;

k) Refusal to allow entry, inspection and monitoring by the Department in accordance with this Act;

l) Refusal to allow access by the Department to relevant reports and records in accordance with this Act;

m) Refusal or failure to submit reports whenever required by the Department in accordance with this Act;

. . . . . .

o) Directly using booster pumps in the distribution system or tampering with the water supply in such a way as to alter or impair the water quality.

Section 28 of the same law provides further enforcement mechanisms:

SECTION 28. *Fines, Damages and Penalties*. — Unless otherwise provided herein, any person who commits any of the prohibited acts provided in the immediately preceding section or violates any of the provision of this Act or its implementing rules and regulations, shall be fined by the Secretary, upon the recommendation of the PAB in the amount of not less than Ten thousand pesos (₱10,000.00) nor more than Two hundred thousand pesos (₱200,000.00) for every day of violation. The fines herein prescribed shall be increased by ten percent (10%) every two (2) years to compensate for inflation and to maintain the deterrent function of such fines: *Provided, That the Secretary, upon recommendation of the PAB may order the closure, suspension of development or construction, or cessation of operations or, where appropriate disconnection of water supply, until such time that proper environmental safeguards are put in place and/or compliance with this Act or its rules and regulations are undertaken. This paragraph shall be without prejudice to the issuance of an ex parte order for such closure, suspension of development or construction, or cessation of operations during the pendency of the case.*

Failure to undertake clean-up operations, willfully, or through gross negligence, shall be punished by imprisonment of not less than two (2) years and not more than four (4) years and a fine not less than Fifty thousand pesos (₱50,000.00) and not more than One hundred thousand pesos (₱100,000.00) per day for each day of violation. Such failure or refusal which results in serious injury or loss of life and/or irreversible water contamination of surface, ground, coastal and marine water shall be punished with imprisonment of not less than six (6) years and one (1) day and not more than twelve (12) years, and a fine of Five hundred thousand pesos (₱500,000.00) per day for each day during which the omission and/or contamination continues.

In case of gross violation of this Act, the PAB shall issue a resolution recommending that the proper government agencies file criminal charges against the violators. (Emphasis supplied)

The Department of Environment and Natural Resources is only authorized by the Clean Water Act to order closures of operations when recommended by the Pollution Adjudicatory Board, or when the latter files an *ex parte* order before a court.

It is the Pollution Adjudicatory Board, not the President or the Department of Environment and Natural Resources, that has specific jurisdiction over the Clean Water Act:[54]

RULE III

Jurisdiction and Authority of the Board

SECTION 1. JURISDICTION OF THE BOARD

. . . . . .

B. Specific Jurisdiction. — Notwithstanding the general jurisdiction of the Board over adjudication of pollution cases, and all matters related thereto, the Board has specific jurisdiction, over the following cases:

. . . . . .

2. Clean Water Act (RA 9275)

The PAB has the *exclusive and original jurisdiction* with respect to adjudication of pollution cases based on exceedance of the DENR Effluent Standards and other acts defined as prohibited under Section 27 of R.A. 9275. (Emphasis supplied)

Should it be necessary, the issuance of Cease and Desist Orders are provided in the Pollution Adjudication Board Resolution No. 001-10 or the Revised Rules of Procedure of the Pollution Adjudicatory Board, thus:

RULE X

Orders, Resolutions and Decisions

SECTION 1. *Cease and Desist Order.* — Whenever the Board finds *prima facie* evidence that the emission or discharge of pollutants

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[54] PAB Reso. No. 001-10 (June 29, 2010), Rule I, Sec. 2 and Rule III, Sec. 1 (B) (2), Revised Rules of the Pollution Adjudicatory Board on Pleading, Practice and Procedure in Pollution Cases.

constitutes an immediate threat to life, public health, safety or welfare, or to animal or plant life, or exceeds the allowable DENR Standards, it may issue or recommend to the DENR Secretary an *ex-parte order* directing the discontinuance of the same or the temporary suspension or cessation of operation of the establishment or person generating such pollutants, without need of a prior public hearing.

The Cease and Desist Order (CDO) shall be immediately executory and shall remain in force and effect until modified or lifted by the Board or the DENR Secretary.

The Board or the DENR Secretary may also direct the Regional Office to revoke, suspend or modify any permit to operate a pollution control facility or any clearance whenever such is necessary to prevent or abate the pollution.

SECTION 2. *Cease and Desist Order against Whom Issued*. — A CDO shall be issued against the respondent for the purpose of directing it to immediately stop or refrain from doing or conducting an act, or continuing a particular activity or course of action in violation of environmental laws, such as, but not limited to, the operation of a particular machine, equipment, process or activity, or doing a particular act expressly prohibited by law.

. . . . . .

SECTION 4. *Board Action on Interim Cease and Desist Order*. — Where an interim CDO effective for seven (7) days has been issued by the Regional Director, the Board shall issue a Cease and Desist Order or recommend to the Secretary the issuance of a CDO, pursuant to the provisions of the applicable law.

SECTION 5. *Remedy of Respondent*. — The respondent may contest the order by filing with the Board a motion to lift the CDO, with proof of service of copies thereof on the Regional Office and the parties concerned.

The Board shall direct the Regional Office which has jurisdiction over the case and the parties concerned to file their comment to the motion within five (5) days from receipt thereof, copy-furnished the respondent. Thereafter, the motion shall be set for hearing or calendared for the Board's deliberation. The filing of such motion shall not stay the enforcement and execution of the CDO.

SECTION 6. *Implementation of Cease and Desist Order*. — The Regional Director or his duly authorized representative, in coordination

with the Regional Executive Director (RED) shall implement or cause the implementation of the Cease and Desist Order no later than seventy-two (72) hours from receipt thereof. He shall submit to the Board a report within forty-eight (48) hours after the completion of the implementation, stating therein the actions taken. Should the Cease and Desist Order be implemented beyond seventy-two (72) hours or cannot be implemented, the Regional Director shall submit a written report to the Board stating therein the causes of delay or failure to execute the same.

The implementing team shall be designated by the Regional Director.

In the implementation of Cease and Desist Orders, the Regional Director shall observe the following guidelines:

1. Upon issuance or receipt of the CDO by the Board, the EMB Regional Director or his duly authorized representative shall inform the local government unit (province/municipality/city) concerned regarding the implementation thereof by furnishing it with copies of the Orders received from the Board;

2. Upon arrival at the respondent's premises, the implementing team shall present proper identification as well as its mission Order duly signed by the EMB Regional Director;

3. The head of the implementing team shall serve the CDO on the Managing Head and the Pollution Control Officer, or in their absence to any person in charge, by thoroughly explaining to them the contents thereof;

4. The team shall proceed with the execution of the CDO by padlocking and sealing the source responsible for generating the effluent or emission, and thereafter requesting the Managing Head and the Pollution Control Officer to affix their signatures to the duplicate copy of the CDO as proof of service;

5. Should there be refusal on the part of the respondent to have the CDO implemented, the head of the implementing team shall report such incident to the EMB Regional Director, without prejudice to such respondent being declared in contempt and other criminal liability under relevant laws;

6. The Regional Director, whenever it is deemed necessary, may seek the assistance of the Local Government Units (LGUs) and/or Philippine National Police (PNP) through its PNP Regional Director. The written communication shall state the urgency of having the

CDO implemented within the seventy-two (72) hour period as prescribed in the existing Rules;

7. The LGUs and/or the PNP together with the same implementing team may break into respondent's premises for the purpose of implementing the CDO in accordance with number four (4) above; and

8. Upon serving of the CDO, the Regional Office shall document the same by taking of photographs and/or videos and thereafter advising respondent that removing or breaking the padlocks and seals constitutes is a criminal offense punishable by existing environmental laws, rules and regulations without prejudice to such respondent being declared in contempt and other liability under relevant laws.

SECTION 7. *Show Cause Order*. — Instead of issuing a CDO, the Board may opt to direct respondent to Show Cause why no CDO should be issued against it, subject to these criteria:

1. The results of a series of effluent samplings shows a marked decrease in the values of the relevant parameters; or

2. The values of the relevant parameters are not far from the DENR Standards.

These statutory framework and mechanisms are absent in the Proclamation.

Recalling the enabling clause of the Proclamation:

NOW, THEREFORE, I, RODRIGO ROA DUTERTE, President of the Philippines, by virtue of the powers vested in me by the Constitution and existing laws, do hereby declare a State of Calamity in the barangays of Balabag, Manoc-Manoc and Yapak (Island of Boracay) in the Municipality of Malay, Aklan. In this regard, the temporary closure of the Island as a tourist destination for six (6) months starting 26 April 2018, or until 25 October 2018, is hereby ordered, subject to applicable laws, rules, regulations and jurisprudence.

Concerned government agencies shall, as may be necessary or appropriate, undertake the remedial measures during a State of Calamity as provided in RA No. 10121 and other applicable laws, rules and regulations, such as control of the prices of basic goods and commodities for the affected areas, employment of negotiated

procurement and utilization of appropriate funds, including the National Disaster Risk Reduction and Management Fund, for relief and rehabilitation efforts in the area. All departments and other concerned government agencies are also hereby directed to coordinate with and provide or augment the basic services and facilities of affected local government units, if necessary.

. . . . . .

All departments, agencies and offices, including government-owned or controlled corporations and affected local government units are hereby directed to implement and execute the abovementioned closure and the appropriate rehabilitation works, in accordance with pertinent operational plans and directives, including the Boracay Action Plan.

. . . . . .

The Municipality of Malay, Aklan is also hereby directed to ensure that no tourist will be allowed entry to the Island of Boracay until such time that the closure has been lifted by the President.

All tourists, residents and establishment owners in the area are also urged to act within the bounds of the law and to comply with the directives herein provided for the rehabilitation and restoration of the ecological balance of the Island which will be for the benefit of all concerned.

The Proclamation makes two (2) basic and broad sets of directives to all agencies.

The first set relates to prices of basic goods, employment of procurement, and disbursement of funds, and for relief and rehabilitation. This is contained in the first paragraph after the enabling clause, thus:

All departments and other concerned government agencies are also hereby directed to coordinate with and provide or augment the basic services and facilities of affected local government units, if any.

The second set of directives relate to "appropriate rehabilitation works" where the primacy of "pertinent action plans and directives," including a "Boracay Action Plan," not appended to the Proclamation, is mentioned. Thus:

All departments, agencies and offices, including government-owned or controlled corporations and affected local government units are hereby directed to implement and execute the abovementioned closure and the appropriate rehabilitation works, in accordance with pertinent operational plans and directives, including the Boracay Action Plan.

The Proclamation completely negates the framework of enforcement and implementation of Republic Act No. 9275.

The form of the Presidential action contributes to its vagueness.

Executive Order No. 292 or the Administrative Code makes a clear distinction between an Executive Order and a Proclamation, thus:

SECTION 2. *Executive Orders*. — Acts of the President providing for rules of a general or permanent character in implementation or execution of constitutional or statutory powers shall be promulgated in executive orders.

. . . . . .

SECTION 4. *Proclamations*. — Acts of the President fixing a date or declaring a status or condition of public moment or interest, upon the existence of which the operation of a specific law or regulation is made to depend, shall be promulgated in proclamations which shall have the force of an executive order.

The Presidential action is in the form of a Proclamation, which appears to state a "status or condition," namely a "state of calamity," intending to signal the operation of Republic Act No. 10121 or Republic Act No. 9275.[55] However, as demonstrated, the provisions of the Proclamation amends the framework and implementation of the Civil Code and the Clean Water Act.

VI

Thirdly, the Proclamation transgresses due process of law in that it is not based on Republic Act No. 10121.

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[55] *See* Proc. No. 475.

The majority finds that Proclamation No. 475 is in the nature of a valid police power measure. It defined police power as the "state authority to enact legislation that may interfere with personal liberty or property in order to promote general welfare."[56] Police power does not need to be supported by the Constitution since "it is inborn in the very fact of statehood and sovereignty."[57]

A valid exercise of police power by the President requires that it be exercised within the framework of both the Constitution and statutes.

In *David v. Arroyo*,[58] this Court invalidated Presidential Decree No. 1017 insofar as the president is granted authority to promulgate "decrees." Legislative power is vested solely in the legislature. Our Constitution provides:

Article VI

The Legislative Department

SECTION 1. The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum.

To determine whether there is a valid delegation of legislative power, it must pass the completeness test and the sufficient standard test. The first test requires that the law must be complete in all its terms and conditions when it leaves the legislature, so much so that when it reaches the delegate, the only thing left is to enforce the law. The second test requires adequate guidelines in law to provide the boundaries of the delegate's authority.[59]

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[56] *Ponencia*, p. 21 citing *Edu v. Ericta*, 146 Phil. 469 (1970) [Per *J.* Fernando, *En Banc*].

[57] *Id*. citing *Philippine Association of Service Exporters, Inc. v. Hon. Drilon*, 246 Phil. 393, 398 (1988) [Per *J.* Sarmiento, *En Banc*].

[58] 522 Phil. 705 (2006) [Per *J.* Sandoval-Gutierrez, *En Banc*].

[59] *Eastern Shipping Lines v. POEA, et al*., 248 Phil. 762, 772 (1988) [Per *J.* Cruz, First Divison].

These tests ensure that the delegate does not step into the shoes of the legislature and exercise legislative power.[60] In *Belgica v. Ochoa*,[61] this Court reminded the parties that "the powers of the government must be divided to avoid concentration of these powers in any one branch, the division, it is hoped, would avoid any single branch from lording its power over the other branches of the citizenry."[62]

The majority, accepting the premise of respondents, cites Republic Act No. 10121[63] as statutory basis for the validity of Proclamation No. 475. Such reliance is erroneous.

Republic Act No. 10121 defines state of calamity as:

> SECTION 3. Definition of Terms. — For purposes of this Act, the following shall refer to:
>
> . . . . . .
>
> *(ll) "State of Calamity"—a condition involving mass casualty and/or major damages to property, disruption of means of livelihoods, roads and normal way of life of people in the affected areas as a result of the occurrence of natural or human-induced hazard*. (Emphasis supplied)

Not all man-made intrusions and pollution into our environment justify as severe an intervention as the "state of calamity envisioned in Republic Act 10121. The environmental disaster must (a) be of such gravity, (b) its cause so known that (c) the response required under that law is necessary.

The imminence of mass casualty or major damage to property or disruption of the means of livelihoods and the normal life

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[60] *Id*.

[61] 721 Phil. 416 (2013) [Per J. Perlas-Bernabe, *En Banc*].

[62] *Id*. at 534.

[63] An Act Strengthening the Philippine Disaster Risk Reduction and Management System, Providing for the National Disaster Risk Reduction and Management Framework and Institutionalizing the National Disaster Risk Reduction and Management Plan, Appropriating Funds Therefor and for Other Purposes.

of the people must be demonstrated. Any action of human beings may cause the unintended consequences of affecting whole communities. The profligate use of plastics is affecting our oceans and endangering our fish stock. The pervasiveness of livestock and the demand for meat may be causing the release of inordinate amounts of carbon and methane causing climate change. The release of anthropogenic gases and other human activities causing climate change have resulted in scientists warning that the "sixth mass extinction event" for our planet may be underway.[64]

Yet, not all of this evolving disasters—as the disaster involving fecal coliform in the beaches of Boracay—would be the state of calamity envisioned by Republic Act No. 10121. Rather, the problem of coliform formation may be due to many other factors that should be addressed by our building codes, sanitation codes, and other environmental laws. Each of these laws provide the means of redress as well as the process of weeding out the source of the disasters. Furthermore, in situations where the violations are rampant, the government may also want to invoke our anti-corruption laws to weed out the causes at its roots.

The nature of the calamity envisioned by Republic Act No. 10121 can be further discerned not only from the nature of the acts prohibited. Section 19 of the law provides:

> SECTION 19. Prohibited Acts. — Any person, group or corporation who commits any of the following prohibited acts shall be held liable and be subjected to the penalties as prescribed in Section 20 of this Act:
>
> (a) Dereliction of duties which leads to destruction, loss of lives, critical damage of facilities and misuse of funds;
>
> (b) Preventing the entry and distribution of relief goods in disaster-stricken areas, including appropriate technology, tools, equipment, accessories, disaster teams/experts;

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[64] Damian, Carrington, *Earth's sixth mass extinction event under way, scientists warn*, THE GUARDIAN, July 10, 2017, available at < https://www.theguardian.com/environment/2017/jul/10/earths-sixth-mass-extinction-event-already-underway-scientists-warn?CMP=share_btn_tw > (last visited on February 12, 2019).

(c) Buying, for consumption or resale, from disaster relief agencies any relief goods, equipment or other aid commodities which are intended for distribution to disaster affected communities;

(d) Buying, for consumption or resale, from the recipient disaster affected persons any relief goods, equipment or other aid commodities received by them;

(e) Selling of relief goods, equipment or other aid commodities which are intended for distribution to disaster victims;

(f) Forcibly seizing relief goods, equipment or other aid commodities intended for or consigned to a specific group of victims or relief agency;

(g) Diverting or misdelivery of relief goods, equipment or other aid commodities to persons other than the rightful recipient or consignee;

(h) Accepting, possessing, using or disposing relief goods, equipment or other aid commodities not intended for nor consigned to him/her;

(i) Misrepresenting the source of relief goods, equipment or other aid commodities by:

(1) Either covering, replacing or defacing the labels of the containers to make it appear that the goods, equipment or other aid commodities came from another agency or persons;

(2) Repacking the goods, equipment or other aid commodities into containers with different markings to make it appear that the goods, came from another agency or persons or was released upon the instance of a particular agency or persons;

(3) Making false verbal claim that the goods, equipment or other aid commodity in its untampered original containers actually came from another agency or persons or was released upon the instance of a particular agency or persons;

(j) Substituting or replacing relief goods, equipment or other aid commodities with the same items or inferior/cheaper quality;

(k) Illegal solicitations by persons or organizations representing others as defined in the standards and guidelines set by the NDRRMC;

(l) Deliberate use of false or inflated data in support of the request for funding, relief goods, equipment or other aid commodities for emergency assistance or livelihood projects; and

(m) Tampering with or stealing hazard monitoring and disaster preparedness equipment and paraphernalia.

The nature of the contingency for the state of calamity envisioned in Republic Act No. 10121 is such that casualties have actually been suffered and property actually damaged. This may take the form of typhoons, tsunamis, or earthquakes where government's relief is needed. It does not include human induced ecological disasters like the formation of fecal coliform on our beaches, which requires a more systematic, deliberate, structural, and institutional approach.

VII

The express and implied powers contained in the Proclamation exceeds that which is granted by Republic Act No. 10121.

Section 17 of that law contains a listing of the competences that may be exercised during states of calamities:

SECTION 17. Remedial Measures. — The declaration of a state of calamity shall make mandatory the immediate undertaking of the following remedial measures by the member-agencies concerned as defined in this Act:

(a) Imposition of price ceiling on basic necessities and prime commodities by the President upon the recommendation of the implementing agency as provided for under Republic Act No. 7581, otherwise known as the "Price Act", or the National Price Coordinating Council;

(b) Monitoring, prevention and control by the Local Price Coordination Council of overpricing/profiteering and hoarding of prime commodities, medicines and petroleum products;

(c) Programming/reprogramming of funds for the repair and safety upgrading of public infrastructures and facilities; and

(d) Granting of no-interest loans by government financing or lending institutions to the most affected section of the population through their cooperatives or people's organizations.

The law expands the power of the executive branch during emergencies. In passing Republic Act No. 10121, the legislature did not contemplate allowing the President to exercise any and all powers amounting to a suspension of existing legislation. Precisely, Republic Act No. 10121 is the legislation that limits that expansion of executive powers during that emergency.

The acknowledgement of the possible abuse of the executive's power to declare a state of calamity and to exercise powers not contemplated in the law is seen with two (2) salient features of the law. First, the declaration of a state of calamity may not be done without a recommendation. Section 16 provides:

SECTION 16. Declaration of State of Calamity. — The National Council shall recommend to the President of the Philippines the declaration of a cluster of barangays, municipalities, cities, provinces, and regions under a state of calamity, and the lifting thereof, based on the criteria set by the National Council. The President's declaration may warrant international humanitarian assistance as deemed necessary.

The declaration and lifting of the state of calamity may also be issued by the local sanggunian, upon the recommendation of the LDRRMC, based on the results of the damage assessment and needs analysis.

Second, the limited powers granted in Section 17 of Republic Act No. 10121 is also implied in other provisions, which guard against the possibility for abuse. The law contains both active Congressional Oversight as well as a sunset provision:

SECTION 26. Congressional Oversight Committee. — There is hereby created a Congressional Oversight Committee to monitor and oversee the implementation of the provisions of this Act. The Committee shall be composed of six (6) members from the Senate and six (6) members from the House of Representatives with the Chairpersons of the Committees on National Defense and Security of both the Senate and the House of Representatives as joint

Chairpersons of this Committee. The five (5) other members from each Chamber are to be designated by the Senate President and the Speaker of the House of Representatives, respectively. The minority shall be entitled to pro rata representation but shall have at least two (2) representatives from each Chamber.

SECTION 27. Sunset Review. — Within five (5) years after the effectivity of this Act, or as the need arises, the Congressional Oversight Committee shall conduct a sunset review. For purposes of this Act, the term "sunset review" shall mean a systematic evaluation by the Congressional Oversight Committee of the accomplishments and impact of this Act, as well as the performance and organizational structure of its implementing agencies, for purposes of determining remedial legislation.

The provisions in statutes should not be read in isolation from the purpose of the legislation and in light of its other provisions. The grant of power given to the president when a state of calamity is declared should thus be read in a limited fashion. *Expressio unius est exclusio alterius*.

Definitely, a total closure of an entire island is not contemplated in the law invoked by Proclamation No. 475.

VIII

More disturbingly, the Proclamation's violations of specific provisions contained in Republic Act No. 10121 patently shows that the latter cannot be the statutory basis for the exercise of executive power.

The period of the state of calamity provided in Proclamation No. 475 contravenes Republic Act No. 10121. In the Proclamation, it is made dependent exclusively on the President.

Proclamation No. 475 provides:

> The State of Calamity in the Island of Boracay shall remain in force and effect *until lifted by the President*, notwithstanding the lapse of the six-month closure period. (Emphasis supplied)

However, in Republic Act No. 10121, the period is conditioned on several factors. Thus:

SECTION 16. Declaration of State of Calamity. — The National Council shall recommend to the President of the Philippines the declaration of a cluster of barangays, municipalities, cities, provinces, and regions under a state of calamity, and the lifting thereof, based on the criteria set by the National Council. The President's declaration may warrant international humanitarian assistance as deemed necessary.

The declaration and lifting of the state of calamity may also be issued by the local sanggunian, upon the recommendation of the LDRRMC, based on the results of the damage assessment and needs analysis.(Emphasis supplied)

Executive issuances cannot amend statutes under which they are issued. It is clear in Proclamation No. 475 that it only grants the President the power to lift the state of calamity. The power of the President to lift the state of calamity is not qualified in the Proclamation, and neither is there a standard. Likewise, it does not mention any other authority that can lift the state of calamity. Incidentally, there is also no standard for the six (6)-month closure of the island.

However, Republic Act No. 10121, under which the Proclamation claims authority, allows the Municipal Sanggunian, upon the recommendation of its Local Disaster Risk Reduction and Management Council, to lift the state of calamity based on a "damage assessment and needs analysis."[65]

The Proclamation and the law are clearly contradictory.

IX

Moreover, the Proclamation transgresses both the Constitution's grant and the statutory elaboration of local autonomy.

The majority admits the intrusion of the President into the autonomy of the local government units, but finds it too trivial to warrant any consideration from this Court.[66]

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[65] Rep. Act No. 10121 (2010), Sec. 16.

[66] *Ponencia*, p. 26.

I cannot agree.

Article X, Section 2 of the Constitution grants local autonomy to all territorial and political subdivisions. Section 4 of the same article provides that the president's power over local government units is merely of general supervision and excludes control:

> ARTICLE X
>
> Local Government
>
> General Provisions
>
> SECTION 2. The territorial and political subdivisions shall enjoy local autonomy.
>
> . . . . . .
>
> SECTION 4. The President of the Philippines shall exercise general supervision over local governments. Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays shall ensure that the acts of their component units are within the scope of their prescribed powers and functions.

In issuing Proclamation No. 475, the President exercised control over the local government units. The Proclamation orders affected local government units to implement and execute the closure. This is definitely a measure of control, not mere supervision.

The distinction between supervision and control of local government units is settled in jurisprudence.

In *Pimentel v. Aguirre*,[67] this Court clarified the connection between supervision and control. The Constitution provides a president only with the power of supervision and not control over local government units. This power enables him or her to see to it that local government officials perform tasks within the bounds of law. He or she may not impair or infringe upon the power given to local government units by law.

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[67] 391 Phil. 84 (2000) [Per *J*. Panganiban, *En Banc*].

This Court differentiated the powers of control and supervision in *Drilon v. Lim*.[68] The power of control is the power to lay rules in the performance of an act. This power includes the ability to order the act done and redone, while supervisory power only necessitates that rules are followed. Under the power of supervision, there is no discretion to alter the rules. In short, supervisory power entails that rules are observed and nothing more.

In *Taule v. Santos*[69] we ruled that the Chief Executive's power over local governments was merely that of checking whether the officials were performing their duties within the bounds of law.

In *Province of Batangas v. Romulo*,[70] then President Joseph Ejercito Estrada (President Estrada) issued Executive Order No. 48 entitled, "Establishing a Program for Devolution Adjustment and Equalization." The program was established to facilitate the process of enhancing the capacities of local government units in the discharge of the functions and services devolved to them by the national government agencies concerned under the Local Government Code.

The Oversight Committee under Executive Secretary Ronaldo Zamora passed resolutions, which were approved by President Estrada on October 6, 1999. The guidelines formulated by the Oversight Committee required local government units to identify the projects eligible for funding under the Local Government Service Equalization Fund, and submit them to the Department of Interior and Local Government for appraisal. Then, the Oversight Committee serves notice to the Department of Budget and Management for the subsequent release of the funds.

This Court struck down the resolutions as infringing on the fiscal autonomy of local government units as provided in the Constitution:

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[68] 305 Phil. 146 (1994) [*J.* Cruz, *En Banc*].

[69] 277 Phil. 584 (1991) [*J.* Gancayco, *En Banc*].

[70] 473 Phil. 806 (2004) [Per *J.* Callejo Sr., *En Banc*].

Article II

Declaration of Principles and State Policies

. . . . . .

SECTION 25. The State shall ensure the autonomy of local governments.

An entire article of the Constitution has been devoted to guaranteeing and promoting the autonomy of local government units. Article X, Section 2 of the Constitution reiterates the State policy in this wise:

SECTION 2. The territorial and political subdivisions shall enjoy local autonomy.

Consistent with the principle of local autonomy, the Constitution confines the President's power over local government units to that of general supervision. This provision has been interpreted to exclude the power of control. The distinction between the two (2) powers was enunciated in *Drilon v. Lim*:

An officer in control lays down the rules in the doing of an act. If they are not followed, he may, in his discretion, order the act undone or re-done by his subordinate or he may even decide to do it himself. Supervision does not cover such authority. The supervisor or superintendent merely sees to it that the rules are followed, but he himself does not lay down such rules, nor does he have the discretion to modify or replace them. If the rules are not observed, he may order the work done or re-done but only to conform to the prescribed rules. He may not prescribe his own manner for doing the act. He has no judgment on this matter except to see to it that the rules are followed.[71]

The Local Government Code of 1991 was enacted to flesh out the mandate of the Constitution. The State policy on local autonomy is amplified in Section 2, thus:

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[71] *Id*. at 152.

SECTION 2. *Declaration of Policy*. — (a) It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources. The process of decentralization shall proceed from the National Government to the local government units.

In *National Liga ng mga Barangay v. Paredes*,[72] the Department of Interior and Local Government was appointed as interim caretaker to administer and manage the affairs of the Liga ng mga Barangay in giving remedy to alleged violations made by its incumbent officer in the conduct of their elections. It issued memorandum circulars that alter, modify, nullify, or set aside the actions of the Liga ng mga Barangay.

This Court ruled:

These acts of the DILG went beyond the sphere of general supervision and constituted direct interference with the political affairs, not only of the *Liga, but more importantly, of the barangay as an institution. The election of Liga officers is part of the Liga's internal organization, for which the latter has already provided guidelines. In succession, the DILG assumed stewardship and jurisdiction over the Liga affairs, issued supplemental guidelines for the election, and nullified the effects of the Liga-conducted elections. Clearly, what the DILG wielded was the power of control which even the President does not have.*

Furthermore, the DILG assumed control when it appointed respondent Rayos as president of the *Liga-Caloocan Chapter prior to the newly scheduled general Liga elections, although petitioner David's term had not yet expired. The DILG substituted its choice, who was Rayos, over the choice of majority of the punong barangay* of Caloocan, who was the incumbent President, petitioner David.

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[72] 482 Phil. 331 (2004) [Per *J.* Tinga, *En Banc*].

The latter was elected and had in fact been sitting as an *ex-officio* member of the sangguniang panlungsod in accordance with the *Liga Constitution and By-Laws. Yet, the DILG extended the appointment to respondent Rayos although it was aware that the position was the subject of a quo warranto* proceeding instituted by Rayos himself, thereby preempting the outcome of that case. It was bad enough that the DILG assumed the power of control, it was worse when it made use of the power with evident bias and partiality.

As the entity exercising supervision over the *Liga ng mga Barangay*, the DILG's authority over the *Liga is limited to seeing to it that the rules are followed, but it cannot lay down such rules itself, nor does it have the discretion to modify or replace them. In this particular case, the most that the DILG could do was review the acts of the incumbent officers of the Liga in the conduct of the elections to determine if they committed any violation of the Liga's Constitution and By-laws and its implementing rules. If the National Liga Board and its officers had violated Liga rules, the DILG should have ordered the Liga to conduct another election in accordance with the Liga's own rules, but not in obeisance to DILG- dictated guidelines. Neither had the DILG the authority to remove the incumbent officers of the Liga and replace them, even temporarily, with unelected Liga officers*.

Like the local government units, the *Liga ng mga Barangay* is not subject to control by the Chief Executive or his *alter ego*.[73]

Supervisory power has been defined as "the power of mere oversight over an inferior body; it does not include any restraining authority over such body."[74]

The relationship between the President and local governments is a constitutional matter. Constitutional relationships are never trivial nor should it be trivialized.

X

Significantly, the Proclamation is even contrary to the law that it alleges to implement. It totally misunderstands the statutory approach for disaster risk and reduction management. Section 2 of Republic Act No. 10121 provides:

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[73] *Id.* at 358-359.

[74] *Taule v. Santos*, 277 Phil. 584, 598 (1991) [*J.* Gancayco, *En Banc*].

SECTION 2. Declaration of Policy. — It shall be the policy of the State to:

(a) Uphold the people's constitutional rights to life and property by addressing the root causes of vulnerabilities to disasters, strengthening the country's institutional capacity for disaster risk reduction and management and building the resilience of local communities to disasters including climate change impacts;

(b) Adhere to and adopt the universal norms, principles, and standards of humanitarian assistance and the global effort on risk reduction as concrete expression of the country's commitment to overcome human sufferings due to recurring disasters;

(c) Incorporate internationally accepted principles of disaster risk management in the creation and implementation of national, regional and local sustainable development and poverty reduction strategies, policies, plans and budgets;

(d) Adopt a disaster risk reduction and management approach that is holistic, comprehensive, integrated, and proactive in lessening the socioeconomic and environmental impacts of disasters including climate change, and promote the involvement and participation of all sectors and all stakeholders concerned, at all levels, especially the local community;

(e) Develop, promote, and implement a comprehensive National Disaster Risk Reduction and Management Plan (NDRRMP) that aims to strengthen the capacity of the national government and the local government units (LGUs), together with partner stakeholders, to build the disaster resilience of communities, and to institutionalize arrangements and measures for reducing disaster risks, including projected climate risks, and enhancing disaster preparedness and response capabilities at all levels;

(f) Adopt and implement a coherent, comprehensive, integrated, efficient and responsive disaster risk reduction program incorporated in the development plan at various levels of government adhering to the principles of good governance such as transparency and accountability within the context of poverty alleviation and environmental protection;

(g) Mainstream disaster risk reduction and climate change in development processes such as policy formulation, socioeconomic development planning, budgeting, and governance, particularly in the areas of environment, agriculture, water, energy, health, education, poverty reduction, land-use and urban planning, and public infrastructure and housing, among others;

(h) Institutionalize the policies, structures, coordination mechanisms and programs with continuing budget appropriation on disaster risk reduction from national down to local levels towards building a disaster-resilient nation and communities;

(i) Mainstream disaster risk reduction into the peace process and conflict resolution approaches in order to minimize loss of lives and damage to property, and ensure that communities in conflict zones can immediately go back to their normal lives during periods of intermittent conflicts;

(j) Ensure that disaster risk reduction and climate change measures are gender responsive, sensitive to indigenous knowledge systems, and respectful of human rights;

(k) Recognize the local risk patterns across the country and strengthen the capacity of LGUs for disaster risk reduction and management through decentralized powers, responsibilities, and resources at the regional and local levels;

(l) Recognize and strengthen the capacities of LGUs and communities in mitigating and preparing for, responding to, and recovering from the impact of disasters;

(m) Engage the participation of civil society organizations (CSOs), the private sector and volunteers in the government's disaster risk reduction programs towards complementation of resources and effective delivery of services to the citizenry;

(n) Develop and strengthen the capacities of vulnerable and marginalized groups to mitigate, prepare for, respond to, and recover from the effects of disasters;

(o) Enhance and implement a program where humanitarian aid workers, communities, health professionals, government aid agencies, donors, and the media are educated and trained

on how they can actively support breastfeeding before and during a disaster and/or an emergency; and

(p) Provide maximum care, assistance and services to individuals and families affected by disaster, implement emergency rehabilitation projects to lessen the impact of disaster, and facilitate resumption of normal social and economic activities.

The President cannot take over what has been statutorily granted to local governments units. To allow him to do so would be to violate his oath of office under Article VII, Section 5 of the Constitution.[75]

Republic Act No. 10121 itself creates a whole structure to address preparation and management of the kinds of disasters envisioned in that law. Thus:

SECTION 6. Powers and Functions of the NDRRMC. — The National Council, being empowered with policy-making, coordination, integration, supervision, monitoring and evaluation functions, shall have the following responsibilities:

(a) Develop a NDRRMF which shall provide for a comprehensive, all-hazards, multi-sectoral, inter-agency and community-based approach to disaster risk reduction and management. The Framework shall serve as the principal guide to disaster risk reduction and management efforts in the country and shall be reviewed on a five (5)-year interval, or as may be deemed necessary, in order to ensure its relevance to the times;

(b) Ensure that the NDRRMP is consistent with the NDRRMF;

(c) Advise the President on the status of disaster preparedness, prevention, mitigation, response and rehabilitation operations

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[75] CONST., Art. VII, Sec. 5 provides:

Before they enter on the execution of their office, the President, the Vice-President, or the acting President shall take the following oath or affirmation:

I do solemnly swear (or affirm) that I will faithfully and conscientiously fulfill my duties as President (or Vice-President or Acting President) of the Philippines, preserve and defend its Constitution, execute its laws, do justice to every man, and consecrate myself to the service of the Nation. So help me God. (In case of affirmation, last sentence will be omitted.)

being undertaken by the government, CSOs, private sector, and volunteers; recommend to the President the declaration of a state of calamity in areas extensively damaged; and submit proposals to restore normalcy in the affected areas, to include calamity fund allocation;

(d) Ensure a multi-stakeholder participation in the development, updating, and sharing of a Disaster Risk Reduction and Management Information System and Geographic Information System-based national risk map as policy, planning and decision-making tools;

(e) Establish a national early warning and emergency alert system to provide accurate and timely advice to national or local emergency response organizations and to the general public through diverse mass media to include digital and analog broadcast, cable, satellite television and radio, wireless communications, and landline communications;

(f) Develop appropriate risk transfer mechanisms that shall guarantee social and economic protection and increase resiliency in the face of disaster;

(g) Monitor the development and enforcement by agencies and organizations of the various laws, guidelines, codes or technical standards required by this Act;

(h) Manage and mobilize resources for disaster risk reduction and management including the National Disaster Risk Reduction and Management Fund;

(i) Monitor and provide the necessary guidelines and procedures on the Local Disaster Risk Reduction and Management Fund (LDRRMF) releases as well as utilization, accounting and auditing thereof;

(j) Develop assessment tools on the existing and potential hazards and risks brought about by climate change to vulnerable areas and ecosystems in coordination with the Climate Change Commission;

(k) Develop vertical and horizontal coordination mechanisms for a more coherent implementation of disaster risk reduction and management policies and programs by sectoral agencies and LGUs;

(l) Formulate a national institutional capability building program for disaster risk reduction and management to address the specific weaknesses of various government agencies and LGUs, based on the results of a biennial baseline assessment and studies;

(m) Formulate, harmonize, and translate into policies a national agenda for research and technology development on disaster risk reduction and management;

(n) In coordination with the Climate Change Commission, formulate and implement a framework for climate change adaptation and disaster risk reduction and management from which all policies, programs, and projects shall be based;

(o) Constitute a technical management group composed of representatives of the abovementioned departments, offices, and organizations, that shall coordinate and meet as often as necessary to effectively manage and sustain national efforts on disaster risk reduction and management;

(p) Task the OCD to conduct periodic assessment and performance monitoring of the member-agencies of the NDRRMC, and the Regional Disaster Risk Reduction and Management Councils (RDRRMCs), as defined in the NDRRMP; and

(q) Coordinate or oversee the implementation of the country's obligations with disaster management treaties to which it is a party and see to it that the country's disaster management treaty obligations be incorporated in its disaster risk reduction and management frameworks, policies, plans, programs and projects.

SECTION 7. Authority of the NDRRMC Chairperson. — The Chairperson of the NDRRMC may call upon other instrumentalities or entities of the government and nongovernment and civic organizations for assistance in terms of the use of their facilities and resources for the protection and preservation of life and properties in the whole range of disaster risk reduction and management. This authority includes the power to call on the reserve force as defined in Republic Act No. 7077 to assist in relief and rescue during disasters or calamities.

SECTION 8. The Office of Civil Defense. — The Office of Civil Defense (OCD) shall have the primary mission of administering a comprehensive national civil defense and disaster risk reduction and management program by providing leadership in the continuous development of strategic and systematic approaches as well as measures to reduce the vulnerabilities and risks to hazards and manage the consequences of disasters.

The Administrator of the OCD shall also serve as Executive Director of the National Council and, as such, shall have the same duties and privileges of a department undersecretary. All appointees shall be universally acknowledged experts in the field of disaster preparedness and management and of proven honesty and integrity. The National Council shall utilize the services and facilities of the OCD as the secretariat of the National Council.

SECTION 9. *Powers and Functions of the OCD*. — The OCD shall have the following powers and functions:

(a) Advise the National Council on matters relating to disaster risk reduction and management consistent with the policies and scope as defined in this Act;

(b) Formulate and implement the NDRRMP and ensure that the physical framework, social, economic and environmental plans of communities, cities, municipalities and provinces are consistent with such plan. The National Council shall approve then DRRMP;

(c) Identify, assess and prioritize hazards and risks in consultation with key stakeholders;

(d) Develop and ensure the implementation of national standards in carrying out disaster risk reduction programs including preparedness, mitigation, prevention, response and rehabilitation works, from data collection and analysis, planning, implementation, monitoring and evaluation;

(e) Review and evaluate the Local Disaster Risk Reduction and Management Plans (LDRRMPs) to facilitate the integration of disaster risk reduction measures into the local Comprehensive Development Plan (CDP) and Comprehensive Land-Use Plan (CLUP);

(f) Ensure that the LGUs, through the Local Disaster Risk Reduction and Management Offices (LDRRMOs) are properly informed and adhere to the national standards and programs;

(g) Formulate standard operating procedures for the deployment of rapid assessment teams, information sharing among different government agencies, and coordination before and after disasters at all levels;

(h) Establish standard operating procedures on the communication system among provincial, city, municipal, and barangay disaster risk reduction and management councils, for purposes of warning and alerting them and for gathering information on disaster areas before, during and after disasters;

(i) Establish Disaster Risk Reduction and Management Training Institutes in such suitable location as may be deemed appropriate to train public and private individuals, both local and national, in such subject as disaster risk reduction and management among others. The Institute shall consolidate and prepare training materials and publications of disaster risk reduction and management books and manuals to assist disaster risk reduction and management workers in the planning and implementation of this program and projects.

The Institute shall conduct research programs to upgrade knowledge and skills and document best practices on disaster risk reduction and management.

The Institute is also mandated to conduct periodic awareness and education programs to accommodate new elective officials and members of the LDRRMCs;\

(j) Ensure that all disaster risk reduction programs, projects and activities requiring regional and international support shall be in accordance with duly established national policies and aligned with international agreements;\

(k) Ensure that government agencies and LGUs give top priority and take adequate and appropriate measures in disaster risk reduction and management;

(l) Create an enabling environment for substantial and sustainable participation of CSOs, private groups, volunteers and

communities, and recognize their contributions in the government's disaster risk reduction efforts;

(m) Conduct early recovery and post-disaster needs assessment institutionalizing gender analysis as part of it;

(n) Establish an operating facility to be known as the National Disaster Risk Reduction and Management Operations Center (NDRRMOC) that shall be operated and staffed on a twenty-four (24) hour basis;

(o) Prepare the criteria and procedure for the enlistment of accredited community disaster volunteers (ACDVs). It shall include a manual of operations for the volunteers which shall be developed by the OCD in consultation with various stakeholders;

(p) Provide advice and technical assistance and assist in mobilizing necessary resources to increase the overall capacity of LGUs, specifically the low income and in high-risk areas;

(q) Create the necessary offices to perform its mandate as provided under this Act; and

(r) Perform such other functions as may be necessary for effective operations and implementation of this Act.

SECTION 10. Disaster Risk Reduction and Management Organization at the Regional Level. — The current Regional Disaster Coordinating Councils shall henceforth be known as the Regional Disaster Risk Reduction and Management Councils (RDRRMCs) which shall coordinate, integrate, supervise, and evaluate the activities of the LDRRMCs. The RDRRMC shall be responsible in ensuring disaster sensitive regional development plans, and in case of emergencies shall convene the different regional line agencies and concerned institutions and authorities.

The RDRRMCs shall establish an operating facility to be known as the Regional Disaster Risk Reduction and Management Operations Center (RDRRMOC) whenever necessary.

The civil defense officers of the OCD who are or may be designated as Regional Directors of the OCD shall serve as chairpersons of the RDRRMCs. Its Vice Chairpersons shall be the Regional Directors of the DSWD, the DILG, the DOST, and the NEDA. In the case of

the Autonomous Region in Muslim Mindanao (ARMM), the Regional Governor shall be the RDRRMC Chairperson. The existing regional offices of the OCD shall serve as secretariat of the RDRRMCs. The RDRRMCs shall be composed of the executives of regional offices and field stations at the regional level of the government agencies.

SECTION 11. Organization at the Local Government Level. — The existing Provincial, City, and Municipal Disaster Coordinating Councils shall henceforth be known as the Provincial, City, and Municipal Disaster Risk Reduction and Management Councils. The Barangay Disaster Coordinating Councils shall cease to exist and its powers and functions shall henceforth be assumed by the existing Barangay Development Councils (BDCs) which shall serve as the LDRRMCs in every barangay.

(a) Composition: The LDRRMC shall be composed of, but not limited to, the following:

(1) The Local Chief Executives, Chairperson;
(2) The Local Planning and Development Officer, member;
(3) The Head of the LDRRMO, member;
(4) The Head of the Local Social Welfare and Development Office, member;
(5) The Head of the Local Health Office, member;
(6) The Head of the Local Agriculture Office, member;
(7) The Head of the Gender and Development Office, member;
(8) The Head of the Local Engineering Office, member;
(9) The Head of the Local Veterinary Office, member;
(10) The Head of the Local Budget Office, member;
(11) The Division Head/Superintendent of Schools of the DepED, member;
(12) The highest-ranking officer of the Armed Forces of the Philippines (AFP) assigned in the area, member;
(13) The Provincial Director/City/Municipal Chief of the Philippine National Police (PNP), member;
(14) The Provincial Director/City/Municipal Fire Marshall of the Bureau of Fire Protection (BFP), member;
(15) The President of the Association of Barangay Captains (ABC), member;

(16) The Philippine National Red Cross (PNRC), member;
(17) Four (4) accredited CSOs, members; and
(18) (1) private sector representative, member.

(b) The LDRRMCs shall have the following functions:

(1) Approve, monitor and evaluate the implementation of the LDRRMPs and regularly review and test the plan consistent with other national and local planning programs;

(2) Ensure the integration of disaster risk reduction and climate change adaptation into local development plans, programs and budgets as a strategy in sustainable development and poverty reduction;

(3) Recommend the implementation of forced or preemptive evacuation of local residents, if necessary; and

(4) Convene the local council once every three (3) months or as necessary.

SECTION 12. Local Disaster Risk Reduction and Management Office (LDRRMO). — (a) There shall be established an LDRRMO in every province, city and municipality, and a Barangay Disaster Risk Reduction and Management Committee (BDRRMC) in every barangay which shall be responsible for setting the direction, development, implementation and coordination of disaster risk management programs within their territorial jurisdiction.

(b) The LDRRMO shall be under the office of the governor, city or municipal mayor, and the punong barangay in case of the BDRRMC. The LDRRMOs shall be initially organized and composed of a DRRMO to be assisted by three (3) staff responsible for: (1) administration and training; (2) research and planning; and (3) operations and warning. The LDRRMOs and the BDRRMCs shall organize, train and directly supervise the local emergency response teams and the ACDVs.

(c) The provincial, city and municipal DRRMOs or BDRRMCs shall perform the following functions with impartiality given the emerging challenges brought by disasters of our times:

(1) Design, program, and coordinate disaster risk reduction and management activities consistent with the National Council's standards and guidelines;

(2) Facilitate and support risk assessments and contingency planning activities at the local level;

(3) Consolidate local disaster risk information which includes natural hazards, vulnerabilities, and climate change risks, and maintain a local risk map;

(4) Organize and conduct training, orientation, and knowledge management activities on disaster risk reduction and management at the local level;

(5) Operate a multi-hazard early warning system, linked to disaster risk reduction to provide accurate and timely advice to national or local emergency response organizations and to the general public, through diverse mass media, particularly radio, landline communications, and technologies for communication within rural communities;

(6) Formulate and implement a comprehensive and integrated LDRRMP in accordance with the national, regional and provincial framework, and policies on disaster risk reduction in close coordination with the local development councils (LDCs);

(7) Prepare and submit to the local sanggunian through the LDRRMC and the LDC the annual LDRRMO Plan and budget, the proposed programming of the LDRRMF, other dedicated disaster risk reduction and management resources, and other regular funding source/s and budgetary support of the LDRRMO/BDRRMC;

(8) Conduct continuous disaster monitoring and mobilize instrumentalities and entities of the LGUs, CSOs, private groups and organized volunteers, to utilize their facilities and resources for the protection and preservation of life and properties during emergencies in accordance with existing policies and procedures;

(9) Identify, assess and manage the hazards, vulnerabilities and risks that may occur in their locality;

(10) Disseminate information and raise public awareness about those hazards, vulnerabilities and risks, their nature, effects, early warning signs and counter-measures;

(11) Identify and implement cost-effective risk reduction measures/ strategies;

(12) Maintain a database of human resource, equipment, directories, and location of critical infrastructures and their capacities such as hospitals and evacuation centers;

(13) Develop, strengthen and operationalize mechanisms for partnership or networking with the private sector, CSOs, and volunteer groups;

(14) Take all necessary steps on a continuing basis to maintain, provide, or arrange the provision of, or to otherwise make available, suitably-trained and competent personnel for effective civil defense and disaster risk reduction and management in its area;

(15) Organize, train, equip and supervise the local emergency response teams and the ACDVs, ensuring that humanitarian aid workers are equipped with basic skills to assist mothers to breastfeed;

(16) Respond to and manage the adverse effects of emergencies and carry out recovery activities in the affected area, ensuring that there is an efficient mechanism for immediate delivery of food, shelter and medical supplies for women and children, endeavor to create a special place where internally-displaced mothers can find help with breastfeeding, feed and care for their babies and give support to each other;

(17) Within its area, promote and raise public awareness of and compliance with this Act and legislative provisions relevant to the purpose of this Act;

(18) Serve as the secretariat and executive arm of the LDRRMC;

(19) Coordinate other disaster risk reduction and management activities;

(20) Establish linkage/network with other LGUs for disaster risk reduction and emergency response purposes;

(21) Recommend through the LDRRMC the enactment of local ordinances consistent with the requirements of this Act;

(22) Implement policies, approved plans and programs of the LDRRMC consistent with the policies and guidelines laid down in this Act;

(23) Establish a Provincial/City/Municipal/Barangay Disaster Risk Reduction and Management Operations Center;

(24) Prepare and submit, through the LDRRMC and the LDC, the report on the utilization of the LDRRMF and other dedicated disaster risk reduction and management resources to the local Commission on Audit (COA), copy furnished the regional director of the OCD and the Local Government Operations Officer of the DILG; and

(25) Act on other matters that may be authorized by the LDRRMC.

(d) The BDRRMC shall be a regular committee of the existing BDC and shall be subject thereto. The punong barangay shall facilitate and ensure the participation of at least two (2) CSO representatives from existing and active community-based people's organizations representing the most vulnerable and marginalized groups in the barangay.

The Proclamation, even as it claims to be based on this law, inexplicably undermines this structure.

The law tasks the local government units to lead in meeting disasters. Thus, in Section 2 of Republic Act No. 10121:

(l) Recognize and strengthen the capacities of LGUs and communities in mitigating and preparing for, responding to, and recovering from the impact of disasters;

(m) Engage the participation of civil society organizations (CSOs), the private sector and volunteers in the government's disaster risk reduction programs towards complementation of resources and effective delivery of services to the citizenry;

(n) Develop and strengthen the capacities of vulnerable and marginalized groups to mitigate, prepare for, respond to, and recover from the effects of disasters;

Furthermore, in Section 15:

SECTION 15. Coordination During Emergencies. — ***The LDRRMCs shall take the lead in preparing for, responding to, and recovering from the effects of any disaster based on the following criteria***:

(a) The BDC, if a barangay is affected;

(b) The city/municipal DRRMCs, if two (2) or more barangays are affected;

(c) The provincial DRRMC, if two (2) or more cities/ municipalities are affected;

(d) The regional DRRMC, if two (2) or more provinces are affected; and

(e) The NDRRMC, if two (2) or more regions are affected.

The NDRRMC and intermediary LDRRMCs ***shall always act*** *as support to LGUs which have the primary responsibility as first disaster responders.* Private sector and civil society groups shall work in accordance with the coordination mechanism and policies set by the NDRRMC and concerned LDRRMCs. (Emphasis supplied)

Even if we assume that the Proclamation was a valid exercise of police power, only the Municipality of Malay, Aklan has been directly affected by the calamity. This means that, statutorily, the Municipality's Local Disaster Risk Reduction and Management Council should take charge. Yet, the Proclamation reduces the local government unit into a minor player in the rehabilitation of the island.

Being contrary to the very law it alleges to be its framework, Proclamation No. 475 is not a valid exercise of police power.

XI

The situation in Boracay is not the only ecological disaster that we face as a nation. The majority creates a dangerous precedent.

For instance, climate change is an urgent and serious calamity faced by the entire world. Our climate is changing faster now

than at any point in history.[76] We have been experiencing a tremendous increase in carbon dioxide in the air, melting icecaps, a consequent rise in sea levels, frigid cold, and extreme heat. Scientists have attributed this to human activity. The rapid rise in our temperatures only started in 1880, during the second industrial revolution, and most of the warming occurred in the last 35 years.

Scientists at the Intergovernmental Panel on Climate Change are urging the world to keep global warming to a maximum of 1.5 degrees Celsius (1.5 °C) for the next 12 years. We are currently one degree Celsius (1 °C) warmer than preindustrial levels. This change is the reason for the hurricanes in the United States, drought in Cape Town, and forest fires in the Arctic. Half a degree more than the 1.5 °C target will worsen droughts, floods, and extreme weather conditions. Coral reefs may disappear completely. Polar ice caps will melt, causing our sea levels to rise.[77] Heat waves will be more intense. Cold spells will be a lot worse; consequently, plant, insect, and animal species will disappear, and human lives will suffer.[78] Countries such as ours without financial and other resources at our disposal will suffer more.

We need to address this situation perhaps more urgently than the fecal coliform formation in our tourist areas.

Yet, these urgent anthropogenic crises cannot be solved by indulging our impatience. Rather, solutions will require both better governance and democratic participation.

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[76] Understand Climate Change, available at < https://www. globalchange. gov/climate-change > (last visited on February 12, 2019).

[77] Jonathan Watts, *We have 12 years to limit climate change catastrophe, warns UN*, THE GUARDIAN, available at < https://www.theguardian.com/environment/2018/oct/08/global-warming-must-not-exceed-15c-warns-landmark-un-report > (last visited on February 12, 2019).

[78] *Global Climate Change*, available at < https://climate.nasa.gov/ > (last visited on February 12, 2019).

Instead of relying on the beguiling pragmatism of a strongman, we should, now more than ever, have the humility to harness our abilities as humans to consult, deliberate, and act together. We should be aware that short-term solutions, which produce short-term effects, may mask the true problems and abuse those who live in our society's margins.

The growth of fecal coliform may be arrested with a drastic and draconian clean-up. Clearly, without addressing its true causes, the ecological remedy will be temporary. The costs may be too high if such temporary relief is purchased with the suspension of the rights of those affected—especially the informal and marginal workers on the island—with a legal precedent that does not take the long view. That is why our environmental laws are permanent statutes, and states of calamity are only temporary and declared under very limiting conditions.

Many of our tourist areas may have become what economists call as open access areas. These areas are subject to what Garett Hardin, an American ecologist and philosopher, more than four (4) decades ago called the "tragedy of the commons."[79] In this situation, businesses, residents, and tourists cannot see beyond the short-term enjoyment of the resource while well aware of the degradation that others will cause. The solution to such a tragedy is a more accountable enforcement of the rules for the enjoyment of the environment and the evolution of a stronger community. To assure the existence of a true common property regime, everyone involved must do what is expected of them.

The legitimation of the closure of Boracay through the Proclamation at issue here easily opens the slippery slope for ecological authoritarianism.

Boracay, originally home to the Ati, was discovered as a pristine island. It attracted migrants, allowed them to establish abodes, and claim ownership. Then, a catena of administrations

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[79] Garett Hardin, *The Tragedy of the Commons*, 162 Science 1243-1248 (1968), available at < http://pages.mtu.edu/~asmayer/rural_sustain/governance/Hardin%201968.pdf > (last visited on February 12, 2019).

promoted it as a tourist attraction, compelling its residents to adjust their lives accordingly. Businesses flourished without an understanding of Boracay's ecology's carrying capacity.

Worse, unscrupulous individuals created profits purchased through illicit collusion with those who should have regulated where they built, how they built, how they dealt with their sewage, where they would get their water. Boracay was destroyed by the shortsightedness of some of the public officials in charge and the unbelievable ignorance of the establishments that profited from what should have been the sustainability of their ecology.

Boracay is victim to the callousness driven by short-term profits and insatiable greed. It is increasingly vulnerable because of the growing absence of a genuine community on the island.

This Court should assure those who are affected that it will offer a genuine reflection of the constitutional order, under which it seeks to find pragmatic yet longer lasting solutions to our problems. This Court is the forum where we can assure an ordinary sandcastle builder, a driver, or an informal worker on the island that we all can be an active part of the solution, as envisioned by our democracy.

I regret that the liberality of the majority in not seeing the constitutional and statutory violations of the Proclamation, and the actions it spawned, will undermine this constitutional order.

Authoritarian solutions based on fear are ironically weak. We still are a constitutional order that will become stronger with a democracy participated in by enlightened citizens.

Ours is not, and should never be, a legal order ruled by diktat.

For these reasons, I dissent.

ACCORDINGLY, I vote to GRANT the Petition.

DISSENTING OPINION

CAGUIOA, *J.*:

"As one great furnace flamed, yet from those flames
No light, but rather darkness visible."[1]

On April 26, 2018, President Rodrigo R. Duterte issued Proclamation No. 475[2] (Proclamation 475), declaring a state of calamity in the island of Boracay and ordering its temporary closure for a maximum of six months.

Petitioners Mark Anthony Zabal (Zabal) and Thiting Estoso Jacosalem (Jacosalem), residents and workers in Boracay, filed the present Petition to assail the temporary closure of the island. They are joined herein by petitioner Odon Bandiola (Bandiola), a regular visitor of Boracay for business and pleasure.

Together, petitioners claim that Proclamation 475 is unconstitutional as it constitutes an invalid exercise of legislative power which places undue restrictions on their constitutional rights to travel and due process.

The *ponencia* denies the Petition, and affirms the validity of Proclamation 475, viewing it as an executive measure which does not pose an actual impairment on the right to travel and due process.[3] Moreover, the *ponencia* is of the view that even if Proclamation 475 were to be construed as restrictive of these fundamental rights, its issuance remains justified as a reasonable exercise of police power occasioned by the pressing state of Boracay island.[4]

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[1] Milton, J., *Paradise Lost* (1667).

[2] DECLARING A STATE OF CALAMITY IN THE BARANGAYS OF BALABAG, MANOC-MANOC AND YAPAK (ISLAND OF BORACAY) IN THE MUNICIPALITY OF MALAY, AKLAN, AND TEMPORARY CLOSURE OF THE ISLAND AS A TOURIST DESTINATION.

[3] *Ponencia*, pp. 18, 24 and 28.

[4] See *id*. at 21-22.

The judicial confirmation of Proclamation 475's purported validity comes after Boracay's re-opening. The temporary closure has come to an end; its decreed rehabilitation now complete. It appears that the proverbial ship has now sailed, as "paradise" appears to have been restored. Its restoration, however, has been forged at great expense — the indiscriminate impairment of fundamental rights.

I cannot, in conscience, give my imprimatur to yet another constitutional shortcut. In a democratic state governed by the rule of law, fundamental rights cannot be traded in exchange for the promise of paradise. Without question, under the rule of law, the end does not, and can never ever, justify the means.

I register my dissent not because I refuse to acknowledge the serious problems that Boracay has faced. On the contrary, I recognize that there was a problem; a disaster that, in fact, needed action. The necessity for action did not, however, justify the measures which the Executive chose to take.

Our country's form of government – democratic, republican, and presidential – characterized by separation, coordination, and the interdependence of its branches, has long been criticized for having burdensome processes that slow down program execution, particularly, in the realm of disaster response. However, as long as this form of government is in place, and so long as our Constitution subscribes to the ideals of separation of powers, no shortcuts of any kind may or should be allowed. I find Proclamation 475 unconstitutional. It finds absolutely no basis in law, and unduly permits the consequent impairment of the rights to travel and due process by executive fiat.

Thus, I am impelled to dissent upon the insistence that the Constitution must be, at all times, respected. As the bedrock of our civil society, the Constitution deserves no less.

The constitutional right to travel

The right to travel is a chief element of the constitutional guarantee of liberty which was first introduced by the Congress

of the United States to the Philippines during the early days of the American regime.[5]

In *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*[6] (*Spark*), the Court held that the right to travel refers to "the right to move freely from the Philippines to other countries or **within** the Philippines" and covers, among others, "the power of locomotion".[7] In the simplest of terms, it is the freedom to move where one chooses to go.

As a fundamental constitutional right, the protection afforded by the right to travel inures to **every** citizen. The provision granting such right is self-executing; its *exercise* is not contingent upon further legislation governing its enforcement.[8]

The same does not hold true, however, with respect to the right's *impairment*.

Section 6, Article III of the Constitution is clear — the right to travel may only be restricted by law

The impairment of the right to travel, while permissible, is subject to the **strict requirements** set forth under Section 6, Article III of the Constitution, thus:

> Section 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. **Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.** (Emphasis supplied)

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[5] Joaquin G. Bernas, S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 867-870 (2003 ed.)

[6] G.R. No. 225442, August 8, 2017, 835 SCRA 350.

[7] *Id.* at 402-403.

[8] As a general rule, the provisions of the Constitution are considered self-executing, and do not require future legislation for their enforcement. For if they are not treated as self-executing, the mandate of the fundamental law can be easily nullified by the inaction of Congress. See generally *Tondo Medical Center Employees Association v. Court of Appeals*, 554 Phil. 609, 625 (2007).

The import of the provision is crystal clear — the right to travel may **only** be impaired in the interest of national security, public safety or public health, **on the basis of a law *explicitly* providing for the impairment**.

Expounding on these parameters, the Court, in *Genuino v. De Lima*[9] (*Genuino*), unequivocally held:

> Clearly, under the provision, there are only three considerations that may permit a restriction on the right to travel: national security, public safety or public health. **As a further requirement, there must be an explicit provision of statutory law or the Rules of Court providing for the impairment. The requirement for a legislative enactment was purposely added to prevent inordinate restraints on the person's right to travel by administrative officials who may be tempted to wield authority under the guise of national security, public safety or public health**. This is in keeping with the principle that ours is a government of laws and not of men and also with the canon that provisions of law limiting the enjoyment of liberty should be construed against the government and in favor of the individual.
>
> The necessity of a law before a curtailment in the freedom of movement may be permitted is apparent in the deliberations of the members of the Constitutional Commission. In particular, Fr. Joaquin Bernas, in his sponsorship speech, stated thus:
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> > On Section 5, in the explanation on page 6 of the annotated provisions, it says that the phrase "and changing the same" is taken from the 1935 version; that is, changing the abode. The addition of the phrase WITHIN THE LIMITS PRESCRIBED BY LAW ensures that, whether the rights be impaired on order of a court or without the order of a court, the impairment must be in accordance with the prescriptions of law; that is, it is not left to the discretion of any public officer.[10] (Emphasis and underscoring supplied)

The requirement of a law authorizing the curtailment of the right to travel is, to repeat, crystal clear — any restriction imposed

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[9] G.R. Nos. 197930, 199034 and 199046, April 17, 2018.

[10] *Id*. at 17-18.

upon such right in the absence of the law, whether through a statute enacted through the legislative process, or provided in the Constitution itself,[11] necessarily renders the restriction null and void.

Proclamation 475 poses an actual restriction on the right to travel

The dismissal of the Petition is primarily grounded on the premise that any effect which Proclamation 475 may have on the right to travel is "merely corollary to the closure of Boracay," and as such, a necessary incident of the island's rehabilitation.[12] This premise gives rise to the conclusion that Proclamation 475 need not comply with the requirements set forth under Section 6, Article III, as its effect on the right to travel is only indirect and merely incidental.

I disagree.

The requirements under the Constitution are spelled out in clear and absolute terms — **neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.** The provision does not distinguish between measures that *directly* restrict the right to travel and those which do so *indirectly*, in the furtherance of another State purpose. *Ubi lex non distinguit, nec nos distinguere debemus.* This interpretation is grounded on the text of the Constitution and finds basis in case law both here and in the United States.

In *Shapiro v. Thomspon*[13] (*Shapiro*), the Supreme Court of the United States (SCOTUS) was confronted with a constitutional

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[11] See Justice Leonen's Separate Opinion in *Genuino*, *supra* note 9.

[12] *Ponencia*, p. 20.

[13] 394 U.S. 618 (1969). Penned for the majority by Associate Justice William J. Brennan, Jr., with Chief Justice Earl Warren, and Associate Justices Hugo Black and John Marshall Harlan dissenting. Chief Justice Warren and Associate Justice Black were of the position that Congress has the power to impose and authorize nationwide residence requirements under the "commerce clause". (*Id*. at 651.) Justice Harlan, on the other hand, was of

challenge against certain statutory provisions enacted in Connecticut, Pennsylvania and the District of Columbia (D.C). The assailed provisions denied welfare assistance to applicants who have not resided in the cities' respective jurisdictions for at least a year immediately preceding the filing of their applications. These provisions, according to the appellants therein, had been crafted as "a protective device to preserve the fiscal integrity of state public assistance programs."[14]

Resolving the case, SCOTUS ruled that the assailed provisions violate the constitutional guarantee of interstate movement, among others, insofar as they create classifications which effectively penalize the exercise of the right to travel,[15] thus:

> We do not doubt that the one-year waiting period device is well suited to discourage the influx of poor families in need of assistance. An indigent who desires to migrate, resettle, find a new job, and start a new life will doubtless hesitate if he knows that he must risk making the move without the possibility of falling back on state welfare assistance during his first year of residence, when his need may be most acute. But the purpose of inhibiting migration by needy persons into the State is constitutionally impermissible.
>
> This Court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement. x x x

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the view that "a number of considerations militate in favor of [the] constitutionality [of the assailed provisions]", particularly, that (i) "legitimate governmental interests are furthered by [the] residence requirements"; (ii) "the impact of the requirements upon the freedom of individuals to travel to interstate is indirect" and "according to [the] evidence, x x x insubstantial"; (iii) the assailed provisions are not attempts to interfere with the right of citizens to travel, but a case where the states act within the terms of a limited authorization by the National Government; and (iv) the legislatures which have enacted the assailed provisions have rejected appellees' objections after "mature deliberation". (*Id*. at 674.)

[14] *Id*. at 627.

[15] *Id*.

x x x x x x x x x

Thus, the purpose of deterring the in-migration of indigents cannot serve as justification for the classification created by the one-year waiting period, since that purpose is constitutionally impermissible. If a law has "no other purpose . . . than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it [is] patently unconstitutional."[16] (Citations omitted)

Following *Shapiro*, SCOTUS handed down its decision in *Attorney General of New York v. Soto-Lopez*[17] (*Soto-Lopez*), holding that "[a] state law implicates the right to travel when it actually deters such travel, x x x [whether] impeding travel is its primary objective, x x x or when it uses '*any classification which serves to penalize the exercise of that right*.'"[18] *Soto-Lopez* involved a challenge against the employment preference afforded by the New York Constitution and Civil Service Law to New York resident-veterans honorably discharged from the Armed Forces.[19]

More recently, in *State of Ohio v. Burnett*[20] (*Burnett*), the Supreme Court of Ohio was confronted with an action questioning the validity of a Cincinnati ordinance which established "drug-exclusion zones" within the city for the purpose of controlling drug-related activity in the area. These zones were identified as those where the number of drug-related arrests were significantly higher than other similarly situated and sized areas of the city. The establishment of these zones had the incidental

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[16] *Id*. at 629-631.

[17] 476 U.S. 898 (1986). Penned for the majority by Associate Justice William J. Brennan, Jr., with Associate Justices Sandra Day O' Connor, William Rehnquist and John Paul Stevens dissenting. Justice O' Connor, with whom Justices Rehnquist and Stevens concur, opined that the New York veterans' preference scheme assailed in the case does not penalize the right to migrate, and is thus, permissible.

[18] *Id*. at 903.

[19] *Id*. at 900.

[20] 93 Ohio St. 3d 419. Penned by Chief Justice Thomas J. Moyer for the unanimous Court.

effect of prohibiting persons from entering the zones within a specified "exclusion period" upon the threat of arrest for criminal trespass. Thus, the Cincinnati ordinance was questioned for being violative of the right to travel, among others.

While conceding that the Cincinatti ordinance had been grounded on a compelling state interest, the Ohio Supreme Court nevertheless ruled that it had the incidental effect of "unconstitutionally burdening" the right to travel.[21] Hence, the Supreme Court of Ohio held:

> Cincinnati asserts that the purposes of Chapter 755 are "restoring the quality of life and protecting the health, safety, and welfare of citizens using the public ways" in drug-exclusion zones and "allowing the public to use and enjoy the facilities in such areas without interference arising from illegal drug abuse and/or illegal drug abuse related crimes." We agree with the city that these asserted interests are compelling. The destruction of some neighborhoods by illegal drug activity has created a crisis of national magnitude, and governments are justified in attacking the problem aggressively. **When legislation addressing the drug problem infringes certain fundamental rights, however, more than a compelling interest is needed to survive constitutional scrutiny. The statute must also be narrowly tailored to meet the compelling interest. It is our opinion that while Chapter 755 is justified by a compelling interest, it fails constitutional analysis because the ordinance is not narrowly tailored to restrict only those interests associated with illegal drug activity, but also restricts a substantial amount of innocent conduct.** (Citations omitted; emphasis supplied)

Though these cases are not binding in this jurisdiction, the Court has regarded American case law as a rich source of persuasive jurisprudence[22] that may guide the bench.

That said, the Court need not look beyond its own jurisprudence to find the answers that it seeks.

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[21] *Id*.

[22] *Social Justice Society (SJS) v. Dangerous Drugs Board*, 591 Phil. 393, 409 (2008).

In the recent case of *Spark*, the Court characterized curfew ordinances as restrictive of minors' right to travel, albeit imposed primarily for the interest of public safety, particularly the promotion of juvenile safety and prevention of juvenile crime.[23] To stress anew, the Court therein referred to the right to travel as "the right to **move freely** from the Philippines to other countries or **within the Philippines**," and a "right embraced within the **general concept of liberty**" which, in turn, includes "the **power of locomotion** and the right of citizens to be **free to use their faculties in lawful ways and to live and work where they desire or where they can best pursue the ends of life**."[24]

The afore-cited cases tell us that measures which impede the right to travel in furtherance of other state interests, whether impermissible (as in *Shapiro*) or even permissible (as in *Burnett* and *Spark*), are treated in the same manner as those which *directly* restrict the right.

The foregoing cases, taken together with the text of the Constitution, unequivocally negate the assertion that Proclamation 475 does not cause a substantive impairment on the right to travel so as to exempt it from the requirements set forth in Section 6, Article III.

In this regard, I disagree with the contention that the effect of the closure of Boracay on a person's ability to travel is merely incidental in nature; hence, conceptually remote from the right's proper sense. To my mind, that an assailed government act only *indirectly* or *incidentally* affects a constitutional right is inconsequential as *any* impairment of constitutionally-protected rights must strictly comply with the mandate of the Constitution. As held in *Genuino*:

> The DOJ would however insist that the resulting infringement of liberty is merely incidental, together with the consequent inconvenience, hardship or loss to the person being subjected to the

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[23] *Spark*, *supra* note 6, at 405-408.

[24] *Id.* at 402-403. Emphasis and underscoring supplied.

restriction and that the ultimate objective is to preserve the investigative powers of the DOJ and public order. It posits that the issuance ensures the presence within the country of the respondents during the preliminary investigation. **Be that as it may, no objective will ever suffice to legitimize desecration of a fundamental right. To relegate the intrusion as negligible in view of the supposed gains is to undermine the inviolable nature of the protection that the Constitution affords.**[25] (Emphasis supplied)

As well, Proclamation 475 cannot be likened to government regulations that amount to the "cordoning-off" of areas ravaged by calamities, where access by people thereto may be prohibited pursuant to public safety considerations. This is because local government units are already explicitly authorized under the Local Government Code to close down roads for such purpose, to wit:

Section 21. *Closure and Opening of Roads*. — (a) **A local government unit may, pursuant to an ordinance, permanently or temporarily close or open any local road, alley, park, or square falling within its jurisdiction**: *Provided, however*, That in case of permanent closure, such ordinance must be approved by at least two-thirds (2/3) of all the members of the *sanggunian*, and when necessary, an adequate substitute for the public facility that is subject to closure is provided.

x x x x x x x x x

(c) **Any national or local road, alley, park, or square may be temporarily closed during an actual emergency**, or fiesta celebrations, public rallies, agricultural or industrial fairs, or an undertaking of public works and highways, telecommunications, and waterworks projects, **the duration of which shall be specified by the local chief executive concerned in a written order**: x x x (Emphasis supplied)

Thus, I submit that the present case cannot be likened to a "cordoning-off" situation, considering that the latter actually complies with Section 6, Article III, *i.e.*, that the restriction be grounded on either national security, public safety or public

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[25] *Genuino*, *supra* note 9, at 27.

health, and that the restriction be provided by law. Accordingly, I maintain my position that the resolution of this case hinges on the right to travel.

There is no law which grants the President any form of police power so as to authorize the impairment of the right to travel during a state of calamity

The *ponencia* alternatively holds that the issuance of Proclamation 475 is valid as a police power measure. It cites Republic Act No. (RA) 10121 and RA 9275 as statutory bases for the validity of the proclamation.

The *ponencia*, as well as respondents, rely on the provisions of RA 10121 which empower the National Disaster Risk Reduction and Management Council (NDRRMC) to recommend to the President the declaration of state of calamity. In particular, they cite the following provisions:

> SEC. 6. *Powers and Functions of the NDRRMC.* — The National Council, being empowered with policy-making, coordination, integration, supervision, monitoring and evaluation functions, shall have the following responsibilities:
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> x x x x x x x x x
>
> (c) Advise the President on the status of disaster preparedness, prevention, mitigation, response and rehabilitation operations being undertaken by the government, CSOs, private sector, and volunteers; recommend to the President the declaration of a state of calamity in areas extensively damaged; and submit proposals to restore normalcy in the affected areas, to include calamity fund allocation;
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> x x x x x x x x x
>
> SEC. 16. *Declaration of State of Calamity.* — The National Council shall recommend to the President of the Philippines the declaration of a cluster of barangays, municipalities, cities, provinces, and regions under a state of calamity, and the lifting thereof, based on the criteria set by the National Council. x x x

From the foregoing provisions, the *ponencia* argues that "the statutes from which [Proclamation 475] draws authority and the constitutional provisions which serve as its framework are primarily concerned with the environment and health, safety, and well-being of the people, the promotion and securing of which are clearly legitimate objectives of governmental efforts and regulations."[26] The *ponencia* then concludes that Proclamation 475 is a valid police power measure.

I differ.

First, the afore-cited provisions of RA 10121 only empower the NDRRMC to *recommend* to the President the declaration of a "state of calamity" and submit to him "proposals to restore normalcy in the affected areas." In turn, the actions or programs to be undertaken by the President during a state of calamity, to be valid, **must still be within the powers granted to him under the Constitution and other laws.**

To be sure, there is absolutely nothing in RA 10121 from which it could reasonably be inferred that the law empowers the NDRRMC or the President to close an entire island. *In fact, RA 10121 does not even refer to the President*, except in connection with the declaration of a state of calamity in Section 16, quoted above.

Parenthetically, it should be emphasized that, under RA 10121, a "state of calamity" only authorizes the President to impose the following remedial measures:

> (a) Imposition of price ceiling on basic necessities and prime commodities by the President upon the recommendation of the implementing agency as provided for under Republic Act No. 7581, otherwise known as the "Price Act", or the National Price Coordinating Council;
>
> (b) Monitoring, prevention and control by the Local Price Coordination Council of overpricing/profiteering and hoarding of prime commodities, medicines and petroleum products;

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[26] *Ponencia*, p. 22.

(c) Programming/reprogramming of funds for the repair and safety upgrading of public infrastructures and facilities; and

(d) Granting of no-interest loans by government financing or lending institutions to the most affected section of the population through their cooperatives or people's organizations.[27]

The very narrow scope of the President's powers during a state of calamity as declared in accordance with RA 10121 becomes more apparent when placed in contrast with those granted by the statute in favor of the NDRRMC.

The powers and prerogatives of the NDRRMC are detailed under RA 10121 as follows:

SEC. 6. *Powers and Functions of the NDRRMC.* — The National Council, being empowered with policy-making, coordination, integration, supervision, monitoring and evaluation functions, shall have the following responsibilities:

(a) Develop a NDRRMF which shall provide for a comprehensive, all-hazards, multi-sectoral, inter-agency and community-based approach to disaster risk reduction and management. The Framework shall serve as the principal guide to disaster risk reduction and management efforts in the country and shall be reviewed on a five (5)-year interval, or as may be deemed necessary, in order to ensure its relevance to the times;

(b) Ensure that the NDRRMP is consistent with the NDRRMF;

(c) Advise the President on the status of disaster preparedness, prevention, mitigation, response and rehabilitation operations being undertaken by the government, CSOs, private sector, and volunteers; recommend to the President the declaration of a state of calamity in areas extensively damaged; and submit proposals to restore normalcy in the affected areas, to include calamity fund allocation;

(d) Ensure a multi-stakeholder participation in the development, updating, and sharing of a Disaster Risk Reduction and Management Information System and Geographic Information System-based national risk map as policy, planning and decision-making tools;

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[27] RA 10121, Sec. 17.

(e) Establish a national early warning and emergency alert system to provide accurate and timely advice to national or local emergency response organizations and to the general public through diverse mass media to include digital and analog broadcast, cable, satellite television and radio, wireless communications, and landline communications;

(f) Develop appropriate risk transfer mechanisms that shall guarantee social and economic protection and increase resiliency in the face of disaster;

(g) Monitor the development and enforcement by agencies and organizations of the various laws, guidelines, codes or technical standards required by this Act;

(h) Manage and mobilize resources for disaster risk reduction and management including the National Disaster Risk Reduction and Management Fund;

(i) Monitor and provide the necessary guidelines and procedures on the Local Disaster Risk Reduction and Management Fund (LDRRMF) releases as well as utilization, accounting and auditing thereof;

(j) Develop assessment tools on the existing and potential hazards and risks brought about by climate change to vulnerable areas and ecosystems in coordination with the Climate Change Commission;

(k) Develop vertical and horizontal coordination mechanisms for a more coherent implementation of disaster risk reduction and management policies and programs by sectoral agencies and LGUs;

(l) Formulate a national institutional capability building program for disaster risk reduction and management to address the specific weaknesses of various government agencies and LGUs, based on the results of a biennial baseline assessment and studies;

(m) Formulate, harmonize, and translate into policies a national agenda for research and technology development on disaster risk reduction and management;

(n) In coordination with the Climate Change Commission, formulate and implement a framework for climate change adaptation and disaster risk reduction and management from which all policies, programs, and projects shall be based;

(o) Constitute a technical management group composed of representatives of the abovementioned departments, offices, and

organizations, that shall coordinate and meet as often as necessary to effectively manage and sustain national efforts on disaster risk reduction and management;

(p) Task the OCD to conduct periodic assessment and performance monitoring of the member-agencies of the NDRRMC, and the Regional Disaster Risk Reduction and Management Councils (RDRRMCs), as defined in the NDRRMP; and

(q) Coordinate or oversee the implementation of the country's obligations with disaster management treaties to which it is a party and see to it that the country's disaster management treaty obligations be incorporated in its disaster risk reduction and management frameworks, policies, plans, programs and projects.

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Section 15. *Coordination During Emergencies*. — The LDRRMCs shall take the lead in preparing for, responding to, and recovering from the effects of any disaster based on the following criteria:

(a) The BDC, if a barangay is affected;

(b) The city/municipal DRRMCs, if two (2) or more barangays are affected;

(c) The provincial DRRMC, if two (2) or more cities/municipalities are affected;

(d) The regional DRRMC, if two (2) or more provinces are affected; and

(e) The NDRRMC, if two (2) or more regions are affected.

RA 10121 likewise established Local Disaster Risk Reduction and Management Councils/Offices (LDRRMCs/LDRRMOs) in every province, city, and municipality in the country, which are "responsible for setting the direction, development, implementation and coordination of disaster risk management programs within their [respective] territorial jurisdiction[s]."[28] Specifically, LDRRMOs are empowered to, among others, (i) identify, assess, and manage the hazards, vulnerabilities and

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[28] *Id*., Sec. 12(a).

risks that may occur in their locality;[29] (ii) identify and implement cost-effective risk reduction measures/strategies;[30] and (iii) respond to and manage the adverse effects of emergencies and carry out recovery activities in the affected area.[31]

Notably, majority of those who compose the LDRRMCs are officials of *local government units*[32] (LGUs) **over whom the President only exercises supervision, instead of control**.[33] Restated, it is very clear that the intent of the law — in directing the LDRRMCs to "take the lead", and in declaring that the NDRRMC would only take over "if two (2) or more regions are affected" — is to favor local autonomy in disaster preparedness and disaster response.

From the foregoing, there can be no serious doubt that the six-month closure of Boracay, as ordered by Proclamation 475, cannot be anchored on RA 10121. To conclude as such requires an Olympic leap in logic which is totally unwarranted, considering that RA 10121: (i) gave preference to *local actors*, not national ones, as regards disaster response and (ii) only granted the President authority to implement limited remedial measures following a declaration of a "state of calamity".

The case of *Review Center Association of the Philippines v. Executive Secretary Ermita*[34] is on point. Therein, the President issued an executive order authorizing the Commission on Higher Education (CHED) to supervise review centers and similar establishments. The petitioner therein sought to declare the executive order unconstitutional on the ground that CHED had no supervisorial authority over them and that the executive order

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[29] *Id*., Sec. 12(c)(9).

[30] *Id*., Sec. 12(c)(11).

[31] *Id*., Sec. 12(c)(16).

[32] See *id*., Sec. 11(a).

[33] *San Juan v. Civil Service Commission*, 273 Phil. 271, 280 (1991).

[34] 602 Phil. 342 (2009).

constitutes a usurpation of legislative power by the President. Ruling in favor of the petitioner, the Court held:

The scopes of EO 566 and the RIRR clearly expand the CHED's coverage under RA 7722. The CHED's coverage under RA 7722 is limited to public and private institutions of higher education and degree-granting programs in all public and private post-secondary educational institutions. EO 566 directed the CHED to formulate a framework for the regulation of review centers and similar entities.

The definition of a review center under EO 566 shows that it refers to one which offers "a program or course of study that is intended to refresh and enhance the knowledge or competencies and skills of reviewees obtained in the formal school setting in preparation for the licensure examinations" given by the PRC. It also covers the operation or conduct of review classes or courses provided by individuals whether for a fee or not in preparation for the licensure examinations given by the PRC.

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The President has no inherent or delegated legislative power to amend the functions of the CHED under RA 7722. Legislative power is the authority to make laws and to alter or repeal them, and this power is vested with the Congress under Section 1, Article VI of the 1987 Constitution which states:

Section 1. The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum.

x x x x x x x x x

Police power to prescribe regulations to promote the health, morals, education, good order or safety, and the general welfare of the people flows from the recognition that *salus populi est suprema lex* — the welfare of the people is the supreme law. **Police power primarily rests with the legislature although it may be exercised by the President and administrative boards by virtue of a valid delegation. Here, no delegation of police power exists under RA 7722 authorizing the President to regulate the operations of non-degree**

granting review centers.[35] (Emphasis and underscoring supplied; emphasis in the original omitted)

Second, police power is an inherent attribute of sovereignty which has been defined as the power to "make, ordain, and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the commonwealth, and for the subjects of the same."[36] Our Constitutional design, however, lodges police power primarily on the Legislature.

That police power is lodged primarily in the Legislature does not appear to be in dispute. This is apparent from the *ponencia* itself, which defines police power as the "state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare."[37]

Clearly, police power cannot be exercised by any group or body of individuals not possessing legislative power; its exercise, therefore, is contingent upon a valid delegation.[38]

In fact, a look at the powers at the President's disposal in times of calamity leads to the inevitable conclusion that Proclamation **475 does not find basis in *any* law**.

Under the Constitution, the President, on whom Executive power is vested by Section 1, Article VII of the Constitution, may, in times of calamity, exercise:

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[35] *Id.* at 364-369.

[36] *Gancayco v. City Government of Quezon City*, 674 Phil. 637, 651 (2011), citing *MMDA v. Bel-Air Village Association*, 385 Phil. 586, 601 (2000).

[37] *Ponencia*, p. 21 , citing Gorospe, Rene, B., *Constitutional Law, Notes and Readings on the Bill of Rights, Citizenship and Suffrage*, Volume 1 (2006), p. 9, further citing *Edu v. Ericta,* 146 Phil. 469 (1970).

[38] *MMDA v. Bel-Air Village Association*, *supra* note 36, at 601.

(1) **calling out powers**, an ordinary police action[39] to call on the armed forces to prevent or suppress three specific instances — lawless violence, invasion, or rebellion;[40]

(2) **emergency powers**, which, even then, may only be exercised in times of war or after Congress considers the calamity as a "national emergency" **and passes a law** authorizing the President to exercise "powers necessary and proper to carry out a declared national policy";[41] and

(3) **taking over powers**, which include taking over of, or directing the operation of any privately-owned public utility or business affected with public interest;[42] and the power to establish and operate vital industries in the interest of national welfare or defense, and the power to transfer to public ownership utilities and other private enterprises to be operated by the Government upon payment of just compensation.[43]

Under RA 7160 or the Local Government Code of 1991, the President may also exercise general supervision over LGUs,[44] and augment the basic services and facilities assigned to an LGU when the need arises, that is, when such services or facilities are not made available or, if made available, are inadequate to meet the requirements of its inhabitants.[45]

Further, in cases of epidemics, pestilence, and other widespread public health dangers, the Secretary of Health may, upon the direction of the President and in consultation with the LGU concerned, temporarily assume direct supervision and control over health operations in any LGU for the duration of the

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[39] *David v. Macapagal-Arroyo*, 522 Phil. 705, 780 (2006).

[40] 1987 CONSTITUTION, Art. VII, Sec. 18.

[41] *Id*., Art. VI, Sec. 23(2).

[42] *Id*., Art. XII, Sec. 17.

[43] *Id*., Art. XII, Sec. 18.

[44] RA 7160, Sec. 25.

[45] *Id*., Sec. 17(f).

emergency, but in no case exceeding a cumulative period of six (6) months.[46]

Finally, in areas declared by the President to be in a state of calamity, the President may enact a supplemental budget by way of budgetary realignment, to set aside appropriations for the purchase of supplies and materials, or for the payment of services which are exceptionally urgent or absolutely indispensable to prevent imminent danger to, or loss of life or property, in the jurisdiction of an LGU concerned.[47]

From the foregoing, it is thus clear that the President has no power to close an entire island, even in a calamitous situation, and despite the blanket invocation of the State's police power.

The authority to restrict the right to travel cannot be implied from the executive department's power, under RA 9275, to "take measures necessary to upgrade the water quality"

The *ponencia* also views RA 9275[48] as another statutory basis for the issuance of Proclamation 475.[49] This position is anchored on Section 6 of said statute which reads:

> SEC. 6. *Management of Non-attainment Areas.* — The [DENR] shall designate water bodies, or portions thereof, where specific pollutants from either natural or man-made source have already exceeded water quality guidelines as non-attainment areas for the exceeded pollutant. x x x
>
> The [DENR] shall, in coordination with [National Water Resource Board], Department of Health (DOH), Department of Agriculture (DA), governing board and other concerned government agencies and private sectors **shall take measures as may be necessary to upgrade the quality of such water in non-attainment areas to**

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[46] *Id*., Sec. 105.

[47] *Id*., Sec. 321.

[48] Otherwise referred to as the PHILIPPINE CLEAN WATER ACT.

[49] *Ponencia*, p. 22.

meet the standards under which it has been classified. (Emphasis and underscoring supplied)

Again, I disagree.

While the language used by RA 9275 was general, such that it may include any measure to upgrade the quality of water in a particular area, the provision in question is still bound by the limitations imposed by the Constitution and other applicable laws.

Specifically, RA 9275 itself provides that "[t]he LGUs shall prepare **and implement** contingency plans and other measures including relocation, whenever necessary, for the protection of health and welfare of the residents within potentially affected areas."[50] It is apparent, therefore, that it is again the LGUs who are tasked with the implementation of contingency plans when measures need to be taken for the protection of the health and welfare of the residents in the area concerned. The DENR's, and consequently the President's, jurisdiction is limited to the adoption of measures for the **treatment** of water, that is, any method, technique, or process designed to alter the physical, chemical or biological and radiological character or composition of any waste or wastewater to reduce or prevent pollution.[51]

More importantly, even if the language employed by RA 9275 was as general as it could be to allow leeway for the DENR as to the means it would undertake to clean the water, **the DENR would still inarguably be bound by Section 6, Article III of the Constitution, which, as discussed, requires that the curtailment of the right to travel be done on the basis of a law**.

The right to travel cannot be impaired by a mere Presidential Proclamation

As discussed, the existence of a law – which may either refer to the Constitution or to a statute necessarily enacted by the

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[50] RA 9275, Sec. 6.

[51] *Id*., Sec. 4(kk).

Legislature – is a prerequisite for the curtailment of the right to travel. The case of *Ople v. Torres*[52] (*Ople*) lends guidance.

In *Ople*, the President sought to establish a national computerized identification reference system, or National ID System, through a mere administrative order. The petitioner in the said case questioned the legality of the administrative order on the ground that, among others, the subject of the administrative order should properly be contained in a law, not a mere administrative issuance. In declaring the administrative order unconstitutional, the Court explained at length:

> Petitioner's sedulous concern for the Executive not to trespass on the lawmaking domain of Congress is understandable. The blurring of the demarcation line between the power of the Legislature to make laws and the power of the Executive to execute laws will disturb their delicate balance of power and cannot be allowed. Hence, the exercise by one branch of government of power belonging to another will be given a *stricter scrutiny* by this Court.
>
> The line that delineates Legislative and Executive power is not indistinct. *Legislative power* is "the authority, under the Constitution, to make laws, and to alter and repeal them." The Constitution, as the will of the people in their original, sovereign and unlimited capacity, has vested this power in the Congress of the Philippines. The grant of legislative power to Congress is broad, general and comprehensive. The legislative body possesses plenary power for all purposes of civil government. Any power, deemed to be legislative by usage and tradition, is necessarily possessed by Congress, unless the Constitution has lodged it elsewhere. In fine, except as limited by the Constitution, either expressly or impliedly, legislative power embraces all subjects and extends to matters of general concern or common interest.
>
> While Congress is vested with the power to enact laws, *the President executes the laws*. The executive power is vested in the President. It is generally defined as the power to enforce and administer the laws. It is the power of carrying the laws into practical operation and enforcing their due observance.
>
> As head of the Executive Department, the President is the Chief Executive. He represents the government as a whole and sees to it

[52] 354 Phil. 948 (1998).

that all laws are enforced by the officials and employees of his department. He has control over the executive department, bureaus and offices. This means that he has the authority to assume directly the functions of the executive department, bureau and office, or interfere with the discretion of its officials. Corollary to the power of control, the President also has the duty of supervising the enforcement of laws for the maintenance of general peace and public order. Thus, he is granted *administrative power* over bureaus and offices under his control to enable him to discharge his duties effectively.

Administrative power is concerned with the work of applying policies and enforcing orders as determined by proper governmental organs. It enables the President to fix a uniform standard of administrative efficiency and check the official conduct of his agents. To this end, he can issue administrative orders, rules and regulations.

Prescinding from these precepts, we hold that A.O. No. 308 involves *a subject that is not appropriate to be covered by an administrative order.* An administrative order is:

> "[Section] 3. Administrative Orders. — Acts of the President which relate to particular aspects of governmental operation in pursuance of his duties as administrative head shall be promulgated in administrative orders."

An administrative order is an ordinance issued by the President which relates to specific aspects in the administrative operation of government. ***It must be in harmony with the law and should be for the sole purpose of implementing the law and carrying out the legislative policy.*** We reject the argument that A.O. No. 308 implements the legislative policy of the Administrative Code of 1987. x x x

x x x x x x x x x

It cannot be simplistically argued that A.O. No. 308 merely implements the Administrative Code of 1987. It establishes for the first time a National Computerized Identification Reference System. Such a System requires a delicate adjustment of various contending state policies — the primacy of national security, the extent of privacy interest against dossier-gathering by government, the choice of policies, etc. Indeed, the dissent of Mr. Justice Mendoza states that the A.O. No. 308 involves the all-important freedom of thought. **As said administrative order redefines the parameters of some basic rights**

of our citizenry v*is-a-vis* the State as well as the line that separates the administrative power of the President to make rules and the legislative power of Congress, it ought to be evident that it deals with a subject that should be covered by law.

Nor is it correct to argue as the dissenters do that A.O. No. 308 is not a law because it confers no right, imposes no duty, affords no protection, and creates no office. **Under A.O. No. 308, a citizen cannot transact business with government agencies delivering basic services to the people without the contemplated identification card**. No citizen will refuse to get this identification card for no one can avoid dealing with government. It is thus clear as daylight that without the ID, a citizen will have difficulty exercising his rights and enjoying his privileges. Given this reality, the contention that A.O. No. 308 gives no right and imposes no duty cannot stand.

Again, with due respect, the dissenting opinions unduly expand the limits of administrative legislation and consequently erodes the plenary power of Congress to make laws. This is contrary to the established approach defining the traditional limits of administrative legislation. **As well stated by Fisher: "x x x *Many regulations however, bear directly on the public. It is here that administrative legislation must be restricted in its scope and application. Regulations are not supposed to be a substitute for the general policy-making that Congress enacts in the form of a public law. Although administrative regulations are entitled to respect, the authority to prescribe rules and regulations is not an independent source of power to make laws.*"**[53] (Emphasis and underscoring supplied)

In the present case, the order to close Boracay for six months was issued in a form of a **proclamation**. Title 1, Book III of Executive Order No. 292 or the Revised Administrative Code of 1987 (Administrative Code) enumerates the different powers of the Office of the President. Chapter 2 of the same – which contains the ordinance powers of the President – defines a "proclamation" as follows:

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[53] *Id*. at 966-970.

BOOK III
Office of the President

TITLE I
Powers of the President

CHAPTER 1
Power of Control

SECTION 1. *Power of Control*. — The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.

CHAPTER 2
Ordinance Power

SEC. 2. *Executive Orders.* — Acts of the President providing for the rules of a general or permanent character in implementation or execution of constitutional or statutory powers shall be promulgated in *executive orders*.

SEC. 3. *Administrative Orders*. — Acts of the President which relate to particular aspects of governmental operations in pursuance of his duties as administrative head shall be promulgated in *administrative orders*.

SEC. 4. *Proclamations*. — Acts of the President fixing a date or declaring a status or condition of public moment or interest, upon the existence of which the operation of a specific law or regulation is made to depend, shall be promulgated in *proclamations* which shall have the force of an executive order.

SEC. 5. *Memorandum Orders.* — Acts of the President on matters of administrative detail or of subordinate or temporary interest which only concern a particular officer or office of the Government shall be embodied in *memorandum orders*.

SEC. 6. *Memorandum Circulars*. — Acts of the President on matters relating to internal administration, which the President desires to bring to the attention of all or some of the departments, agencies, bureaus or offices of the Government, for information or compliance, shall be embodied in *memorandum circulars*.

SEC. 7. *General or Special Orders*. — Acts and commands of the President in his capacity as Commander-in-Chief of the Armed Forces of the Philippines shall be issued as *general or special orders*. (Emphasis supplied)

The declaration of a state of calamity in the present case was embodied in a "proclamation". But that is not all that was covered by the "proclamation". Along with the declaration of a state of calamity, Proclamation 475 also ordered the closure of an entire island — **an order which directly impacts fundamental rights, particularly, the right to travel and due process**. Borrowing the words of the Court in *Ople*, when an issuance "redefines the parameters of some basic rights of our citizenry *vis-a-vis* the State,"[54] then such is a subject matter that should be contained in a law. Such matters are beyond the power of the President to determine, and cannot be undertaken merely upon the authority of a proclamation.

As explained by Justice Dante O. Tinga in *David v. Macapagal-Arroyo*:[55]

> x x x The power of the President to make proclamations, while confirmed by statutory grant, is nonetheless rooted in an inherent power of the presidency and not expressly subjected to constitutional limitations. But proclamations, by their nature, are a species of issuances of extremely limited efficacy. As defined in the Administrative Code, proclamations are merely "acts of the President fixing a date or declaring a status or condition of public moment or interest upon the existence of which the operation of a specific law or regulation is made to depend". **A proclamation, on its own, cannot create or suspend any constitutional or statutory rights or obligations. There would be need of a complementing law or regulation referred to in the proclamation** should such act indeed put into operation any law or regulation by fixing a date or declaring a status or condition of a public moment or interest related to such law or regulation. And should the proclamation allow the operationalization of such law or regulation, all subsequent resultant acts cannot exceed or supersede the law or regulation that was put into effect.[56] (Emphasis supplied)

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[54] *Ople, id.* at 969.

[55] *J.* Tinga, Dissenting Opinion, *supra* note 39, at 818-854.

[56] *Id.* at 820-821.

In sum, as the governmental action at hand involves the curtailment of the constitutionally guarded right to travel, it was thus invalid for the President to have done so (i) without enabling legislation and (ii) in the form of a mere proclamation.

The authority to curtail the right to travel is neither subsumed in the President's duty to execute laws, nor can it be deemed inherent in the President's power to promote the general welfare

In the absence of statutory and Constitutional basis, it is imperative to stress that the restriction of the right to travel, as imposed through Proclamation 475, cannot be justified as a necessary incident of the Executive's duty to execute laws.

The faithful execution clause is found in Section 17, Article VII of the Constitution. It states:

> SEC. 17. The President shall have control of all the executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed.

The foregoing clause should not be understood as a grant of power, but rather, an obligation imposed upon the President.[57] In turn, this obligation should not be construed in the narrow context of the particular statute to be carried out, but, more appropriately, in conjunction with the very document from which such obligation emanates. Hence, speaking of the faithful execution clause, the Court has ruled:

> [The faithful execution clause] simply underscores the rule of law and, corollarily, the cardinal principle that **the President is not above the laws but is obliged to obey and execute them**. This is precisely why the law provides that "administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution."[58] (Emphasis supplied)

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[57] *Almario v. Executive Secretary*, 714 Phil. 127, 164 (2013).

[58] *Id*. at 164.

Based on these premises, I cannot subscribe to the position that the restriction of the right to travel imposed as a consequence of Boracay's closure is valid simply because it is necessary for the island's rehabilitation. **The fact that the restriction of the right to travel is deemed necessary to achieve the avowed purpose of Proclamation 475 does not take such restriction away from the scope of the Constitutional requirements under Section 6, Article III.**

As well, I cannot agree with respondents' contention that the authority to restrict the right to travel is inherent in the exercise of the President's residual power to protect and promote the general welfare.[59] This claim appears to result from an analogy drawn from the Court's rulings in *Silverio v. Court of Appeals*[60] (Silverio) and *Leave Division, Office of the Administrative Services, Office of the Court Administrator v. Heusdens*[61] (*Leave Division*), which speak of the inherent powers of the judicial and legislative departments.

A close reading of these cases reveals, however, that respondents' claim does not find support in either *Silverio* or *Leave Division*.

In *Silverio*, the petitioner therein had been charged with a violation of the Revised Securities Act. The petitioner assailed the order issued by the handling Regional Trial Court (RTC) which directed: (i) the Department of Foreign Affairs to cancel his passport; and (ii) then Commission on Immigration to prevent him from leaving the Philippines.[62] The petitioner further argued that the RTC could not validly impair his right to travel on the basis of grounds other than national security, public safety and public health.[63]

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[59] *Ponencia*, p. 8.

[60] 273 Phil. 128 (1991).

[61] 678 Phil. 328 (2011).

[62] *Silverio*, *supra* note 60, at 130.

[63] *Id*. at 131, 132.

Resolving the issue, the Court held that Section 6, Article III should not be construed to limit the inherent power of the courts to use all means necessary to carry their orders into effect, thus:

Petitioner takes the posture, however, that while the 1987 Constitution recognizes the power of the Courts to curtail the liberty of abode within the limits prescribed by law, it restricts the allowable impairment of the right to travel only on grounds of interest of national security, public safety or public health, as compared to the provisions on freedom of movement in the 1935 and 1973 Constitutions.

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Petitioner x x x theorizes that under the 1987 Constitution, Courts can impair the right to travel only on the grounds of "national security, public safety, or public health."

The submission is not well taken.

Article III, Section 6 of the 1987 Constitution should be interpreted to mean that while the liberty of travel may be impaired even without Court Order, the appropriate executive officers or administrative authorities are not armed with arbitrary discretion to impose limitations. They can impose limits only on the basis of "national security, public safety, or public health" and "as may be provided by law," a limitive phrase which did not appear in the 1973 text x x x. Apparently, the phraseology in the 1987 Constitution was a reaction to the ban on international travel imposed under the previous regime when there was a Travel Processing Center, which issued certificates of eligibility to travel upon application of an interested party x x x.

Article III, Section 6 of the 1987 Constitution should by no means be construed as delimiting the inherent power of the Courts to use all means necessary to carry their orders into effect in criminal cases pending before them. When by law jurisdiction is conferred on a Court or judicial officer, all auxiliary writs, process and other means necessary to carry it into effect may be employed by such Court or officer x x x.

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Petitioner is facing a criminal charge. He has posted bail but has violated the conditions thereof by failing to appear before the Court

when required. Warrants for his arrest have been issued. Those orders and processes would be rendered nugatory if an accused were to be allowed to leave or to remain, at his pleasure, outside the territorial confines of the country. Holding an accused in a criminal case within the reach of the Courts by preventing his departure from the Philippines must be considered as a valid restriction on his right to travel so that he may be dealt with in accordance with law. The offended party in any criminal proceeding is the People of the Philippines. It is to their best interest that criminal prosecutions should run their course and proceed to finality without undue delay, with an accused holding himself amenable at all times to Court Orders and processes.[64] (Emphasis and underscoring supplied; citations omitted)

In *Leave Division*, petitioner therein argued that the Office of the Court Administrator (OCA) Circular No. 49-2003 (B), which requires court employees to secure a travel authority as a requisite for foreign travel, unduly restricts the right to travel.

Speaking of "inherent limitations on the right to travel", the Court in *Leave Division* held:

> Inherent limitations on the right to travel are those that naturally emanate from the source. These are very basic and are built-in with the power. An example of such inherent limitation is the power of the trial courts to prohibit persons charged with a crime to leave the country. In such a case, permission of the court is necessary. **Another is the inherent power of the legislative department to conduct a congressional inquiry in aid of legislation. In the exercise of legislative inquiry, Congress has the power to issue a *subpoena* and *subpoena duces tecum* to a witness in any part of the country, signed by the chairperson or acting chairperson and the Speaker or acting Speaker of the House; or in the case of the Senate, signed by its Chairman or in his absence by the Acting Chairman, and approved by the Senate President**.[65] (Emphasis supplied)

While the foregoing cases decree that the requirements of Section 6, Article III should not be interpreted to unduly negate the inherent powers belonging to the judicial and legislative

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[64] *Id.* at 132-135.

[65] *Leave Division*, *supra* note 61, at 340-340.

departments, these cases do not purport to sanction the curtailment of the right to travel solely on the basis of implication.

To be sure, the authority to restrict the right to travel, while inherent in the exercise of judicial power *and* in the conduct of legislative inquiry, do not stem from mere abstraction, but rather, proceed from specific grants of authority under the Constitution. These grants of authority therefore satisfy the requirement that the restriction be provided for by law.

To recall, Section 5(5), Article VIII of the Constitution vests unto the Court the power to promulgate rules concerning, among others, the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts. Pursuant to such authority, the Court promulgated the Rules 135 of the Rules of Court, which reads:

> SEC. 6. *Means to carry jurisdiction into effect*. — When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears comfortable to the spirit of the said law or rules.

In this connection, the jurisdiction to exercise judicial power and exert all means necessary to carry such jurisdiction into effect is conferred upon the lower courts **by law**, specifically, under Batas Pambansa Bilang 129.

Similarly, the Legislature's power to promulgate rules governing the conduct of a congressional inquiry stems from Section 21, Article VI of the Constitution, thus:

> SEC. 21. The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in or affected by such inquiries shall be respected.

In turn, the Congress' power to resort to coercive measures in the course of legislative inquiry have been detailed in their respective internal rules promulgated pursuant to Section 21.[66]

Plainly, there is no basis to conclude that these inherent powers constitute *exceptions* to the parameters set forth by Section 6, Article III, for the reason that the Constitution itself provides the basis for their exercise.

Nevertheless, respondents argue, by analogy, that the authority to restrict the right to travel is inherent in the President's exercise

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[66] Sections 17 and 18 of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation state, in part:

Sec. 17. *Powers of the Committee.* — The Committee shall have the powers of an investigating committee, including the power to summon witnesses and take their testimony and to issue subpoena and subpoena *duces tecum*, signed by its Chairman, or in his absence by the Acting Chairman, and approved by the President. Within Metro Manila, such process shall be served by the Sergeant-at-Arms or his assistant. Outside of Metro Manila, service may be made by the police of a municipality or city, upon request of the Secretary. x x x

Sec. 18. *Contempt.* — (a) The Chairman with the concurrence of at least one (1) member of the Committee, may punish or cite in contempt any witness before the Committee who disobeys any order of the Committee or refuses to be sworn or to testify or to answer a proper question by the Committee or any of its members, or testifying, testifies falsely or evasively, or who unduly refuses to appear or bring before the Committee certain documents and/or object evidence required by the Committee notwithstanding the issuance of the appropriate subpoena therefor. A majority of all the members of the Committee may, however, reverse or modify the aforesaid order of contempt within seven (7) days.

A contempt of the Committee shall be deemed a contempt of the Senate. Such witness may be ordered by the Committee to be detained in such place as it may designate under the custody of the Sergeant-at-Arms until he/she agrees to produce the required documents, or to be sworn or to testify, or otherwise purge himself/herself of that contempt.

On the other hand, Section 7 of the House of Representatives Rules of Procedure Governing Inquiries in Aid of Legislation states, in part:

Section 7. *Compulsory Attendance of Witnesses*. — The committee shall have the power to issue subpoena and subpoena *duces tecum* to witnesses in any part of the country, signed by the chairperson or acting chairperson and the Speaker or acting Speaker x x x.

of residual powers to protect general welfare.[67] In support of this proposition, respondents rely on *Marcos v. Manglapus*[68] (*Marcos*), the relevant portion of which reads:

> x x x The power involved is the President's residual power to protect the general welfare of the people. It is founded on the duty of the President, as steward of the people. To paraphrase Theodore Roosevelt, it is not only the power of the President but also his duty to do anything not forbidden by the Constitution or the laws that the needs of the nation demand. x x x
>
> x x x The President is not only clothed with extraordinary powers in times of emergency, but is also tasked with attending to the day-to-day problems of maintaining peace and order and ensuring domestic tranquillity in times when no foreign foe appears on the horizon. Wide discretion, within the bounds of law, in fulfilling presidential duties in times of peace is not in any way diminished by the relative want of an emergency specified in the commander-in-chief provision. x x x[69] (Citations omitted)

I cannot subscribe to this position.

To echo the Court's words in *Genuino*, the imposition of a restriction on the right to travel may not be justified by resorting to an analogy.[70]

A closer look at the very limited cases in which the President's unstated "residual powers" and "broad discretion" have been recognized[71] reveals that the exercise of these residual powers can only be justified in the existence of circumstances posing a threat to the general welfare of the people so imminent that it requires **immediate** action on the part of the government.

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[67] *Ponencia*, p. 8.

[68] 258 Phil. 479 (1989); see *Ponencia*, p. 8.

[69] *Marcos*, *id*. at 504-505.

[70] *Supra* note 9, at 45-46.

[71] *Marcos*, *supra* note 68; *Sanidad v. COMELEC,* 165 Phil. 303, 336 (1976).

In *Marcos*, these circumstances were "the catalytic effect of the return of the Marcoses that may pose a serious threat to the national interest and welfare,"[72] the fact that the country was only then "beginning to recover from the hardships brought about by the plunder of the economy attributed to the Marcoses and their close associates and relatives, many of whom are still here in the Philippines in a position to destabilize the country, while the Government has barely scratched the surface, in its efforts to recover the enormous wealth stashed away by the Marcoses in foreign jurisdictions."[73] The distinctiveness of these circumstances impelled the Court to thus treat its pronouncement therein as *sui generis*:

> **This case is unique. It should not create a precedent**, for the case of a dictator forced out of office and into exile after causing twenty years of political, economic and social havoc in the country and who within the short space of three years seeks to return, is in a class by itself.[74] (Emphasis supplied)

I submit, therefore, that respondents' reliance on the Court's ruling in *Marcos* as basis to determine the scope of the President's "residual powers" is erroneous.

In any case, the "residual powers" as referred to in Section 20, Chapter 7, Title I, Book III of the Administrative Code, refers to the President's power to "exercise such other powers and functions vested [in the President] which are provided for under the laws and which are not specifically enumerated above, or which are not delegated by the President in accordance with law."

While residual powers are, by their nature, "unstated," these powers are vested in the President in furtherance of the latter's duties under the Constitution. **To exempt residual powers from the restrictions set forth by the very same document from**

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[72] *Id*. at 508.

[73] *Id*. at 509.

[74] *Id*. at 492.

which they emanate is absurd. While residual powers are "unstated", they are *not* extra-constitutional.

Indeed, while the President possesses the residual powers in times of calamity, these powers are limited by, and must therefore be wielded within, the bounds set forth by the Constitution and applicable laws enabling such powers' exercise. As aptly observed by the Supreme Court in *Rodriguez, Sr. v. Gella*:[75]

> **Shelter may not be sought in the proposition that the President should be allowed to exercise emergency powers for the sake of speed and expediency in the interest and for the welfare of the people, because we have the Constitution, designed to establish a government under a regime of justice, liberty and democracy.** x x x Much as it is imperative in some cases to have prompt official action, deadlocks in and slowness of democratic processes must be preferred to concentration of powers in any one man or group of men for obvious reasons. The framers of the Constitution, however, had the vision of and were careful in allowing delegation of legislative powers to the President for a limited period "in times of war or other national emergency." They had thus entrusted to the good judgment of the Congress the duty of coping with any national emergency by a more efficient procedure; but it alone must decide because emergency in itself cannot and should not create power. In our democracy the hope and survival of the nation lie in the wisdom and unselfish patriotism of all officials and in their faithful adherence to the Constitution."[76] (Emphasis supplied)

Inasmuch as the President has the power to ensure the faithful execution of laws,[77] and to protect the general welfare of the people, such power can, by no means, be wielded at every turn, or be unduly expanded to create "inherent restrictions" upon fundamental rights protected by the Constitution.

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[75] 92 Phil. 603 (1953).

[76] *Id*. at 611-612.

[77] 1987 CONSTITUTION, Art. VII, Sec. 17.

There are Constitutionally permissible measures to address the problem

In the resolution of this Petition, the *ponencia* and the related concurring opinions appear to harp on the ***necessity*** of the governmental action involved, *i.e.*, closure of the entire island to solve the problem at hand. The *ponencia*, for instance, states:

> **Certainly, the closure of Boracay, albeit temporarily, gave the island its much needed breather, and likewise afforded the government the necessary leeway in its rehabilitation program.** Note that apart from review, evaluation and amendment of relevant policies, the bulk of the rehabilitation activities involved inspection, testing, demolition, relocation, and construction. These works could not have easily been done with tourists present. The rehabilitation works in the first place were not simple, superficial or mere cosmetic but rather quite complicated, major, and permanent in character as they were intended to serve as long-term solutions to the problem. **Also, time is of the essence. Every precious moment lost is to the detriment of Boracay's environment and of the health and well-being of the people thereat.** Hence, any unnecessary distraction or disruption is most unwelcome. Moreover, as part of the rehabilitation efforts, operations of establishments in Boracay had to be halted in the course thereof since majority, if not all of them, need to comply with environmental and regulatory requirements in order to align themselves with the government's goal to restore Boracay into normalcy and develop its sustainability. Allowing tourists into the island while it was undergoing necessary rehabilitation would therefore be pointless as no establishment would cater to their accommodation and other needs. **Besides, it could not be said that Boracay, at the time of the issuance of the questioned proclamation, was in such a physical state that would meet its purpose of being a tourist destination.** For one, its beach waters could not be said to be totally safe for swimming. In any case, the closure, to emphasize, was only for a definite period of six months, *i.e.*, from April 26, 2018 to October 25, 2018. To the mind of the Court, this period constitutes a reasonable time frame, if not to complete, but to at least put in place the necessary rehabilitation works to be done in the island. Indeed, the temporary closure of Boracay, although unprecedented and radical as it may seem, was reasonably necessary and not unduly oppressive under the circumstances. **It was the most practical and realistic means of ensuring that rehabilitation works in the island**

are started and carried out in the most efficacious and expeditious way. x x x[78] (Emphases and underscoring supplied)

As I earlier intimated in this opinion, I concede and recognize that Boracay was facing a critical problem that necessitated its closure. I do acknowledge that there was both ***necessity*** and ***urgency*** to act on the island's problem. Nonetheless, at the risk of being repetitive, I reiterate that the closure was invalid without an enabling law enacted for the purpose — **a requirement that is neither impossible nor unreasonable to comply with.**

To illustrate, under the Constitution, the President may certify a bill as urgent "to meet a public calamity or emergency."[79] Thus:

> No bill passed by either House shall become a law unless it has passed three readings on separate days, and printed copies thereof in its final form have been distributed to its Members three days before its passage, **except when the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency**. Upon the last reading of a bill, no amendment thereto shall be allowed, and the vote thereon shall be taken immediately thereafter, and the *yeas* and *nays* entered in the Journal. (emphasis supplied)

In *Tolentino vs. Secretary of Finance*,[80] the Court ruled that the President's certification dispenses with the requirement of (i) three readings ***on separate days*** and (ii) of printing and distribution ***three days before its passage***. This constitutional mechanism allows the President to communicate to Congress what the government's priority measures are, and allows these same bills to "skip" what otherwise would be a rather burdensome and time-consuming procedure in the legislative process. Stated differently, this certification provides a constitutionally sanctioned procedure for the passing of urgent matters that needed to be in the form of a law.

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[78] *Ponencia,* pp. 23-24.

[79] 1987 CONSTITUTION, Art. VI, Sec. 26(2).

[80] 305 Phil. 686 (1994).

Indeed, this is not uncharted territory. The Court can take judicial notice[81] of the fact that, for instance, the bill that would later on become the Bangsamoro Organic Law was certified as urgent on May 29, 2018.[82] In less than two months, or by July 26, 2018, the bill was already signed into law.[83] Another example is the passage of the Responsible Parenthood and Reproductive Health Act. After its second reading in the House of Representatives on December 12, 2012, the Reproductive Health (RH) Bill was certified as urgent by the then President on December 13, 2012.[84] The House of Representatives and Senate approved the measure on third reading on December 17, 2012 and ratified its final version on December 19, 2012.[85] By December 21, 2012, **or merely eight days from the certification of the bill as urgent**, the RH Bill was signed into law.[86]

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[81] RULES OF COURT, Rule 129, Sec. 1 provides:

SECTION 1. *Judicial notice, when mandatory*. — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, **the official acts of the legislative, executive and judicial departments of the Philippines**, the laws of nature, the measure of time, and the geographical divisions. (Emphasis and underscoring supplied)

[82] Dharel Placide, "Duterte certifies BBL as urgent," ABS-CBN News, < https://news.abs-cbn.com/news/05/29/18/duterte-certifies-bbl-as-urgent > (last accessed January 22, 2019).

[83] "Duterte signs Bangsamoro Law," ABS-CBN News, < https://news.abs-cbn.com/news/07/26/18/duterte-signs-bangsamoro-law > (last accessed January 22, 2019).

[84] Willard Cheng, "PNoy certifies RH bill as urgent" ABS-CBN News, < https://news.abs-cbn.com/nation/12/14/12/pnoy-certifies-rh-bill-urgent > (last accessed January 22, 2019).

[85] Angela Casauay, "President Aquino signs RH bill into law," < https://www.rappler.com/nation/18728-aquino-signs-rh-bill-into-law > (last accessed January 22, 2019).

[86] Karen Boncocan, "RH Bill finally signed into law," Inquirer, < https://newsinfo.inquirer.net/331395/gonzales-aquino-signed-rh-bill-into-law > (last accessed January 22, 2019).

There is thus clear precedent on the effectiveness of this mechanism. Regrettably, it was not resorted to in addressing Boracay's problems. Instead, an unconstitutional shortcut was taken by merely issuing a ***proclamation*** to close the island.

This unconstitutional shortcut is, to repeat, the *raison d'etre* for this dissent. The situation in Boracay is undoubtedly dire; yet, there are constitutionally permissible measures that the government could, and should, have taken to address the problem.

The protection afforded by the right to due process, as asserted in connection with one's right to work, applies with equal force to all persons, regardless of their profession

Finally, the *ponencia* declares that petitioners Zabal and Jacosalem, being part of the informal economy sector where earnings are not guaranteed, cannot be said to have already acquired vested rights to their sources of income in Boracay. Since their earnings are contingent, the *ponencia* proceeds to conclude that petitioners have no vested rights to their sources of income as to be entitled to due process.[87]

I disagree.

Section 1, Article III on the Bill of Rights of the Constitution provides that "[n]o person shall be deprived of life, liberty, or property without due process of law x x x." Property protected under this constitutional provision includes **the right to work and the right to earn a living**.

In *JMM Promotion and Management, Inc. v. Court of Appeals*,[88] which was cited by the *ponencia*, the Court held that "[a] profession, trade or calling is a property right within the meaning of our constitutional guarantees. One cannot be deprived of the right to work and the right to make a living because these rights are property rights, the arbitrary and

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[87] *Ponencia*, pp. 24-26.

[88] 329 Phil. 87 (1996).

unwarranted deprivation of which normally constitutes an actionable wrong."[89]

Notwithstanding this constitutional protection, the right to property is not absolute as it may be curtailed through a valid exercise of the State's police power.[90] However, such deprivation must be done with due process.

The *ponencia* concedes that one's profession or trade is considered a property right covered by the due process clause.[91] However, the *ponencia* is of the position that petitioner Zabal and Jacosalem's right thereto is merely inchoate, reasoning as follows:

> In any case, petitioners, particularly Zabal and Jacosalem, cannot be said to have already acquired vested rights to their sources of income in Boracay. As heretofore mentioned, they are part of the informal sector of the economy where earnings are not guaranteed. x x x
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> x x x Clearly, said petitioners' earnings are contingent in that, even assuming tourists are still allowed in the island, they will still earn nothing if no one avails of their services. Certainly, they do not possess any vested right on their sources of income, and under this context, their claim of lack of due process collapses. To stress, only rights which have completely and definitely accrued and settled are entitled protection under the due process clause.[92]

There is no question that petitioners have no vested right to their future income. However, what is involved here is not necessarily the right to their future income; **rather, it is petitioners' existing and present right to work and to earn a living**. To belabor the point, such right is not inchoate — on the contrary, it is constitutionally recognized and protected. The fact that petitioner Zabal and Jacosalem's professions yield

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[89] *Id.* at 99-100.

[90] *Id.* at 100.

[91] *Ponencia*, p. 24.

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

variable income (as opposed to fixed income) does not, in any way, dilute the protection afforded them by the Constitution.

On this score, I take exception to the position that petitioners Zabal and Jacosalem lack legal standing to file the present Petition.[93]

Locus standi or legal standing is the right of appearance in a court of justice on a given question.[94] In order to possess the necessary legal standing, a party must show a personal and substantial interest in the case such that s/he has sustained or will sustain direct injury as a result of the challenged governmental act.[95] This requirement of direct injury "guarantees that the party who brings suit has such personal stake in the outcome of the controversy and, in effect, assures 'that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.'"[96]

In their petition, petitioners stated that:

106. Petitioners Zabal and Jacosalem's daily earnings from their tourism-related activities are absolutely necessary to put food on the table, send their children to school, and cover the daily expenses of their families.

107. Without such sources of income – even if only for a period of six (6) months – said petitioners' families will go hungry and, worse, be uprooted or forced to relocate to other places. Such a development would disrupt their children's schooling and work untold hardships upon their families.

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[93] *Id*. at 14.

[94] *Advocates For Truth in Lending, Inc. v. Bangko Sentral Monetary Board*, 701 Phil. 483, 493 (2013).

[95] *Francisco, Jr. v. The House of Representatives*, 460 Phil. 830, 893 (2003).

[96] *The Provincial Bus Operators Association of the Philippines v. DOLE and LTFRB*, G.R. No. 202275, July 17, 2018, p. 17.

108. Petitioners have every right to continue to earn a living in the manner they so choose which, and depriving them of their livelihood violates such right and creates untold hardships for them and their families.[97]

Applying jurisprudential standards, the inescapable conclusion is that petitioners Zabal and Jacosalem unquestionably have legal standing. Undoubtedly, they have a personal and substantial interest in this case and they have shown that they would sustain direct injury as a result of the Boracay closure.

In denying petitioners any legal standing, the *ponencia* cites *Galicto v. Aquino III,*[98] (*Galicto*) a case involving the constitutionality of Executive Order No. (E.O.) 7 issued by President Benigno Aquino III which ordered, among others, a moratorium on the increases in the salaries and other forms of compensation of all government owned and controlled corporations (GOCCs). The *ponencia* summarized the ruling therein as follows:

x x x The Court held that Galicto, an employee of the GOCC Philhealth, has no legal standing to assail [E.O.] 7 for his failure to demonstrate that he has a personal stake or material interest in the outcome of the case. His interest, if any, was speculative and based on a mere expectancy. Future increases in his salaries and other benefits were contingent events or expectancies to which he has no vested rights. Hence, he possessed no *locus standi* to question the curtailment thereof.[99]

Applying the foregoing principles, the *ponencia* finds that petitioners Zabal and Jacosalem do not have standing to file the instant petition, reasoning that:

x x x, Zabal is a sandcastle maker and Jacosalem, a [tricycle] driver. The nature of their livelihood is one wherein earnings are not guaranteed. As correctly pointed out by respondents, their earnings

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[97] Petition, p. 25.

[98] 683 Phil. 141 (2012).

[99] *Ponencia*, p. 13.

are not fixed and may vary depending on the business climate in that while they can earn much on peak seasons, it is also possible for them not to earn anything on lean seasons, especially when the rainy days set in. Zabal and Jacosalem could not have been oblivious to this kind of situation, they having been in the practice of their trade for a considerable length of time. Clearly, therefore, what Zabal and Jacosalem could lose in this case are mere projected earnings which are in no way guaranteed, and are sheer expectancies characterized as contingent, subordinate, or consequential interest, just like in *Galicto*. Concomitantly, an assertion of direct injury on the basis of loss of income does not clothe Zabal and Jacosalem with legal standing.[100]

Contrary to the foregoing supposition, *Galicto* is inapplicable in this case.

In *Galicto*, the Court correctly ruled that Galicto's interest was merely speculative and based on a mere expectancy because he has no vested rights to salary increases and, therefore, the absence of such right deprives him of legal standing to assail E.O. 7. **The same ruling cannot be applied in the instant case. The impairment of petitioners' rights as a consequence of the closure of Boracay gives rise to interests that are real, and not merely speculative.** There is no doubt that they will be directly affected by the closure because they derive their income on tourism-related activities in Boracay. While *Galicto* was concerned about future increases, what is involved in the present case is petitioners' constitutionally protected right to work and earn a living.[101] To stress, the fact that petitioners

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

[101] 1987 CONSTITUTION, ART. II, SEC. 18 and ART. XIII, SEC. 3. provide:

Section 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

x x x x x x x x x

Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

Zabal and Jacosalem's professions yield variable income does not, in any way, dilute the protection they are entitled to under the Constitution.

Conclusion

I end this discourse fully cognizant of the unfortunate realities that the island of Boracay has faced. I do not attempt to ignore the degradation it has suffered in the hands of those who have refused to comply with statutes, rules and regulations crafted for its protection.

When the exigencies of times call for limitations on fundamental rights, it is incumbent upon Congress to respond to the need by explicitly authorizing such limitations through law.[102] While the President has the power, *nay*, duty, to address such exigencies, the necessity of impairing constitutional rights in connection therewith is not for him to determine, more so, unilaterally impose, most particularly in cases where, as here, there is an absence of any indication that Congress would be unable to respond to the call.

The requirements under Section 6, Article III of the Constitution are as clear as they are absolute. The parameters for their application have been drawn in deft strokes by the Court in *Genuino* promulgated just nine (9) months ago. Respondents' shotgun attempt to carve out an exception to these requirements in order to justify the issuance of Proclamation 475 actually betrays their complete awareness of the Proclamation's nullity. In *Genuino*, the Court warned against the sacrifice of individual liberties for a perceived good as this is disastrous to a democracy. Therein, the Court emphasized:

> One of the basic principles of the democratic system is that where the rights of the individual are concerned, the end does not justify the means. It is not enough that there be a valid objective; it is also necessary that the means employed to pursue it be in keeping with the Constitution. Mere expediency will not excuse constitutional shortcuts. There is no question that not even the strongest moral

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[102] See *Genuino*, *supra* note 9, at 20.

conviction or the most urgent public need, subject only to a few notable exceptions, will excuse the bypassing of an individual's rights. It is no exaggeration to say that a person invoking a right guaranteed under Article III of the Constitution is a majority of one even as against the rest of the nation who would deny him that right.[103]

The Court did not hesitate to protect the Constitution against the threat of executive overreach in *Genuino*. The refusal to do so now is nothing less than bewildering.

The judicial validation of Proclamation 475 lends itself to abuse. It grants the President the power to encroach upon fundamental constitutional rights at whim, upon the guise of "faithful execution," and under a sweeping claim of "necessity." The *ponencia* lauds the "bold and urgent action" taken by the present government, but in the process, lost sight that it did so at the expense of fundamental rights. Undue premium has been placed on the underlying necessity for which the remedial action was taken, and the speed in which it was implemented. As a consequence, the inviolability of constitutionally protected rights has been forgotten.

I invite everyone, both within and outside the confines of this judicial institution, to learn from history. The Berlin Wall — the border system that divided a country physically and ideologically for nearly three decades — was said to have been built overnight. For a modern democracy, such as ours, that is struggling to strike a balance between maintaining the integrity of its institutions and dealing with its inefficiencies, the swiftness with which the Berlin Wall was built may be astonishing, if not enviable.

Yet, it is well to be reminded that the Berlin Wall was constructed at the initiative of a leader perceived by many as a dictator. If this country is to remain a democracy — as opposed to a dictatorship — the challenge for all of us is to accept that progressive and sustainable changes require much time.

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[103] *Genuino*, *id*. at 27, citing *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform,* 256 Phil. 777, 809 (1989).

To my mind, this *ponencia,* which prioritizes swiftness of action over the rule of law, leads to the realization of the very evil against which the Constitution had been crafted to guard against — **tyranny**, in its most dangerous form. To say that we believe in our Constitution, and yet discard it so easily because of expediency, is to champion hypocrisy to the detriment of our national soul.

In view of the foregoing, I vote to **GRANT** the Petition.

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ACTIONS

Cause of action — This Court agrees with the trial court that the Complaint states no cause of action against petitioners; a cause of action is "the delict or wrongful act or omission committed by the defendant in violation of the primary rights of the plaintiff"; the elements of a cause of action are: (1) The existence of a legal right in the plaintiff, (2) a correlative legal duty on the part of the defendant, and (3) an act or omission of the defendant in violation of plaintiffs right with consequential injury or damage to the plaintiff for which he may maintain an action for the recovery of damages or other appropriate relief; here, the second and third elements are lacking. (Bangko Sentral ng Pilipinas *vs*. Sps. Ledesma, G.R. No. 211176, Feb. 6, 2019) p. 444

— While respondents claim that their amended complaint before the RTC is denominated as one for the declaration of validity of the Deed of Sale and for specific performance, the averments in their amended complaint and the character of the reliefs sought therein reveal that the action primarily involves title to or possession of real property; an action "involving title to real property" means that the plaintiff's cause of action is based on a claim that he owns such property or that he has the legal rights to have exclusive control, possession, enjoyment, or disposition of the same; title is the "legal link between (1) a person who owns property and (2) the property itself." (The Heirs of the Late Sps. Ramiro *vs*. Sps. Bacaron, G.R. No. 196874, Feb. 6, 2019) p. 410

Consolidation of actions — Consolidation is "a procedural device granted to the court as an aid in deciding how cases in its docket are to be tried so that the business of the court may be dispatched expeditiously and with economy while providing justice to the parties"; Sec. 1, Rule 31 of the Rules of Court allows the courts to order the consolidation of cases involving a common question of law or fact that are pending before it in order to avoid

unnecessary costs or delay; *Magalang v. Court of Appeals*, cited; the failure to consolidate a case with a related case does not necessarily result in the dismissal of the former, unless there is *litis pendentia* or *res judicata*; thus, it is incumbent upon the parties to be on the lookout and to immediately inform the courts of cases pending with other courts, and if needed, to move for the consolidation of related cases in order to avoid the dismissal of a case on the grounds of *litis pendentia* and/or *res judicata*, or the issuance of conflicting decisions. (Goodland Co., Inc. *vs*. Banco De Oro-Unibank, Inc., G.R. No. 208543, Feb. 11, 2019) p. 625

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Nature of — Settled is the rule that the nature of the action and which court has original and exclusive jurisdiction over the same is determined by the material allegations of the complaint, the type of relief prayed for by the plaintiff and the law in effect when the action is filed, irrespective of whether the plaintiffs are entitled to some or all of the claims asserted therein; for instance, when the main relief sought is specific performance, the action is incapable of pecuniary estimation within the exclusive jurisdiction of the RTC; when the action, on the other hand, primarily involves title to, or possession of land, the court which has exclusive original jurisdiction over the same is determined by the assessed value of the property. (The Heirs of the Late Sps. Ramiro *vs*. Sps. Bacaron, G.R. No. 196874, Feb. 6, 2019) p. 410

— The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. (Bagaporo *vs*. People, G.R. No. 211829, Jan. 30, 2019) p. 302

Real action — In *Gochan v. Gochan,* we ruled that where a complaint is entitled as one for specific performance but nonetheless prays for the issuance of a deed of sale for a parcel of land, its primary objective and nature is one to recover the parcel of land itself and is, thus, deemed a real action; under these circumstances, the court which has jurisdiction over the subject matter of the case is determined by the assessed value of the subject property; the Court cannot take judicial notice of the assessed or market value of lands; consequently, the complaint filed before the RTC should be dismissed. (The Heirs of the Late Sps. Ramiro *vs*. Sps. Bacaron, G.R. No. 196874, Feb. 6, 2019) p. 410

ALIBI AND DENIAL

Defense of — Denial and alibi are viewed by this Court with disfavor, considering these are inherently weak defenses. (People *vs*. Elimancil, G.R. No. 234951, Jan. 28, 2019) p. 186

AN ACT ESTABLISHING THE PHILIPPINE DEPOSIT INSURANCE CORPORATION (R.A. NO. 3591)

Deposit splitting — In deposit splitting, there is a presumption that the transferees have no beneficial ownership considering that the source account, which exceeded the maximum deposit insurance coverage, was split into two or more accounts within 120 days immediately preceding bank closure; on the other hand, in cases wherein the transfer into two or more accounts occurred before the 120-day period, the PDIC does not discount the possibility that there may have been a transfer for valid consideration, but in the absence of transfer documents found in the records of the bank at the time of closure, the presumption arises that the source account remained with the transferor; consequently, even if the transfer into different accounts was not made within 120 days immediately preceding bank closure, the grant of deposit insurance to an account found to have originated from another deposit is not automatic because the transferee still has to prove that the transfer was for a valid consideration through

documents kept in the custody of the bank. (Linsangan *vs*. Phil. Deposit Insurance Corp., G.R. No. 228807, Feb. 11, 2019) p. 680

— Under PDIC Regulatory Issuance No. 2009-03, the elements of Deposit Splitting are as follows: a. Existence of source account/s in a bank with a balance or aggregate balance of more than the MDIC; b. There is a break up and transfer of said account/s into two or more existing or new accounts in the name of another person/s or entity/entities; c. The transferee/s have no Beneficial Ownership over the transferred funds; and d. Transfer occurred within 120 days immediately preceding or during a bank-declared bank holiday, or immediately preceding bank closure; the PDIC shall deem that there exists Deposit Splitting for the purpose of availing of the maximum deposit insurance coverage when all of these elements are present; the bank, its directors, officers, employees, or agents are prohibited from and shall not in any way participate or aid in, or otherwise abet Deposit Splitting activities as herein defined, nor shall they promote or encourage the commission of Deposit Splitting among the bank's depositors; the approval by a bank officer or employee of a transaction resulting to Deposit Splitting shall be *prima facie* evidence of participation in Deposit Splitting activities. (*Id*.)

Duty to grant or deny claims for deposit insurance — The PDIC was created by R.A. No. 3591 on June 22, 1963 as an insurer of deposits in all banks entitled to the benefits of insurance under the PDIC Charter to promote and safeguard the interests of the depositing public by way of providing permanent and continuing insurance coverage of all insured deposits; the PDIC has the duty to grant or deny claims for deposit insurance; "the term 'insured deposit' means the amount due to any *bona fide* depositor for legitimate deposits in an insured bank net of any obligation of the depositor to the insured bank as of the date of closure, but not to exceed Five Hundred Thousand Pesos (₱500,000.00); in determining such amount due to any depositor, there shall be added

together all deposits in the bank maintained in the same right and capacity for his benefit either in his own name or in the names of others." (Linsangan *vs*. Phil. Deposit Insurance Corp., G.R. No. 228807, Feb. 11, 2019) p. 680

ANTI-TRAFFICKING IN PERSONS ACT OF 2003 (R.A. NO. 9208)

Application of — Accused-appellant was charged with having violated qualified trafficking in relation to Sec. 4(e) of R.A. No. 9208, which provides that it is unlawful for anyone to maintain or hire a person to engage in prostitution or pornography. (People *vs*. Lasaca Ramirez, G.R. No. 217978, Jan. 30, 2019) p. 314

—— The crime is still considered trafficking if it involves the "recruitment, transportation, transfer, harboring, or receipt of a child for the purpose of exploitation" even if it does not involve any of the means stated under the law; trafficking is considered qualified when the trafficked person is a child. (*Id*.)

Elements — Under R.A. No. 10364, the elements of trafficking in persons have been expanded to include the following acts: (1) The act of "recruitment, obtaining, hiring, providing, offering, transportation, transfer, maintaining, harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders; (2) The means used include "by means of threat, or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person"; (3) The purpose of trafficking includes "the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs. (People *vs*. Lasaca Ramirez, G.R. No. 217978, Jan. 30, 2019) p. 314

APPEALS

Appeal from the Sandiganbayan Resolutions — Sec. 1, Rule 122 of the Revised Rules of Criminal Procedure provides

that: "Any party may appeal from a judgment or final order, unless the accused will be placed in double jeopardy"; further, Sec. 7 of P.D. No. 1606, as amended by Sec. 3 of R.A. No. 7975 provides that decisions and final orders of the Sandiganbayan shall be appealable to the Court by a petition for review on *certiorari* raising pure questions of law in accordance with Rule 45 of the Rules of Court; this is in harmony with the procedural rule that the provisions of Rules 42, 44, 45, 46 and 48 to 56 relating to the procedure in original and appealed civil cases shall also be applied to criminal cases; thus, the proper remedy from the Sandiganbayan Resolutions dismissing the criminal cases is an appeal by *certiorari* under Rule 45 and not under Rule 65 of the Rules of Court; subject to certain exceptions, the use of an erroneous mode of appeal is cause for dismissal of the petition following the basic rule that *certiorari*, being an independent action, is not a substitute for a lost appeal. (People *vs.* Sandiganbayan [First Div.], G.R. Nos. 219824-25, Feb. 12, 2019) p. 718

Appeal in criminal cases — In criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors; the appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law. (People *vs.* Acosta, G.R. No. 238865, Jan. 28, 2019) p. 198

Appeal in labor cases — In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion; thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so

declare and, accordingly, dismiss the petition. (Slord Dev't. Corp. *vs*. Noya, G.R. No. 232687, Feb. 4, 2019) p. 380

— *Montoya v. Transmed Manila Corporation* laid down the parameters of judicial review for a labor case under Rule 45: In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65; furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision; in ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct; grave abuse of discretion, defined; the findings of the National Labor Relations Commission were amply supported by substantial evidence. (Paringit *vs*. Global Gateway Crewing Services, Inc., G.R. No. 217123, Feb. 6, 2019) p. 460

— When supported by substantial evidence, the Court cannot inquire into the veracity of the CA's factual findings, which are final, binding, and conclusive upon this Court; however, when the CA's factual findings are contrary to those of the administrative body exercising quasi-judicial functions from which the action originated, the Court may examine the facts only for the purpose of resolving allegations and determining the existence of grave abuse of discretion; this is consistent with the ruling that in a Rule 45 review in labor cases, the Court examines the CA's Decision from the prism of whether the latter had correctly determined the presence or absence of grave abuse of discretion in the NLRC's Decision. (Slord Dev't. Corp. *vs*. Noya, G.R. No. 232687, Feb. 4, 2019) p. 380

Dismissal of appeal — Sec. (1)(h), Rule 50 of the Rules of Court provides that the CA may dismiss an appeal *motu proprio* for failure of the appellant to comply with orders, circulars or directives of the court without justifiable cause; the said provision confers a discretionary power and not a mandatory duty; in *Tiangco v. Land Bank of the Philippines*, the Court explained that it is presumed that the CA had exercised sound discretion in deciding whether to dismiss the case in accordance with the rules, to wit: xxx Although said discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case, the presumption is that it has been so exercised; thus, it is incumbent upon her to prove that the CA unsoundly exercised its discretion to dismiss her appeal as it is presumed that the appellate court had exercised its discretion judiciously; unfortunately, Abad failed to overcome the said presumption. (Heirs of Batori *vs*. Register of Deeds of Benguet, G.R. No. 212611, Feb. 11, 2019) p. 643

Factual findings of the trial court — In criminal cases, the factual findings of the trial court are generally accorded great weight and respect on appeal, especially when such findings are supported by substantial evidence on record; it is only in exceptional circumstances, such as when the trial court overlooked material and relevant matters, that the Court will evaluate the factual findings of the court below. (Miranda *y* Parelasio *vs*. People, G.R. No. 234528, Jan. 23, 2019) p. 125

Petition for review on certiorari to the Supreme Court under Rule 45 — Court explains that it allows the direct recourse from the decision of the RTC on the ground that the petition raises a pure question of law on the proper application of Art. 26 of the Family Code; direct recourse to this Court from the decisions and final orders of the RTC may be taken where only questions of law are raised or involved. (Nullada *vs*. Civil Registrar of Manila, G.R. No. 224548, Jan. 23, 2019) p. 96

—— Petitioner's second claim is a question of fact improper in a petition for review under Rule 45; *DST Movers Corporation v. People's General Insurance Corporation,* cited; as a general rule, it becomes improper for this court to consider factual issues: the findings of fact of the trial court, as affirmed on appeal by the Court of Appeals, are conclusive on this court; rationale. (Rep. of the Phils. *vs*. Fetalvero, G.R. No. 198008, Feb. 4, 2019) p. 327

—— Rule 51, Sec. 8 of the Rules of Court, which applies to petitions for review on *certiorari* under Rule 45 of the same rules, provides that as a rule, only matters assigned as errors may be resolved by the Court; in *Catholic Bishop of Balanga v. Court of Appeals*, the Court laid down several exceptions: (1) Grounds not assigned as errors but affecting jurisdiction over the subject matter; (2) Matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; (3) Matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interest of justice or to avoid dispensing piecemeal justice; (4) Matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (5) Matters not assigned as errors on appeal but closely related to an error assigned; and (6) Matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent. (Goodland Co., Inc. *vs*. Banco De Oro-Unibank, Inc., G.R. No. 208543, Feb. 11, 2019) p. 625

—— The Court notes that only questions of law should be raised in a petition for review on *certiorari* under Rule 45; factual findings of the lower courts will generally not be disturbed; thus, the issues pertaining to the value of the property expropriated are questions of fact which are generally beyond the scope of the judicial review of this Court under Rule 45; here, the Republic-DPWH is

asking the Court to recalibrate and weigh anew the evidence already passed upon by the courts below. (Rep. of the Phils. *vs.* Sps. Silvestre, G.R. No. 237324, Feb. 6, 2019) p. 599

Points of law, issues, theories, and arguments — A question of facts exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation; a *catena* of cases has consistently held that questions of fact cannot be raised in an appeal *via certiorari* before the Court and are not proper for its consideration. (VDM Trading, Inc. *vs.* Carungcong, G.R. No. 206709, Feb. 6, 2019) p. 425

Principles in reviewing rape cases — In reviewing rape cases, this Court has constantly been guided by three principles, to wit: (1) an accusation of rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence for the defense; and as a result of these guiding principles, credibility of the complainant becomes the single most important issue; if the testimony of the victim is credible, convincing and consistent with human nature, and the normal course of things, the accused may be convicted solely on the basis thereof. (People *vs.* Elimancil, G.R. No. 234951, Jan. 28, 2019) p. 186

Right to — The right to appeal is neither a natural right nor is it a component of due process; it is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law; any liberality in the application of the rules of procedure may be properly

invoked only in cases of some excusable formal deficiency or error in a pleading, but definitely not in cases like now where a liberal application would directly subvert the essence of the proceedings or results in the utter disregard of the Rules of Court. (Bagaporo *vs*. People, G.R. No. 211829, Jan. 30, 2019) p. 302

Rules on — Issues not raised in the previous proceedings cannot be raised for the first time at a late stage. (Augustin Int'l. Center, Inc. *vs*. Bartolome, G.R. No. 226578, Jan. 28, 2019) p. 159

ATTORNEYS

Retainer or written agreement — A retainer or written agreement between a lawyer and the client lists the scope of the services to be offered by the lawyer and governs the relationship between the parties; without a written agreement, it would be difficult to ascertain what the parties committed to; if the parties had executed a written agreement, issues on lawyer's fees and other expenses incurred during a trial would not have arisen, as each party would know his or her obligations under the retainer agreement; complainants seemed unaware of what was expected of them as clients, leading them to make blanket accusations of impropriety against respondent; to prevent a similar predicament from happening in the future, respondent is directed to henceforth execute written agreements with all of his clients, even those whose cases he is handling *pro bono*. (Buntag *vs*. Atty. Toledo, A.C. No. 12125, Feb. 11, 2019) p. 613

BAIL

Right to — Admission to bail always involves the risk that the accused will take flight; this is the reason precisely why the probability or the improbability of flight is an important factor to be taken into consideration in granting or denying bail, even in capital cases; however, where bail is a matter of right, prior absconding and forfeiture is not excepted from such right, bail must be allowed irrespective of such circumstance; the existence of a

high degree of probability that the accused will abscond confers upon the court no greater discretion than to increase the bond to such an amount as would reasonably tend to assure the presence of the defendant when it is wanted, such amount to be subject, of course, to the constitutional provision that "excessive bail shall not be required." (Padua *vs*. People, G.R. No. 220913, Feb. 4, 2019) p. 354

— Bail exists to ensure society's interest in having the accused answer to a criminal prosecution without unduly restricting his or her liberty and without ignoring the accused's right to be presumed innocent; it does not perform the function of preventing or licensing the commission of a crime; the practice of admission to bail is not a device for keeping persons in jail upon mere accusation until it is found convenient to give them a trial; the spirit of the procedure is rather to enable them to stay out of jail until a trial, with all the safeguards, has found and adjudged them guilty. (*Id*.)

— Considering that *estafa* is a bailable offense, petitioners no longer need to apply for bail as they are entitled to bail, by operation of law; where bail is a matter of right, it is ministerial on the part of the trial judge to fix bail when no bail is recommended. (*Id*.)

— In *Miranda, et al. v. Tuliao*, the Court pronounced that "custody of the law is required before the court can act upon the application for bail, but is not required for the adjudication of other reliefs sought by the defendant where the mere application therefor constitutes a waiver of the defense of lack of jurisdiction over the person of the accused"; indeed, a person applying for admission to bail must be in the custody of the law or otherwise deprived of his liberty; however, the Court also held therein that, "in adjudication of other reliefs sought by accused, it requires neither jurisdiction over the person of the accused, nor custody of law over the body of the person." (*Id*.)

— Petitioners filed an Omnibus Motion *Ex-Abundante Ad Cautelam* (to Quash Warrant of Arrest and to Fix Bail)

wherein it is not required that petitioners be in the custody of the law, because the same is not an application for bail where custody of the law is required; when bail is a matter of right, the fixing of bail is ministerial on the part of the trial judge even without the appearance of the accused. (*Id*.)

— The constitutional mandate is that all persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law; however, bail may be a matter of right or judicial discretion; discussed; the determination of whether the evidence of guilt is strong, in this regard, is a matter of judicial discretion. (*Id*.)

— The right to bail is expressly afforded by Sec. 13, Art. III (Bill of Rights) of the Constitution; this constitutional provision is repeated in Sec. 7, Rule 114 of the Rules of Court; the general rule is that any person, before being convicted of any criminal offense, shall be bailable, unless he is charged with a capital offense, or with an offense punishable with *reclusion perpetua* or life imprisonment, and the evidence of his guilt is strong; thus, from the moment an accused is placed under arrest, or is detained or restrained by the officers of the law, he can claim the guarantee of his provisional liberty under the Bill of Rights. (*Id*.)

Posting of — After the amount of bail has been fixed, petitioners, when posting the required bail, must be in the custody of the law; they must make their personal appearance in the posting of bail; bail, whether a matter of right or of discretion, cannot be posted before custody of the accused has been acquired by the judicial authorities either by his arrest or voluntary surrender, or personal appearance; rationale. (Padua *vs*. People, G.R. No. 220913, Feb. 4, 2019) p. 354

BIGAMY

Commission of — Judicial declaration also constitutes proof that the petitioner acted in good faith, and would negate criminal intent on his part when he married the private complainant and, as a consequence, he could not be held guilty of bigamy in such case. (Bagaporo *vs*. People, G.R. No. 211829, Jan. 30, 2019) p. 302

BILL OF RIGHTS

Right to due process — A profession, trade or calling is a property right within the meaning of our constitutional guarantees; one cannot be deprived of the right to work and the right to make a living because these rights are property rights, the arbitrary and unwarranted deprivation of which normally constitutes an actionable wrong; "when the conditions so demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to general welfare"; an inchoate right is a mere expectation, which may or may not come into fruition; "it is contingent as it only comes 'into existence on an event or condition which may not happen or be performed until some other event may prevent their vesting"; only rights which have completely and definitely accrued and settled are entitled to protection under the due process clause. (Zabal *vs*. Pres. Duterte, G.R. No. 238467, Feb.12, 2019) p. 743

Right to self-organization — Art. III, Sec. 8 of the Bill of Rights likewise states, "the right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged"; while the right to self-organization is absolute, the right of government employees to collective bargaining and negotiation is subject to limitations; collective bargaining is a series of negotiations between an employer and a representative of the employees to regulate the various aspects of the employer-employee relationship such as working hours, working conditions, benefits, economic provisions, and

others. (GSIS Family Bank Employees Union *vs*. Sec. Villanueva, G.R. No. 210773, Jan. 23, 2019) p. 30

— The right of workers to self-organization, collective bargaining, and negotiations is guaranteed by the Constitution under Art. XIII, Sec. 3: xxx the right to self-organization is not limited to private employees and encompasses all workers in both the public and private sectors, as shown by the clear declaration in Art. IX(B), Sec. 2(5) that "the right to self--organization shall not be denied to government employees." (*Id*.)

Right to speedy disposition of cases — Our ruling in the case of *People v. Sandiganbayan, et al.*, where we held that fact-finding investigations are included in the period for determination of inordinate delay has already been abandoned; in *Cagang v. Sandiganbayan. et al*., we made the following disquisition, thus: xxx Considering that fact-finding investigations are not yet adversarial proceedings against the accused, the period of investigation will not be counted in the determination of whether the right to speedy disposition of cases was violated; thus, this Court now holds that for the purpose of determining whether inordinate delay exists, a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation; in this case, the reckoning point to determine if there had been inordinate delay should start to run from the filing of the formal complaint with the Office of the Ombudsman-Mindanao, on December 8, 2014, up to the filing of the Information on November 23, 2016; the period from the filing of the formal complaint to the subsequent conduct of the preliminary investigation was not attended by vexatious, capricious, and oppressive delays as would constitute a violation of respondents' right to a speedy disposition of cases. (People *vs*. Sandiganbayan [Fifth Div.], G.R. No. 233063, Feb. 11, 2019) p. 690

— The right to the speedy disposition of cases is enshrined in Art. III of the Constitution; "the constitutional right is not limited to the accused in criminal proceedings but

extends to all parties in all cases, be it civil or administrative in nature, as well as all proceedings, either judicial or quasi-judicial"; "in this accord, any party to a case may demand expeditious action from all officials who are tasked with the administration of justice"; "this right, however, like the right to a speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays"; "the concept of speedy disposition is relative or flexible; a mere mathematical reckoning of the time involved is not sufficient; particular regard must be taken of the facts and circumstances peculiar to each case"; the doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are as follows: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay. (*Id*.)

Right to travel — This case does not actually involve the right to travel in its essential sense contrary to what petitioners want to portray; any bearing that Proclamation No. 475 may have on the right to travel is merely corollary to the closure of Boracay and the ban of tourists and non-residents therefrom which were necessary incidents of the island's rehabilitation; there is certainly no showing that Proclamation No. 475 deliberately meant to impair the right to travel; if at all, the impact of Proclamation No. 475 on the right to travel is not direct but merely consequential; and, the same is only for a reasonably short period of time or merely temporary. (Zabal *vs*. Pres. Duterte, G.R. No. 238467, Feb.12, 2019) p. 743

CERTIORARI

Grave abuse of discretion — Petitioner assails the Sandiganbayan's finding of lack of probable cause as it was allegedly attended by a failure to consider and weigh all the evidence; as a rule, misapplication of facts and evidence, and erroneous conclusions based on evidence do not, by the mere fact that errors were committed, rise

to the level of grave abuse of discretion; even granting that the Sandiganbayan erred in weighing the sufficiency of the prosecution's evidence, such error does not necessarily amount to grave abuse of discretion; similarly, the mere fact that a court erroneously decides a case does not necessarily deprive it of jurisdiction; such are errors of judgment that cannot be corrected by an extraordinary writ of *certiorari*. (People *vs*. Sandiganbayan [First Div.], G.R. Nos. 219824-25, Feb. 12, 2019) p. 718

—— The CA obviously found that there was indeed grave abuse of discretion amounting to lack of jurisdiction committed by the NLRC; grave abuse of discretion has been described as such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction; the abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility; the CA found that the NLRC based its computation of backwages on pieces of evidence which were extremely doubtful. (Ramiro Lim & Sons Agricultural Co., Inc. *vs*. Guilaran, G.R. No. 221967, Feb. 6, 2019) p. 497

Petition for — Petitioner only resorted to a petition for *certiorari* when it failed to appeal the case within the reglementary period; *Nippon Paint Employees Union-Olalia v. Court of Appeals*, cited; a special civil action for *certiorari* under Rule 65 lies only when "there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law"; *certiorari* cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy, *certiorari* not being a substitute for lost appeal; the remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive. (Rep. of the Phils. *vs*. Fetalvero, G.R. No. 198008, Feb. 4, 2019) p. 327

—— Respondent's erroneous cognizance of the Petition for Inclusion/Exclusion can only be deemed as grave abuse

of discretion, which is more properly the subject of a petition for certiorari, not a petition for contempt. (Polo Plantation Agrarian Reform Multipurpose Coop. (POPARMUCO) *vs.* Inson, G.R. No. 189162, Jan. 30, 2019) p. 239

Writ of — A writ of certiorari may only be issued when the following are alleged in the petition and proven: (1) the writ is directed against a tribunal, a board, or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy[,] and adequate remedy in the ordinary course of law. (GSIS Family Bank Employees Union *vs.* Sec. Villanueva, G.R. No. 210773, Jan. 23, 2019) p. 30

— The Governance Commission possesses neither judicial nor quasi-judicial powers; thus, it cannot review or settle actual controversies or conflicting rights between dueling parties and enforce legally demandable rights; it is not a tribunal or board exercising judicial or quasi-judicial functions that may properly be the subject of a petition for *certiorari*. (*Id.*)

CIVIL SERVICE

Revised Rules of Administrative Cases in the Civil Service (RRACCS) — Sec. 46, Rule 10 of the *Revised Rules of Administrative Cases in the Civil Service* (RRACCS) classifies gross neglect of duty as a grave offense punishable by dismissal from the service even on the first violation; although gross insubordination and gross inefficiency and incompetence in the performance of official duties each merits the penalty of suspension for six months and one day to one year for the first violation, Sec. 50 of the RRACCS provides that in case of two or more charges or counts, the penalty to be imposed shall be that corresponding to the most serious offense, and the rest of the counts shall be treated as aggravating

circumstances. (Malubay *vs*. Guevara, A.M. No. P-18-3791 [Formerly OCA IPI No. 15-4447-P], Jan. 29, 2019) p. 227

COLLECTIVE BARGAINING AGREEMENT

Union security clause — Pertinent is Art. 259 (formerly 248), paragraph (e) of the Labor Code, which states that "nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement"; the stipulation in a CBA based on this provision of the Labor Code is commonly known as the "union security clause"; "union security is a generic term which is applied to and comprehends 'closed shop,' 'union shop,' 'maintenance of membership' or any other form of agreement which imposes upon employees the obligation to acquire or retain union membership as a condition affecting employment. (Slord Dev't. Corp. *vs*. Noya, G.R. No. 232687, Feb. 4, 2019) p. 380

— The Court has consistently upheld the validity of a closed shop agreement as a form of union security clause; in *Tanduay Distillery Labor Union v. NLRC*, the Court ruled that the organization by union members of a rival union outside the freedom period, without first terminating their membership in the union and without the knowledge of the officers of the latter union, is considered an act of disloyalty, for which the union members may be sanctioned; having ratified the CBA and being members of the union, union members owe fealty and are required under the union security clause to maintain their membership in good standing during the term thereof; this requirement ceases to be binding only during the sixty (60)-day freedom period immediately preceding the expiration of the CBA, which enjoys the principle of sanctity or inviolability of contracts guaranteed by the Constitution. (*Id*.)

— There is union shop when all new regular employees are required to join the union within a certain period for their continued employment; there is maintenance of membership shop when employees, who are union members as of the effective date of the agreement, or who thereafter become members, must maintain union membership as a condition for continued employment until they are promoted or transferred out of the bargaining unit, or the agreement is terminated; a closed shop, on the other hand, may be defined as an enterprise in which, by agreement between the employer and his employees or their representatives, no person may be employed in any or certain agreed departments of the enterprise unless he or she is, becomes, and, for the duration of the agreement, remains a member in good standing of a union entirely comprised of or of which the employees in interest are a part"; rationale behind stipulations for "union shop" and "closed shop." (*Id*.)

COMMON CARRIERS

Diligence required — Under Art. 1733 of the Civil Code, extraordinary diligence in the vigilance over the goods it transports according to all the circumstances of each case; in the event that the goods are lost, destroyed or deteriorated, it is presumed to have been at fault or to have acted negligently, unless it proves that it observed extraordinary diligence; to be sure, under Art. 1736 of the Civil Code, a common carrier's extraordinary responsibility over the shipper's goods lasts from the time these goods are unconditionally placed in the possession of, and received by, the carrier for transportation, until they are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them. (Keihin-Everett Forwarding Co., Inc. *vs*. Tokio Marine Malayan Insurance Co., Inc., G.R. No. 212107, Jan. 28, 2019) p. 141

COMPREHENSIVE AGRARIAN REFORM LAW (R.A. NO. 6657, AS AMENDED)

Application of — Secs. 22 and 22-A of the Comprehensive Agrarian Reform Law provides the order of priority in the distribution of lands covered by the Comprehensive Agrarian Reform Program to landless farmers/farm workers; the basic qualification for a beneficiary is his or her willingness, aptitude, and ability to cultivate and make the land as productive as possible. (Polo Plantation Agrarian Reform Multipurpose Coop. (POPARMUCO) *vs*. Inson, G.R. No. 189162, Jan. 30, 2019) p. 239

— The landowner or any real party-in-interest may file before the Department of Agrarian Reform Municipal Office a protest or petition to lift the coverage of the Comprehensive Agrarian Reform Program within 60 calendar days from receipt of the Notice; the protest will be resolved in accordance with the procedure set forth in Department of Agrarian Reform Administrative Order No. 03-03, or the 2003 Rules for Agrarian Law Implementation Cases. (*Id*.)

Department of Agrarian Reform — Department of Agrarian Reform Administrative Order No. 07-03 provides the qualifications, disqualifications, and rights and obligations of agrarian reform beneficiaries; it also provides the operating procedures for their: (1) identification, screening, and selection; (2) resolution of protests in the selection; and (3) certificate of land ownership award generation and registration. (Polo Plantation Agrarian Reform Multipurpose Coop. (POPARMUCO) *vs*. Inson, G.R. No. 189162, Jan. 30, 2019) p. 239

— In addition to identifying the qualified beneficiaries, Sec. 22 of the Comprehensive Agrarian Reform Law mandates the Department of Agrarian Reform to "adopt a system of monitoring the record or performance of each beneficiary, so that any beneficiary guilty of negligence or misuse of the land or any support extended to him shall forfeit his right to continue as such beneficiary. (*Id*.)

— Sec. 7 of the Comprehensive Agrarian Reform Law authorizes the Department of Agrarian Reform, in coordination with the Presidential Agrarian Reform Council, to plan and program the acquisition and distribution of all agricultural lands in accordance with the order of priority under the law; inherent in this function is the Department of Agrarian Reform's power to identify the landholdings within the coverage of the Comprehensive Agrarian Reform Program, and to identify, screen, and select agrarian reform beneficiaries. (*Id*.)

— Sec. 24 of the Comprehensive Agrarian Reform Law states that the rights and obligations of beneficiaries commence from the time the land is awarded to them; the certificate of land ownership award contains the restrictions and conditions provided in the law and other applicable statutes. (*Id*.)

— The Comprehensive Agrarian Reform Law vested in the Department of Agrarian Reform the primary responsibility of implementing the Comprehensive Agrarian Reform Program; Sec. 50 pertains to both the Department of Agrarian Reform's: (1) administrative function, which involves enforcing, administering, and carrying agrarian reform laws into operation; and (2) quasi-judicial function, which involves the determination of parties' rights and obligations in agrarian reform matters. (*Id*.)

— Under Department of Agrarian Reform Administrative Order No. 01-03, the Municipal Agrarian Reform Officer serves copies of the Notice of Coverage or Petition for Coverage on the landowner; through the Notice, the landowner is informed that his or her landholding is subjected to the Comprehensive Agrarian Reform Program; he or she is invited to a public hearing or field investigation on the date specified in the Notice. (*Id*.)

— Under the Department of Agrarian Reform Administrative Order No. 01-03, or the 2003 Rules Governing Issuance of Notice of Coverage and Acquisition of Agricultural Lands under R.A. No. 6657, compulsory acquisition is

commenced through two (2) ways; the first is through a Notice of Coverage; after determining that the land is covered by the Comprehensive Agrarian Reform Program and writing a pre-ocular inspection report, the Municipal Agrarian Reform Officer sends a Notice to the landowner; the Notice would be posted for at least seven (7) days in the bulletin boards of the barangay hall and municipal/ city hall where the property is located; the other way is through a Petition for Coverage, filed by any party before the Department of Agrarian Reform's Regional Office or Provincial Office of the region or province where the property is located; either of these offices transmits the case folder to the Municipal Agrarian Reform Officer where the property is located. (*Id*.)

— Written protests for the inclusion/exclusion from the master list must be filed before the Department of Agrarian Reform's Regional or Provincial Office, as the case may be, not later than 15 days from the last day of posting of the list; the Regional Director will resolve the protest through summary proceedings within 30 days from receiving the Beneficiary Screening Committee's case records or the Provincial Office's investigation report and recommendation; the master list becomes final and executory after the lapse of 15 days from receipt of the Regional Director's decision on the protest, but such finality is only for the specific purpose of generating the certificate of land ownership award. (*Id*.)

Two modes of acquiring land — There are two (2) modes of acquiring land under the Comprehensive Agrarian Reform Law: (1) compulsory acquisition and (2) voluntary offer for sale/land transfer; Sec. 16 outlines the procedure for compulsory land acquisition: x x x Sec. 16(a) requires that after identification of the land, landowners, and farmer beneficiaries, the Department of Agrarian Reform will send a notice of acquisition to the landowner, through personal delivery or registered mail, and post it in a conspicuous place in the municipal building and barangay hall of the place where the property is located. (Polo Plantation Agrarian Reform Multipurpose Coop.

(POPARMUCO) *vs.* Inson, G.R. No. 189162, Jan. 30, 2019) p. 239

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Absence of the required witnesses — *People v. Sipin* ruled what constitutes justifiable reasons for the absence of any of the three witnesses: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Art. 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. (People *vs.* Tampus, G.R. No. 221434, Feb. 6, 2019) p. 481

Buy-bust operation — The Court cannot agree with the finding of both the RTC and the CA that a legitimate buy-bust operation was conducted in this case; a buy-bust operation is a form of entrapment in which the violator is caught *in flagrante delicto* and the police officers conducting the operation are not only authorized but duty-bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime; however, where there really was no buy-bust operation conducted, the elements of illegal sale of prohibited drugs cannot be proved and the indictment against the accused will have no leg to stand on. (People *vs.* Labsan *y* Nala, G.R. No. 227184, Feb. 6, 2019) p. 514

Chain of custody — 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"; as such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved; the foregoing is based on the saving clause found in Sec. 21 (a) Art. II of the Implementing Rules and Regulations of R.A. No. 9165, which was later adopted into the text of R.A. No. 10640; for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist. (People *vs*. Acabo *y* Ayento, G.R. No. 241081, Feb. 11, 2019) p. 705

(People *vs.* Alconde *y* Madla, G.R. No. 238117, Feb. 4, 2019) p. 398

— Contrary to the ruling of the RTC and the CA, the prosecution clearly failed to comply with the requirements of the chain of custody rule under Sec. 21 of R.A. No. 9165, as amended; the conduct of physical inventory and taking of photograph of the seized items in drugs cases must be in the presence of at least three (3) witnesses, particularly: (1) the accused or the persons from whom such items were confiscated and seized or his/her counsel, (2) an elected public official, and (3) a representative of the National Prosecution Service or the media; the three witnesses, thereafter, should sign copies of the inventory and be given a copy thereof. (People *vs*. Tampus, G.R. No. 221434, Feb. 6, 2019) p. 481

— In view of this unjustified deviation from the chain of custody rule, the Court is constrained to conclude that the integrity and evidentiary value of the items purportedly

seized from accused-appellants had been compromised, which consequently warrants their acquittal. (People *vs*. Alconde *y* Madla, G.R. No. 238117, Feb. 4, 2019) p. 398

— Sec. 21, Art. II of R.A. No. 9165 provides the mandatory procedural safeguards in buy-bust operations, and in addition, Sec. 21(a), Art. II of the Implementing Rules and Regulations of R.A. No. 9165; non-compliance with the procedures delineated and set would not necessarily invalidate the seizure and custody of the dangerous drugs as long as there were justifiable grounds for the non-compliance and the integrity of the *corpus delicti* was preserved. (People *vs*. Gumban *y* Caranay, G.R. No. 224210, Jan. 23, 2019) p. 82

— The marking of the seized items at the police station, not at the place of incident, did not impair the chain of custody of the drug evidence; for one, the marking at the nearest police station is allowed whenever the same is availed of due to practical reason. (People *vs*. Sahibil, G.R. No. 228953, Jan. 28, 2019) p. 173

— The rule on chain of custody expressly demands the identification of the persons who handle the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they are seized from the accused until the time they are presented in court. (People *vs*. Gumban *y* Caranay, G.R. No. 224210, Jan. 23, 2019) p. 82

— There are generally four links that must be proved to comply with the Chain of Custody Rule; *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. (People *vs*. Sahibil, G.R. No. 228953, Jan. 28, 2019) p. 173

— 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; 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 R.A. No. 9165 by R.A. No. 10640, "a representative from the media *and* the Department of Justice, and any elected public official"; or (*b*) if after the amendment of R.A. No. 9165 by R.A. No. 10640, "an elected public official and a representative of the National Prosecution Service or the media." (People *vs.* Acabo *y* Ayento, G.R. No. 241081, Feb. 11, 2019) p. 705

(People *vs.* Alconde *y* Madla, G.R. No. 238117, Feb. 4, 2019) p. 398

Failure to strictly comply with the mandatory procedure — As held in *People v. De Guzman*, "the justifiable ground for non-compliance must be proven as a fact; the court cannot presume what these grounds are or that they even exist"; the prosecution has the burden of (1) proving their compliance with Sec. 21, R.A. No. 9165, and (2) providing a sufficient explanation in case of non-compliance; as the Court *en banc* unanimously held in

the recent case of *People v. Lim*, it must be alleged and proved that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Art. 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. (People *vs*. Guerrero *y* Eling, G.R. No. 228881, Feb. 6, 2019) p. 539

—— The Court has recognized, in a number of cases, that law enforcers resort to the practice of planting evidence to extract information from or even to harass civilians; thus, to the Court's mind, the allegation of Guerrero that he was a victim of *palit-ulo*, has the ring of truth to it; nevertheless, even if the Court were to believe the version of the prosecution, the buy-bust team committed patent procedural lapses which thus created reasonable doubt as to the identity and integrity of the drug and, consequently, reasonable doubt as to the guilt of Guerrero. (*Id*.)

—— The prosecution neither recognized, much less tried to justify, its deviation from the procedure contained in Sec. 21, R.A. No. 9165; the prosecution did not offer any plausible explanation as to why they did not contact the representative from the DOJ; breaches of the procedure outlined in Sec. 21 committed by the police officers, left

unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised; *People v. Reyes*, cited. (*Id*.)

— While there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Sec. 21 of R.A. No. 9165 does not *ipso facto* render the seizure and custody over the items void and invalid, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved; the Court has repeatedly emphasized that the prosecution should explain the reasons behind the procedural lapses. (*Id*.)

Illegal sale of dangerous drugs — For a successful prosecution for the crime of illegal sale of drugs, the following must be proven: (a) the identities of the buyer, seller, object, and consideration; and (b) the delivery of the thing sold and the payment for it; the confiscated drug constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction; it is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty. (People *vs.* Guerrero *y* Eling, G.R. No. 228881, Feb. 6, 2019) p. 539

(People *vs.* Sahibil, G.R. No. 228953, Jan. 28, 2019) p. 173

Illegal sale/possession of dangerous drugs — In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under R.A. No. 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime; failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal. (People *vs.* Acabo *y* Ayento, G.R. No. 241081, Feb. 11, 2019) p. 705

(People *vs.* Alconde *y* Madla, G.R. No. 238117, Feb. 4, 2019) p. 398

Integrity of the confiscated drugs and/or paraphernalia — In cases involving dangerous drugs, it is essential to establish with moral certainty the identity and integrity of the seized drug, for the same constitutes the very *corpus delicti* of the offense; it is imperative for the prosecution to show that the prohibited drug confiscated or recovered from the accused is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that required to make a finding of guilt; this resonates even more in buy-bust operations; Sec. 21, Art. II of R.A. No. 9165, the applicable law at the time of the commission of the alleged crimes, outlines the procedure which the police officers must strictly follow to preserve the integrity of the confiscated drugs and/or paraphernalia used as evidence: (1) the seized items must be inventoried and photographed immediately after seizure or confiscation; (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy of the same; and (3) the seized drugs must be turned over to the Philippine National Police Crime Laboratory within twenty-four (24) hours from confiscation for examination. (People *vs.* Labsan *y* Nala, G.R. No. 227184, Feb. 6, 2019) p. 514

— Sec. 21, Art. II of RA 9165 and its Implementing Rules and Regulations, the applicable law at the time of the commission of the alleged crime, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence: (1) that the seized items be inventoried and photographed immediately after seizure or confiscation; (2) that the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an

elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof; and (3) that such conduct of the physical inventory and photograph shall be done at the (a) place where the search warrant is served; (b) nearest police station; or (c) nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure. (People *vs.* Guerrero *y* Eling, G.R. No. 228881, Feb. 6, 2019) p. 539

Mandatory policy to prove chain of custody — People v. Lim enumerated this Court's mandatory policy to prove chain of custody under Sec. 21 of R.A. No. 9165, as amended: 1. In the sworn statements/affidavits, the apprehending/ seizing officers must state their compliance with the requirements of Sec. 21(1) of R.A. No. 9165, as amended, and its IRR; 2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items; 3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court; instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause; 4. If the investigating 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 Sec. 5, Rule 112, Rules of Court. (People *vs.* Tampus, G.R. No. 221434, Feb. 6, 2019) p. 481

Non-compliance with the procedure — The Court has clarified that under varied field conditions, strict compliance with the requirements of Sec. 21 of R.A. No. 9165 may not always be possible; and, the failure of the apprehending team to strictly comply with the procedure laid out in Sec. 21 of R.A. No. 9165 does not *ipso facto* render the

seizure and custody over the items void and invalid; however, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; *and* (b) the integrity and evidentiary value of the seized items are properly preserved; the prosecution must also provide justifiable explanation why the police officers failed to comply with the mandatory requirements of Sec. 21; without any justifiable explanation, which must be proven as a fact, the evidence of the *corpus delicti* is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been proven beyond reasonable doubt. (People *vs.* Labsan *y* Nala, G.R. No. 227184, Feb. 6, 2019) p. 514

Non-compliance with the witness requirement — 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; *People v. Miranda*, cited; 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." (People *vs.* Acabo *y* Ayento, G.R. No. 241081, Feb. 11, 2019) p. 705

Physical inventory and photographing of the seized items — Sec. 21 of R.A. No. 9165 requires the apprehending

team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation; the said inventory must be done in the presence of the aforementioned required witnesses, all of whom shall be required to sign the copies of the inventory and be given a copy thereof; the phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension; it is only when the same is not practicable that the IRR of R.A. No. 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/ team; the three required witnesses should already be physically present at the time of apprehension — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. (People *vs*. Guerrero *y* Eling, G.R. No. 228881, Feb. 6, 2019) p. 539

— The law requires that the inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if prior to the amendment of R.A. No. 9165 by R.A. No. 10640, a representative from the media and the Department of Justice, and any elected public official; or (b) if after the amendment of R.A. No. 9165 by R.A. No. 10640, an elected public official and a representative of the National Prosecution Service or the media; in this case, the procedure veers away from what is prescribed by law. (People *vs*. Alconde *y* Madla, G.R. No. 238117, Feb. 4, 2019) p. 398

—— The physical inventory and photographing were not made before the three required witnesses; the presence of the required witnesses at the time of the inventory is mandatory, and the law imposes the said requirement because their presence serves an essential purpose; in *People v. Tomawis*, the Court elucidated on the purpose

of the law in mandating the presence of the required witnesses as follows: The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug; *People v. Mendoza*, cited. (People *vs.* Guerrero *y* Eling, G.R. No. 228881, Feb. 6, 2019) p. 539

Three-witness rule — There was no compliance with the three (3)-witness rule; the Court has repeatedly emphasized that the presence of the required witnesses at the time of the apprehension and inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose; it is essential to secure the presence of the three (3) witnesses not only during inventory but more importantly at the time or near the place of the buy-bust arrest, because it is at this point when their presence is most needed to ensure the source, identity, and integrity of the seized drug; thus, if the buy-bust operation was legitimately conducted, the presence of the insulating witnesses would controvert the usual defense of frame-up, extortion and civilian harassment; conversely, without the presence of any of the required witnesses at the time of apprehension or during inventory, as in this case, then, doubt exists whether there was actually a buy-bust operation as there are no unbiased witnesses to prove the source, identity and integrity of the *corpus delicti*. (People *vs.* Labsan *y* Nala, G.R. No. 227184, Feb. 6, 2019) p. 514

Witness requirement — It is settled that 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; in this case, however, no plausible explanation was given by the police officers as to why all the required witnesses were not around during the conduct of inventory and photography of the confiscated items; neither was it shown that genuine and sufficient efforts were made to secure the presence

of all the witnesses. (People *vs*. Alconde *y* Madla, G.R. No. 238117, Feb. 4, 2019) p. 398

CONTEMPT

Concept of — Contempt of court is defined as a disobedience to the court by acting in opposition to its authority, justice, and dignity, and signifies not only a willful disregard of the court's order, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or, in some manner, to impede the due administration of justice; to be considered contemptuous, an act must be clearly contrary to or prohibited by the order of the court. (Polo Plantation Agrarian Reform Multipurpose Coop. (POPARMUCO) *vs*. Inson, G.R. No. 189162, Jan. 30, 2019) p. 239

CONTRACTS

Stipulation on — Parties are allowed to constitute any stipulation on the venue or mode of dispute resolution as part of their freedom to contract under Art. 1306 of the Civil Code of the Philippines, which provides: ARTICLE 1306; the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy. (Hygienic Packaging Corp. *vs*. Nutri-Asia, Inc., G.R. No. 201302, Jan. 23, 2019) p. 1

CORRECTION OF ENTRIES IN THE CIVIL REGISTRY WITHOUT NEED OF A JUDICIAL ORDER (R.A. NO. 9048), AS AMENDED BY R.A. NO. 10172

Administrative corrections relating to the date of birth or sex — When Special Proceeding No. 2009-018 was filed in 2009, the governing law then was the original, unamended R.A. No. 9048; there was no provision then for the administrative correction or change of clerical or typographical errors or mistakes in the civil registry entries of the day and month in the date of birth or sex of individuals, but only clerical or typographical errors and change of first names or nicknames; administrative

corrections or changes relating to the date of birth or sex of individuals was authorized only with the passage in 2012 of R.A. No. 10172; even then, the amendments under R.A. No. 10172 should still apply, the law being remedial in nature; under Sec. 11 of R.A. No. 9048, retroactive application is allowed "insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code and other laws." (Rep. of the Phils. *vs*. Omandam Unabia, G.R. No. 213346, Feb. 11, 2019) p. 656

COURT PERSONNEL

Duties — The conduct required of court officials or employees, from the presiding judges to the lowliest clerks, must always be imbued with the heavy burden of responsibility as to require them to be free from any suspicion that may taint the image and reputation of the Judiciary; any act or omission that contravenes this norm of conduct disgraces the Judiciary; anyone falling short of the norm must be sanctioned without hesitation lest he infect his co-workers with the same malaise. (Malubay *vs*. Guevara, A.M. No. P-18-3791 [Formerly OCA IPI No. 15-4447-P], Jan. 29, 2019) p. 227

Gross insubordination — The inexplicable and unjustified refusal to obey some order that a superior is entitled to give and have obeyed, and imports a willful or intentional disregard of the lawful and reasonable instructions of the superior. (Malubay *vs*. Guevara, A.M. No. P-18-3791 [Formerly OCA IPI No. 15-4447-P], Jan. 29, 2019) p. 227

Gross neglect of duty — Loss of court records while in his custody reflected his lack of diligence in performing his duties, and indubitably revealed his uncharacteristic indifference to and wanton abandonment of his regular assigned duties and responsibilities; he thereby became guilty of gross neglect of duty. (Malubay *vs*. Guevara, A.M. No. P-18-3791 [Formerly OCA IPI No. 15-4447-P], Jan. 29, 2019) p. 227

— The failure of a public official or employee to give attention to a task expected of him; the public official or employee of the Judiciary responsible for such act or omission cannot escape the disciplinary power of this Court. (*Id.*)

CRIMINAL PROCEDURE

Jurisdiction — An objection based on the ground that the court lacks jurisdiction over the offense charged may be raised or considered *motu proprio* by the court at any stage of the proceedings or on appeal; jurisdiction over the subject matter in a criminal case cannot be conferred upon the court by the accused, by express waiver or otherwise, since such jurisdiction is conferred by the sovereign authority which organized the court, and is given only by law in the manner and form prescribed by law. (Cabral *vs.* Bracamonte, G.R. No. 233174, Jan. 23, 2019) p. 110

— For jurisdiction to be acquired by courts in criminal cases, the offense should have been committed or any one of its essential ingredients should have taken place within the territorial jurisdiction of the court; a court cannot take jurisdiction over a person charged with an offense allegedly committed outside of its limited territory; it has been held that the jurisdiction of a court over the criminal case is determined by the allegations in the complaint or information. (*Id.*)

— In a criminal case, the prosecution must not only prove that the offense was committed, it must also prove the identity of the accused and the fact that the offense was committed within the jurisdiction of the court. (*Id.*)

— Territorial jurisdiction in criminal cases is the territory where the court has jurisdiction to take cognizance of or to try the offense allegedly committed therein by the accused; in all criminal prosecutions, the action shall be instituted and tried in the court of the municipality or territory wherein the offense was committed or where any one of the essential ingredients took place; the place where the crime was committed determines not only the

venue of the action but is an essential element of jurisdiction. (*Id*.)

Preliminary investigation — A preliminary investigation is only for the determination of probable cause; probable cause is the existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation; being based merely on opinion and reasonable belief, it does not import absolute certainty. (Villarosa *vs*. Ombudsman, G.R. No. 221418, Jan. 23, 2019) p. 64

— Court must defer to the exercise of discretion of the Ombudsman, in the absence of actual grave abuse of discretion on the part of the same. (*Id*.)

— DOJ Department Circular No. 70-A delegated to the ORSPs the authority to rule with finality cases subject of preliminary investigation/reinvestigation appealed before it, provided that: (*a*) the case is not filed in the National Capital Region (NCR); and (*b*) the case, should it proceed to the courts, is cognizable by the Metropolitan Trial Courts (MeTCs), Municipal Trial Courts (MTCs) and Municipal Circuit Trial Courts (MCTCs) which includes not only violations of city or municipal ordinances, but also all offenses punishable with imprisonment not exceeding six (6) years irrespective of the amount of fine, and regardless of other imposable accessory or other penalties attached thereto; this is, however, without prejudice on the part of the SOJ to review the ORSP ruling, should the former deem it appropriate to do so in the interest of justice. (Mina *vs*. Court of Appeals, G.R. No. 239521, Jan. 28, 2019) p. 208

— Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief; probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction. (Villarosa *vs*. Ombudsman, G.R. No. 221418, Jan. 23, 2019) p. 64

Venue — In criminal cases, venue or where at least one of the elements of the crime or offense was committed must be proven and not just alleged; otherwise, a mere allegation is not proof and could not justify sentencing a man to jail or holding him criminally liable; an allegation is not evidence and could not be made equivalent to proof. (Cabral *vs*. Bracamonte, G.R. No. 233174, Jan. 23, 2019) p. 110

CRIMINAL PROSECUTION

Stages in determining probable cause –– The executive determination of probable cause is not to be confused with the judicial determination of probable cause; in a criminal prosecution, probable cause is determined at two stages: *first*, the executive level where probable cause is determined by the prosecutor during the preliminary investigation and before the filing of the criminal information; and *second*, the judicial level where probable cause is determined by the judge before the issuance of a warrant of arrest; thus, while it is true that the Ombudsman retains full discretion to determine whether or not a criminal case should be filed in the Sandiganbayan, the latter gains full control as soon as the case has been filed before it; this must necessarily be so considering that when an information is filed in court, the court acquires jurisdiction over the case and the concomitant authority to determine whether or not the case should be dismissed being the "best and sole judge" thereof; consequently, absent a showing of grave abuse of discretion, the Court will not interfere with the Sandiganbayan's jurisdiction and control over a case properly filed before it. (People *vs*. Sandiganbayan [First Div.], G.R. Nos. 219824-25, Feb. 12, 2019) p. 718

DAMAGES

Attorney's fees — Attorney's fees are allowed in the discretion of the court after considering several factors which are discernible from the facts brought out during the trial. (Keihin-Everett Forwarding Co., Inc. *vs*. Tokio Marine Malayan Insurance Co., Inc., G.R. No. 212107, Jan. 28, 2019) p. 141

DISBARMENT AND DISCIPLINE OF ATTORNEYS

Substantial evidence — It is well-established that the allegations in a disbarment complaint must be proven with substantial evidence; *Spouses Boyboy v. Atty. Yabut, Jr.* defines the standard of substantial evidence for an administrative complaint: The standard of substantial evidence required in administrative proceedings is more than a mere scintilla; it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. (Buntag *vs.* Atty. Toledo, A.C. No. 12125, Feb. 11, 2019) p. 613

EMINENT DOMAIN

Just compensation — Under Art. III, Sec. 9 of the 1987 Constitution, "private property shall not be taken for public use without just compensation"; for almost 20 years now, petitioner had been enjoying the use of respondent's property without paying the full amount of just compensation under the Compromise Agreement; payment of legal interest on the remaining just compensation due to respondent, imposed; consistent with the ruling in *Nacar v. Gallery Frames,* the Court imposes interest at the rate of twelve percent (12%) per annum from the time of taking until June 30, 2013, and six percent (6%) per annum from July 1, 2013 until fully paid. (Rep. of the Phils. *vs.* Fetalvero, G.R. No. 198008, Feb. 4, 2019) p. 327

EMPLOYMENT, TERMINATION OF

Backwages for piece-rate or pakyaw workers — A distinguishing characteristic of a task basis engagement or *pakyaw,* as opposed to straight-hour wage payment, is the non-consideration of the time spent in working; in a payment by *pakyaw* basis, the emphasis is on the task itself, in the sense that payment is reckoned in terms of completion of the work, not in terms of the number of hours spent in the completion of the work; to determine the amount of backwages for piece-rate or *pakyaw* workers, there is a need to determine the varying degrees of production and days worked by each worker; *Velasco v. NLRC*,

cited. (Ramiro Lim & Sons Agricultural Co., Inc. *vs.* Guilaran, G.R. No. 221967, Feb. 6, 2019) p. 497

— When the CA adopted the method used by the Labor Arbiter which granted respondents' backwages based on the mandated rates provided by law for the period from 2000 to December 2009, and limited the computation of the amount to a period of six months of work per year, it was not baseless and arbitrary; it was based on applicable law and jurisprudence; Art. 124 of the Labor Code of the Philippines provides, in part: Art. 124. *Standards/Criteria for minimum wage fixing*. All workers paid by result, including those who are paid on piecework, *takay, pakyaw* or task basis, shall receive not less than the prescribed wage rates per eight (8) hours of work a day, or a proportion thereof for working less than eight (8) hours; *Pulp and Paper, Inc. v. NLRC*, cited; the Court held: xxx. To ensure the payment of fair and reasonable wage rates, Art. 101 of the Labor Code provides that "the Secretary of Labor shall regulate the payment of wages by results, including *pakyaw*, piecework and other non-time work"; in the absence of such prescribed wage rates for piece-rate workers, the ordinary minimum wage rates prescribed by the Regional Tripartite Wages and Productivity Boards should apply; similarly, petitioners herein failed to adduce any evidence on the agreed amount of payment for work based on *pakyaw* basis, and whether such amount was determined and approved by the Secretary of Labor; thus, the Labor Arbiter was correct in applying the minimum wage rates based on the applicable Wage Orders to determine the amount of backwages due to respondents. (*Id.*)

Dismissal due to the enforcement of the union security clause — Case law states that in order to effect a valid dismissal of an employee, both substantial and procedural due process must be observed by the employer; an employee's right not to be dismissed without just or authorized cause, as provided by law, is covered by his right to substantial due process; on the other hand, compliance with procedure provided in the Labor Code constitutes the procedural

due process right of an employee; while not explicitly mentioned in the Labor Code, case law recognizes that dismissal from employment due to the enforcement of the union security clause in the CBA is another just cause for termination of employment; similar to the enumerated just causes in the Labor Code, the violation of a union security clause amounts to a commission of a wrongful act or omission out of one's own volition. (Slord Dev't. Corp. *vs.* Noya, G.R. No. 232687, Feb. 4, 2019) p. 380

— To validly terminate an employee through the enforcement of the union security clause, the following requisites must concur: (1) the union security clause is applicable; (2) the union is requesting for the enforcement of the union security provision in the CBA; and (3) there is sufficient evidence to support the decision of the union to expel the employee from the union; termination of respondent's employment, warranted. (*Id.*)

Procedural due process — In *Distribution & Control Products, Inc. v. Santos*, the Court has explained that procedural due process consists of the twin requirements of notice and hearing; the employer must furnish the employee with two (2) written notices before the termination of employment can be effected: (1) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him; the requirement of a hearing is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted; respondent's right to procedural due process was violated, entitling him to the payment of nominal damages, which the Court deems proper to increase from ₱10,000.00 to ₱30,000.00 in line with existing jurisprudence. (Slord Dev't. Corp. *vs.* Noya, G.R. No. 232687, Feb. 4, 2019) p. 380

ESTAFA

Commission of — Deceit has been defined as the false representation of a matter of fact, whether by words or

conduct by false or misleading allegations or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury. (Cabral *vs*. Bracamonte, G.R. No. 233174, Jan. 23, 2019) p. 110

— The elements of *estafa* under Art. 315, par. 2(d) of the Revised Penal Code consists of the following: (1) the offender has postdated or issued a check in payment of an obligation contracted at the time of the postdating or issuance; (2) at the time of postdating or issuance of said check, the offender has no funds in the bank or the funds deposited are not sufficient to cover the amount of the check; and (3) the payee has been defrauded; in this form of *estafa*, it is not the non-payment of a debt which is made punishable, but the criminal fraud or deceit in the issuance of a check. (*Id*.)

***ESTAFA* UNDER PARAGRAPH 2(a), ARTICLE 315 OF THE RPC, AS AMENDED BY R.A. NO. 10951**

Penalty — Applying par. 2(a), Art. 315 of the RPC, as amended by R.A. No. 10951, considering the amount allegedly defrauded by petitioners amounted to ₱2,600,000 which exceeded two million four hundred thousand pesos (₱2,400,000) but not more than ₱4,400,000.00, the imposable penalty will be *prision correccional* in its maximum period to *prision mayor* in its minimum period; where the amounts allegedly defrauded all exceeded ₱4,400,000.00, the imposable penalty shall be in its maximum period, adding one year for each additional Two million pesos (₱2,000,000.00); however, the law also provides that the total penalty which may be imposed shall not exceed twenty years; in such cases, and in connection with the accessory penalties which may be imposed, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be. (Padua *vs*. People, G.R. No. 220913, Feb. 4, 2019) p. 354

EVIDENCE

Admissions by silence — Jurisprudence holds that the rule on admission by silence applies to adverse statements in writing if the party was carrying on a mutual correspondence with the declarant; however, if there was no such mutual correspondence, the rule is relaxed on the theory that while the party would have immediately reacted by a denial if the statements were orally made in his presence, such prompt response can generally not be expected if the party still has to resort to a written reply; application. (VDM Trading, Inc. *vs*. Carungcong, G.R. No. 206709, Feb. 6, 2019) p. 425

Authentication and proof of documents — The submission of the decree should come with adequate proof of the foreign law that allows it; the Japanese law on divorce must then be sufficiently proved; our courts do not take judicial notice of foreign laws and judgment, our law on evidence requires that both the divorce decree and the national law of the alien must be alleged and proven; to prove a foreign law, the party invoking it must present a copy thereof and comply with Secs. 24 and 25 of Rule 132 of the Revised Rules of Court. (Nullada *vs*. Civil Registrar of Manila, G.R. No. 224548, Jan. 23, 2019) p. 96

Burden of proof — The well-entrenched dictum in criminal law is 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"; if the prosecution cannot, to begin with, establish the guilt of accused beyond reasonable doubt, the defense is not even required to adduce evidence. (People *vs*. Gumban *y* Caranay, G.R. No. 224210, Jan. 23, 2019) p. 82

Identification and authentication of a private document — As a prerequisite to its admission in evidence, the identity and authenticity of a private document must be properly laid and reasonably established; according to Sec. 20, Rule 132 of the Rules of Court, the identification and authentication of a private document may only be proven by either: (1) a person who saw the execution of the

document, or (2) a person who has knowledge and can testify as to the genuineness of the signature or handwriting of the maker. (VDM Trading, Inc. *vs*. Carungcong, G.R. No. 206709, Feb. 6, 2019) p. 425

Prima facie evidence –– Defined as evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue it supports, but which may be contradicted by other evidence; thus, *prima facie* evidence is not conclusive or absolute – evidence to the contrary may be presented by the party disputing the assumption of fact made by inference of law and the court may validly consider such; while payrolls in question enjoyed the presumption of regularity as entries made in the course of business, this presumption of regularity was effectively overthrown by evidence to the contrary. (Ramiro Lim & Sons Agricultural Co., Inc. *vs*. Guilaran, G.R. No. 221967, Feb. 6, 2019) p. 497

Proof beyond reasonable doubt — The overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt; in order to convict an accused, the circumstances of the case must exclude all and every hypothesis consistent with his innocence; what is required is that there be proof beyond reasonable doubt that the crime was committed and that the accused committed the crime; Guerrero must perforce be acquitted. (People *vs.* Guerrero *y* Eling, G.R. No. 228881, Feb. 6, 2019) p. 539

Public document –– The Medical Certificate is a public document, the same having been issued by a public officer in the performance of official duty; under Sec. 23, Rule 132 of the Rules of Court, "documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated; all other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter"; "a public document, by virtue of its official or sovereign character, or because it has been acknowledged before a

notary public (except a notarial will) or a competent public official with the formalities required by law, or because it is a public record of a private writing authorized by law, is self-authenticating and requires no further authentication in order to be presented as evidence in court." (Rep. of the Phils. *vs*. Omandam Unabia, G.R. No. 213346, Feb. 11, 2019) p. 656

EXECUTIVE DEPARTMENT

Presidential immunity from suit — As correctly pointed out by respondents, President Duterte must be dropped as respondent in this case; the Court's pronouncement in *Professor David v. President Macapagal-Arroyo* on the non-suability of an incumbent President cannot be any clearer, *viz*.: xxx Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law; unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government. (Zabal *vs*. Pres. Duterte, G.R. No. 238467, Feb.12, 2019) p. 743

EXPROPRIATION

Just compensation — Just compensation, in expropriation cases, is defined as the full and fair equivalent of the loss of the property taken from its owner by the expropriator; its true measure is not the taker's gain, but the owner's loss; the word "just" is used to modify the meaning of the word "compensation" to convey the idea that the equivalent to be given for the property to be taken shall be real, substantial, full and ample; it has been consistently held, moreover, that though the determination of just compensation in expropriation proceedings is essentially a judicial prerogative, the appointment of commissioners to ascertain just compensation for the property sought to be taken is a mandatory requirement nonetheless; while it is true that

the findings of commissioners may be disregarded and the trial court may substitute its own estimate of the value, it may only do so for valid reasons; enumerated. (Rep. of the Phils. *vs*. Sps. Silvestre, G.R. No. 237324, Feb. 6, 2019) p. 599

— The delay in the payment of just compensation is a forbearance of money and, as such, is necessarily entitled to earn interest; thus, the difference in the amount between the final amount as adjudged by the Court, which in this case is ₱15,225,000.00, and the initial payment made by the government, in the amount of ₱3,654,000.00 – which is part and parcel of the just compensation due to the property owner – should earn legal interest as a forbearance of money; with respect to the amount of interest on this difference between the initial payment and the final amount of just compensation, as adjudged by the Court, we have upheld, in recent pronouncements, the imposition of 12% interest rate from the time of taking, when the property owner was deprived of the property, until July 1, 2013, when the legal interest on loans and forbearance of money was reduced from 12% to 6% per annum by Bangko Sentral ng Pilipinas Circular No. 799; accordingly, from July 1, 2013 onwards, the legal interest on the difference between the final amount and initial payment is 6% per annum. (*Id*.)

GARNISHMENT

Government funds and properties — Since there is an existing appropriation for the payment of just compensation, and this Court already settled that petitioner is bound by the Compromise Agreement, respondent is legally entitled to his money claim; however, he still has to go through the appropriate procedure for making a claim against the Government; *Atty. Roxas v. Republic Real Estate Corporation*, cited; C.A. No. 327, as amended by P.D. No. 1445, requires that all money claims against government must first be filed before the Commission on Audit, which, in turn, must act upon them within 60 days; only when the Commission on Audit rejects the

claim can the claimant elevate the matter to this Court on *certiorari* and, in effect, sue the state. (Rep. of the Phils. *vs.* Fetalvero, G.R. No. 198008, Feb. 4, 2019) p. 327

— The general rule is that government funds cannot be seized by virtue of writs of execution or garnishment; this doctrine has been explained in *Commissioner of Public Highways v. San Diego:* The universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimant's action "only up to the completion of proceedings anterior to the stage of execution" and that the power of the Courts ends when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on obvious considerations of public policy; the functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law. (*Id.*)

GOCC GOVERNANCE ACT OF 2011 (R.A. NO. 10149)

Application of — A government-owned or controlled corporation is: (1) established by original charter or through the general corporation law; (2) vested with functions relating to public need whether governmental or proprietary in nature; and (3) directly owned by the government or by its instrumentality, or where the government owns a majority of the outstanding capital stock; possessing all three (3) attributes is necessary to be classified as a government-owned or controlled corporation. (GSIS Family Bank Employees Union *vs.* Sec. Villanueva, G.R. No. 210773, Jan. 23, 2019) p. 30

— R.A. No. 10149 defines a non-chartered government-owned or controlled corporation as a government-owned or controlled corporation that was organized and is operating under the Corporation Code; it does not differentiate between chartered and non-chartered government-owned or controlled corporations. (*Id.*)

— Sec. 9 of R.A. No. 10149 also categorically states, "Any law to the contrary notwithstanding, no government-owned or controlled corporation shall be exempt from the coverage of the Compensation and Position Classification System developed by the Governance Commission under this Act"; R.A. No. 10149 directed the Governance Commission to develop a Compensation and Position Classification System, to be submitted for the President's approval, which shall apply to all officers and employees of government-owned or controlled corporations, whether chartered or non-chartered. (*Id.*)

— The Governance Commission is composed of five (5) members; the chairperson, with a rank of Cabinet Secretary, and two (2) other members, with the rank of Undersecretary, are appointed by the President; the Department of Budget and Management and the Department of Finance Secretaries sit as *ex-officio* members. (*Id.*)

— The Governance Commission was created under R.A. No. 10149; it is attached to the Office of the President and is the "central advisory, monitoring, and oversight body with authority to formulate, implement, and coordinate policies" relative to government-owned and controlled corporations; it has no judicial or quasi-judicial authority, as evidenced by its powers and functions under the law. (*Id.*)

HOMICIDE

Frustrated homicide — In cases of frustrated homicide, the prosecution must prove beyond reasonable doubt that: (i) the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault; (ii) the victim sustained a fatal or mortal wound but did not die because of timely medical assistance; and (iii) none of the qualifying circumstances for murder under Art. 248 of the Revised Penal Code (RPC), as amended, are present. (Miranda *y* Parelasio *vs*. People, G.R. No. 234528, Jan. 23, 2019) p. 125

— The main element in frustrated homicide is the accused's intent to take his victim's life; the prosecution has to prove this clearly and convincingly to exclude every possible doubt regarding homicidal intent; intent to kill, being a state of mind, is discerned by the courts only through external manifestations, such as the acts and conduct of the accused at the time of the assault and immediately thereafter. (*Id*.)

JUDGES

Undue delay in rendering a decision — The prompt disposal of cases is necessary as undue delay erodes the public's faith and confidence to the justice system and brings it into disrepute. (Re: E-Mail Complaint of Ma. Rosario Gonzales Against Hon. Maria Theresa Mendoza-Arcega, Associate Justice, Sandiganbayan and Hon. Flerida Z. Banzuela, Presiding Judge, RTC, Br. 51, Sorsogon City, Sorsogon, A.M. No. 18-03-03-SB, Jan. 29, 2019) p. 216

JUDGMENTS

Compromised judgment — Considered proper and in order in case at bar. (Sps. Tio *vs*. Bank of the Phil. Islands, G.R. No. 193534, Jan. 30, 2019) p. 294

Content of — Art. VIII, Sec. 14 of the Constitution mandates that decisions written by courts should clearly and distinctly state the facts and the law on which it is based; this constitutional mandate is echoed in Sec. 5, Rule 51 of the Rules of Court; parties to a litigation should be informed of how it was decided with an explanation of the factual and legal reasons that led to the conclusions of the court. (Heirs of Batori *vs*. Register of Deeds of Benguet, G.R. No. 212611, Feb. 11, 2019) p. 643

Nature — Cu Unjieng E Hijos v. Mabalacat Sugar Company, et al., cited; "A judgment must be definitive. By this is meant that the decision itself must purport to decide finally the rights of the parties upon the issue submitted, by specifically denying or granting the remedy sought by the action"; and when a definitive judgment cannot thus be rendered because it depends upon a contingency,

the proper procedure is to render no judgment at all and defer the same until the contingency has passed. (Bangko Sentral ng Pilipinas *vs*. Sps. Ledesma, G.R. No. 211176, Feb. 6, 2019) p. 444

JUDICIAL DEPARTMENT

Expanded powers of judicial review — Court's expanded power of judicial review requires a prima facie showing of grave abuse of discretion by any government branch or instrumentality; this broad grant of power contrasts with the remedy of *certiorari* under Rule 65, which is limited to the review of judicial and quasi-judicial acts. (GSIS Family Bank Employees Union *vs*. Sec. Villanueva, G.R. No. 210773, Jan. 23, 2019) p. 30

Judicial review — Judicial power is the court's authority to settle justiciable controversies or disputes involving rights that are enforceable and demandable before the courts of justice or the redress of wrongs for violations of such rights; judicial power includes the power to enforce rights conferred by law and determine grave abuse of discretion by any government branch or instrumentality. (GSIS Family Bank Employees Union *vs*. Sec. Villanueva, G.R. No. 210773, Jan. 23, 2019) p. 30

— The lack of an actual or justiciable controversy means that the court has nothing to resolve, and will, in effect, only render an advisory opinion; courts generally dismiss cases on the ground of mootness unless any of the following instances are present: (1) grave constitutional violations; (2) exceptional character of the case; (3) paramount public interest; (4) the case presents an opportunity to guide the bench, the bar, and the public; or (5) the case is capable of repetition yet evading review. (*Id*.)

Traditional and expanded powers of judicial review — Traditional judicial power is the court's authority to review and settle actual controversies or conflicting rights between dueling parties and enforce legally demandable rights; an actual case or controversy exists "when the case presents conflicting or opposite legal rights that

may be resolved by the court in a judicial proceeding"; on the other hand, the framers of the 1987 Constitution deliberately expanded this Court's power of judicial review to prevent courts from seeking refuge behind the political question doctrine and turning a blind eye to abuses committed by the other branches of government. (GSIS Family Bank Employees Union *vs.* Sec. Villanueva, G.R. No. 210773, Jan. 23, 2019) p. 30

JUDICIAL REVIEW

Requisites — In *La Bugal-B'laan Tribal Association, Inc. v. Sec. Ramos*, an actual case or controversy was characterized as a "case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory, lest the decision of the court would amount to an advisory opinion; the power does not extend to hypothetical questions since any attempt at abstraction could only lead to dialectics and barren legal question and to sterile conclusions unrelated to actualities"; the existence of an actual controversy in this case is evident; it bears to state that when coupled with sufficient facts, "reasonable certainty of the occurrence of a perceived threat to any constitutional interest suffices to provide a basis for mounting a constitutional challenge"; while it may be argued that the reopening of Boracay has seemingly rendered moot and academic questions relating to the ban of tourists and non-residents into the island, abstention from judicial review is precluded by such possibility of constitutional violation and also by the exceptional character of the situation, the paramount public interest involved, and the fact that the case is capable of repetition. (Zabal *vs.* Pres. Duterte, G.R. No. 238467, Feb.12, 2019) p. 743

— "Legal standing or *locus standi* is a party's personal and substantial interest in a case such that he has sustained or will sustain direct injury as a result of the governmental act being challenged; it calls for more than just a generalized grievance; the term 'interest' means a material interest, an interest in issue affected by the decree, as

distinguished from mere interest in the question involved, or a mere incidental interest"; there must be a present substantial interest and not a mere expectancy or a future, contingent, subordinate, or consequential interest; "it has been held that a party who assails the constitutionality of a statute must have a direct and personal interest; he must show not only that the law or any governmental act is invalid, but also that he sustained or is in immediate danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way; he must show that he has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the statute or act complained of." (*Id*.)

— The petition must be subjected to the four exacting requisites for the exercise of the power of judicial review, *viz*.: (a) there must be an actual case or controversy; (b) the petitioners must possess *locus standi*; (c) the question of constitutionality must be raised at the earliest opportunity; and (d) the issue of constitutionality must be the *lis mota* of the case; it is not enough that this petition mounts a constitutional challenge against Proclamation No. 475; it is likewise necessary that it meets the aforementioned requisites before the Court sustains the propriety of the recourse. (*Id*.)

JURISDICTION

Jurisdiction over the person of the accused — In criminal cases, jurisdiction over the person of the accused is deemed waived by the accused when he files any pleading seeking an affirmative relief, except in cases when he invokes the special jurisdiction of the court by impugning such jurisdiction over his person; however, in narrow cases involving special appearances, an accused can invoke the processes of the court even though there is neither jurisdiction over the person nor custody of the law; nevertheless, if a person invoking the special jurisdiction of the court applies for bail, he must first submit himself

to the custody of the law. (Padua *vs*. People, G.R. No. 220913, Feb. 4, 2019) p. 354

Jurisdiction over the subject matter or nature of the action – – It is not simply the filing of the complaint or appropriate initiatory pleading but the payment of the prescribed docket fee that vests a trial court with jurisdiction over the subject matter or nature of the action; in resolving the issue of whether or not the correct amount of docket fees were paid, it is also necessary to determine the true nature of the complaint; having settled that the action instituted by respondents is a real action and not one incapable of pecuniary estimation, the basis for determining the correct docket fees shall, therefore, be the assessed value of the property, or the estimated value thereof as alleged by the claimant. (The Heirs of the Late Sps. Ramiro *vs*. Sps. Bacaron, G.R. No. 196874, Feb. 6, 2019) p. 410

JUSTIFYING CIRCUMSTANCES

Self-defense — In retaliation, the aggression that the victim started already ceased when the accused attacked him, but in self-defense, the aggression was still continuing when the accused injured the aggressor. (Miranda *y* Parelasio *vs*. People, G.R. No. 234528, Jan. 23, 2019) p. 125

— When the accused invokes self-defense, in effect, he admits to the commission of the acts for which he was charged, albeit under circumstances that, if proven, would exculpate him; the burden of proving that his act was justified, shifts upon him; this means that the accused must prove by clear and convincing evidence that the attack was accompanied by the following circumstances: (i) unlawful aggression on the part of the victim; (ii) reasonable necessity of the means employed to prevent or repel such aggression; and (iii) lack of sufficient provocation on the part of the person resorting to self-defense. (*Id*.)

Unlawful aggression — Imminent unlawful aggression means that the attack against the accused is impending or at the point of happening; this scenario must be distinguished from a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong. (Miranda *y* Parelasio *vs*. People, G.R. No. 234528, Jan. 23, 2019) p. 125

— The most important element of self-defense is unlawful aggression; this is a condition *sine qua non* for upholding self-defense; significantly, the accused must establish the concurrence of three elements of unlawful aggression, namely: (i) there must have been a physical or material attack or assault; (ii) the attack or assault must be actual, or, at least, imminent; and (iii) the attack or assault must be unlawful. (*Id*.)

LABOR ARBITER

Jurisdiction — Sec. 10 of R.A. No. 8042, as amended by R.A. No. 10022, explicitly provides that Labor Arbiters have original and exclusive jurisdiction over claims arising out of employer-employee relations or by virtue of any law or contract involving Filipino workers for overseas deployment. (Augustin Int'l. Center, Inc. *vs*. Bartolome, G.R. No. 226578, Jan. 28, 2019) p. 159

LABOR STANDARDS

Money claims — Sec. 10 of R.A. No. 8042, as amended, expressly provides that a recruitment agency, such as AICI, is solidarily liable with the foreign employer for money claims arising out of the employee-employer relationship between the latter and the overseas Filipino worker; jurisprudence explains that this solidary liability is meant to assure the aggrieved worker of immediate and sufficient payment of what is due him, as well as to afford overseas workers an additional layer of protection against foreign employers that tend to violate labor laws. (Augustin Int'l. Center, Inc. *vs*. Bartolome, G.R. No. 226578, Jan. 28, 2019) p. 159

LABOR RELATIONS

Voluntary arbitration — Voluntary Arbitrator under the Labor Code is one agreed upon by the parties to resolve certain disputes and is tasked to render an award or decision within twenty (20) calendar days pursuant to Art. 276 of the Labor Code; this decision shall be final and executory after ten (10) calendar days from receipt thereof. (Augustin Int'l. Center, Inc. *vs*. Bartolome, G.R. No. 226578, Jan. 28, 2019) p. 159

LAND REGISTRATION

Actual and extrinsic fraud — In *Republic v. Guerrero*, the Court expounded on the kind of fraud necessary to invalidate a decree of registration, to wit: Fraud may also be either *extrinsic* or *intrinsic;* fraud is regarded as intrinsic where the fraudulent acts pertain to an issue involved in the original action, or where the acts constituting the fraud were or could have been litigated therein; the fraud is extrinsic if it is employed to deprive parties of their day in court and thus prevent them from asserting their right to the property registered in the name of the applicant; the distinctions assume significance because only actual and extrinsic fraud had been accepted and is contemplated by the law as a ground to review or reopen a decree of registration. (Heirs of Batori *vs*. Register of Deeds of Benguet, G.R. No. 212611, Feb. 11, 2019) p. 643

LITIS PENDENTIA

Requisites — *Litis pendentia* is a ground for the dismissal of an action when there is another action pending between the same parties involving the same cause of action, thus, rendering the second action unnecessary and vexatious; it exists when the following requisites concur: 1. Identity of parties or of representation in both cases, 2. Identity of rights asserted and relief prayed for, 3. The relief must be founded on the same facts and the same basis, and 4. Identity in the two preceding particulars should be such that any judgment which may be rendered

in the other action, will, regardless of which party is successful, amount to *res judicata* on the action under consideration. (Goodland Co., Inc. *vs*. Banco De Oro-Unibank, Inc., G.R. No. 208543, Feb. 11, 2019) p. 625

MALVERSATION

Technical malversation — The mere act of using government money to fund a project which is different from what the law states you have to spend it for does not fall under the definition of manifest partiality nor gross inexcusable negligence; it must always be remembered that manifest partiality and gross inexcusable negligence are not elements in the crime of Technical Malversation and simply alleging one or both modes would not suffice to establish probable cause for violation of Sec. 3 (e) of R.A. No. 3019, for it is well-settled that allegation does not amount to proof. (Villarosa *vs*. Ombudsman, G.R. No. 221418, Jan. 23, 2019) p. 64

MARRIAGES

Divorce decree obtained abroad — In determining whether a divorce decree obtained by a foreigner spouse should be recognized in the Philippines, it is immaterial that the divorce is sought by the Filipino national; the purpose of Par. 2 of Art. 26 is to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after a foreign divorce decree that is effective in the country where it was rendered, is no longer married to the Filipino spouse; the provision is a corrective measure to address an anomaly where the Filipino spouse is tied to the marriage while the foreign spouse is free to marry under the laws of his or her country. (Nullada *vs*. Civil Registrar of Manila, G.R. No. 224548, Jan. 23, 2019) p. 96

— Whether the Filipino spouse initiated the foreign divorce proceeding or not, a favorable decree dissolving the marriage bond and capacitating his or her alien spouse to remarry will have the same result: the Filipino spouse will effectively be without a husband or wife. (*Id*.)

OBLIGATIONS

Payment or performance — The insurer who may have no rights of subrogation due to "voluntary" payment may nevertheless recover from the third party responsible for the damage to the insured property under Art. 1236 of the Civil Code. (Keihin-Everett Forwarding Co., Inc. *vs*. Tokio Marine Malayan Insurance Co., Inc., G.R. No. 212107, Jan. 28, 2019) p. 141

Solidary liability — There is solidary liability only when the obligation expressly so states, when the law so provides, or when the nature of the obligation so requires; under Art. 2194 of the Civil Code, liability of two or more persons is solidary in *quasi-delicts.* (Keihin-Everett Forwarding Co., Inc. *vs*. Tokio Marine Malayan Insurance Co., Inc., G.R. No. 212107, Jan. 28, 2019) p. 141

OFFICE OF THE SOLICITOR GENERAL

Power to bind the government — Despite the lack of the Solicitor General's approval, the government is still bound by the Compromise Agreement due to laches; the Solicitor General is assumed to have known of the Compromise Agreement since, as principal counsel, she was furnished a copy of the trial court's Order, which referred the case to mediation. (Rep. of the Phils. *vs*. Fetalvero, G.R. No. 198008, Feb. 4, 2019) p. 327

Role of a deputized counsel — Republic of the Philippines v. Viaje, et al., cited; the Administrative Code of 1987 explicitly states that the OSG shall have the power to "deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases"; the OSG's deputized counsel is "no more than the 'surrogate' of the Solicitor General in any particular proceeding" and the latter remains the principal counsel entitled to be furnished copies of all

court orders, notices, and decisions. (Rep. of the Phils. *vs*. Fetalvero, G.R. No. 198008, Feb. 4, 2019) p. 327

OMBUDSMAN

Powers — Both the Constitution and R.A. No. 6770, or The Ombudsman Act of 1989, give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees; as an independent constitutional body, the Office of the Ombudsman is 'beholden to no one, acts as the champion of the people, and is the preserver of the integrity of the public service.' (Villarosa *vs*. Ombudsman, G.R. No. 221418, Jan. 23, 2019) p. 64

PLEADINGS

Rules on — It may be that there is no specific provision in the Rules of Court which prohibits the admission in evidence of an actionable document in the event a party fails to comply with the requirement of the rule on actionable documents under Sec. 7, Rule 8. (Keihin-Everett Forwarding Co., Inc. *vs*. Tokio Marine Malayan Insurance Co., Inc., G.R. No. 212107, Jan. 28, 2019) p. 141

PRELIMINARY INVESTIGATION

Probable cause — A judge is mandated to personally determine the existence of probable cause after his personal evaluation of the prosecutor's resolution and the supporting evidence for the crime charged; under Sec. 5(a), Rule 112 of the Rules of Criminal Procedure, the court has three options upon the filing of a criminal complaint or information: a) immediately dismiss the case if the evidence on record clearly failed to establish probable cause; b) issue a warrant of arrest if it finds probable cause; or c) order the prosecutor to present additional evidence within five days from notice in case of doubt on the existence of probable cause. (People *vs*. Sandiganbayan [First Div.], G.R. Nos. 219824-25, Feb. 12, 2019) p. 718

PRESUMPTIONS

Disputable presumption — While it is true that entries in the payrolls enjoy the presumption of regularity, it is merely a disputable presumption that may be overthrown by clear and convincing evidence to the contrary; a presumption is merely an assumption of fact that the law requires to be made based on another fact or group of facts; it is an inference as to the existence of a fact that is not actually known, but arises from its usual connection with another fact, or a conjecture based on past experience as to what the ordinary human affairs take; a presumption has the effect of shifting the burden of proof to the party who would be disadvantaged by a finding of the presumed fact. (Ramiro Lim & Sons Agricultural Co., Inc. *vs*. Guilaran, G.R. No. 221967, Feb. 6, 2019) p. 497

Presumption of regular performance of official duties — The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right; the burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein; here, the RTC and the CA erroneously relied on the presumption of regularity in the performance of official duty because the lapses in the procedures undertaken by the buy-bust team, which the courts *a quo* even acknowledged, are affirmative proofs of irregularity; the presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused; here, the presumption of regularity does not even arise because of the buy-bust team's blatant disregard of the established procedures under Sec. 21 of R.A. No. 9165. (People *vs*. Labsan *y* Nala, G.R. No. 227184, Feb. 6, 2019) p. 514

PROHIBITION

Writ of — Prohibition is a preventive remedy seeking that a judgment be rendered directing the defendant to desist

from continuing with the commission of an act perceived to be illegal; as a rule, the proper function of a writ of prohibition is to prevent the performance of an act which is about to be done; it is not intended to provide a remedy for acts already accomplished. (Zabal *vs*. Pres. Duterte, G.R. No. 238467, Feb.12, 2019) p. 743

PROHIBITION AND *MANDAMUS*

Writ of — The use of prohibition and *mandamus* is not merely confined to Rule 65; as stated in *Spouses Imbong v. Hon. Ochoa, Jr.*: As far back as *Tañada v. Angara*, the Court has unequivocally declared that *certiorari*, prohibition and *mandamus* are appropriate remedies to raise constitutional issues and to review and/or prohibit/ nullify, when proper, acts of legislative and executive officials, as there is no other plain, speedy or adequate remedy in the ordinary course of law; resort to prohibition and *mandamus* on the basis of alleged constitutional violations is not without limitations; after all, this Court does not have unrestrained authority to rule on just about any and every claim of constitutional violation. (Zabal *vs*. Pres. Duterte, G.R. No. 238467, Feb.12, 2019) p. 743

QUALIFIED RAPE

Civil liability of accused-appellant — As to the award of damages, the CA was correct in modifying the RTC's ruling such that Navasero is now ordered to pay, for each count of rape, civil indemnity in the amount of ₱100,000.00, moral damages in the amount of ₱100,000.00, and exemplary damages in the amount of ₱100,000.00, pursuant to *People v. Jugueta*, as well as a six percent (6%) interest per annum on all the amounts awarded reckoned from the date of finality of this Decision until the damages are fully paid. (People *vs*. Navasero, Sr. *y* Hugo, G.R. No. 234240, Feb. 6, 2019) p. 564

Elements — Art. 266-A of the Revised Penal Code provides that rape is committed: "1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: a) Through force, threat or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious; c) By means of fraudulent machination or grave abuse of authority; and d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present"; in this relation, Art. 266-B of the RPC provides that "the death penalty shall be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances: 1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim"; thus, "to raise the crime of rape to qualified rape under Art. 266-B, par. 1 of the RPC, the twin circumstances of minority of the victim and her relationship to the offender must concur"; the courts *a quo* committed no error in convicting the accused of fifteen (15) counts of qualified rape. (People *vs*. Navasero, Sr. *y* Hugo, G.R. No. 234240, Feb. 6, 2019) p. 564

Penalty — The RTC was correct in imposing the penalty of *reclusion perpetua* for each count of rape, without eligibility for parole, pursuant to A.M. No. 15-08-02-SC and in lieu of death because of its suspension under R.A. No. 9346. (People *vs*. Navasero, Sr. *y* Hugo, G.R. No. 234240, Feb. 6, 2019) p. 564

QUASI-DELICTS

Doctrine — By alleging that damage was caused to their property by virtue of the respondents' individual and collective fault and/or negligence, the petitioners' cause of action is anchored on *quasi-delict*; according to Art. 2176 of the Civil Code, whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done; such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a *quasi-delict*. (VDM Trading, Inc. *vs*. Carungcong, G.R. No. 206709, Feb. 6, 2019) p. 425

Elements — A *quasi-delict* has the following elements: a) the damage suffered by the plaintiff; b) the act or omission of the defendant supposedly constituting fault or negligence; and c) the causal connection between the act and the damage sustained by the plaintiff, or proximate cause. (VDM Trading, Inc. *vs*. Carungcong, G.R. No. 206709, Feb. 6, 2019) p. 425

Negligence or fault — In a cause of action based on *quasi-delict*, the negligence or fault should be clearly established as it is the basis of the action; the burden of proof is thus placed on the plaintiff, as it is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law; to constitute *quasi-delict*, the alleged fault or negligence committed by the defendant must be the proximate cause of the damage or injury suffered by the plaintiff; proximate cause is that cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the result would not have occurred. (VDM Trading, Inc. *vs*. Carungcong, G.R. No. 206709, Feb. 6, 2019) p. 425

RAPE

Commission of — A small living quarter has not been considered to be a safe refuge from a sexual assault; rape can be committed in the same room with the rapist's spouse or where other members of the family are also sleeping, in a house where there are other occupants or even in places which to many might appear unlikely and high-risk venues for its commission; lust, it has been said before, is apparently no respecter of time and place; neither is it necessary for the rape to be committed in an isolated place, for rapists bear no respect for locale and time in carrying out their evil deed. (People *vs*. Elimancil, G.R. No. 234951, Jan. 28, 2019) p. 186

RES JUDICATA

Requisites — *Res judicata* exists if the following requisites concur: "(1) the former judgment or order must be final;

(2) the judgment or order must be on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and the parties; (4) there must be, between the first and the second action, identity of parties, of subject matter and cause of action." (Goodland Co., Inc. *vs*. Banco De Oro-Unibank, Inc., G.R. No. 208543, Feb. 11, 2019) p. 625

SEAFARER

Disability benefits — *Kestrel Shipping Co., Inc., et al. v. Munar* summarized the rules for entitlement to disability benefits discussed in *Vergara*: In *Vergara v. Hammonia Maritime Services, Inc.*, this Court read the POEA-SEC in harmony with the Labor Code and the AREC in interpreting in holding that: (a) the 120 days provided under Sec. 20-B (3) of the POEA-SEC is the period given to the employer to determine fitness to work and when the seafarer is deemed to be in a state of total and temporary disability; (b) the 120 days of total and temporary disability may be extended up to a maximum of 240 days should the seafarer require further medical treatment; and (c) a total and temporary disability becomes permanent when so declared by the company-designated physician within 120 or 240 days, as the case may be, or upon the expiration of the said periods without a declaration of either fitness to work or permanent disability and the seafarer is still unable to resume his regular seafaring duties. (Paringit *vs*. Global Gateway Crewing Services, Inc., G.R. No. 217123, Feb. 6, 2019) p. 460

— Petitioner took medication to normalize his high blood pressure, but the working conditions and mandatory diet aboard the vessel made it difficult and nearly impossible for him to maintain a healthy lifestyle; *Magsaysay Maritime Services, et al. v. Laurel,* cited; settled is the rule that for illness to be compensable, it is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer; it is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational

mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had. (*Id*.)

–– To grant a seafarer's claim for disability benefits, the following requisites must be present: (1) he suffered an illness; (2) he suffered this illness during the term of his employment contract; (3) he complied with the procedures prescribed under Sec. 20-B; (4) his illness is one of the enumerated occupational diseases or that his illness or injury is otherwise work-related; and (5) he complied with the four conditions enumerated under Sec. 32-A for an occupational disease or a disputably-presumed work-related disease to be compensable. (*Id*.)

SEARCH WARRANT

Plain view doctrine — The 'plain view' doctrine applies when the following requisites concur: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of evidence in plain view is inadvertent; (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband or otherwise subject to seizure. (People *vs*. Acosta, G.R. No. 238865, Jan. 28, 2019) p. 198

–– The "plain view" doctrine cannot apply if the officers are actually "searching" for evidence against the accused. (*Id*.)

SEARCHES AND SEIZURE

Conduct of — Sec. 2, Art. III of the 1987 Constitution mandates that a search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause, absent which, such search and seizure become "unreasonable" within the meaning of said constitutional provision; to protect the people from unreasonable searches and seizures, Sec. 3 (2), Art. III of the 1987 Constitution provides that evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any

proceeding. (People *vs*. Acosta, G.R. No. 238865, Jan. 28, 2019) p. 198

SOLICITOR GENERAL

Powers — The authority to represent the State in appeals of criminal cases before the Supreme Court and the CA is solely vested in the OSG; Sec. 35(1), Chapter 12, Title III, Book IV of the 1987 Administrative Code explicitly provides that the OSG shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers; it shall have specific powers and functions to represent the Government and its officers in the Supreme Court and the CA, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party. (Cabral *vs*. Bracamonte, G.R. No. 233174, Jan. 23, 2019) p. 110

— There have been instances where the Court permitted an offended party to file an appeal without the intervention of the OSG, such as when the offended party questions the civil aspect of a decision of a lower court, when there is denial of due process of law to the prosecution and the State or its agents refuse to act on the case to the prejudice of the State and the private offended party, when there is grave error committed by the judge, or when the interest of substantial justice so requires. (*Id*.)

STATE, INHERENT POWERS OF

Police power — Police power, amongst the three fundamental and inherent powers of the state, is the most pervasive and comprehensive; defined as the 'state authority to enact legislation that may interfere with personal liberty or property in order to promote general welfare"; it consists of (1) imposition or restraint upon liberty or property, (2) in order to foster the common good; the police power "finds no specific Constitutional grant for the plain reason that it does not owe its origin to the Charter" since "it

is inborn in the very fact of statehood and sovereignty"; it is said to be the "inherent and plenary power of the State which enables it to prohibit all things hurtful to the comfort, safety, and welfare of the society"; thus, police power constitutes an implied limitation on the Bill of Rights; that the assailed governmental measure in this case is within the scope of police power cannot be disputed. (Zabal *vs*. Pres. Duterte, G.R. No. 238467, Feb.12, 2019) p. 743

SUGAR RESTITUTION LAW (R.A. NO. 7202)

Sugar Restitution Fund — Petitioner Philippine National Bank is not beholden to respondents; all claims for restitution shall be filed with the Bangko Sentral ng Pilipinas; petitioner's role was merely that of a lending bank; under R.A. No. 7202 and its Implementing Rules and Regulations, lending banks are not obligated to compensate sugar producers for their losses; restitution falls under the Bangko Sentral ng Pilipinas, upon the establishment of a sugar restitution fund; respondents are covered under R.A. No. 7202. (Bangko Sentral ng Pilipinas *vs*. Sps. Ledesma, G.R. No. 211176, Feb. 6, 2019) p. 444

—— The Court of Appeals erred in ruling that petitioner Bangko Sentral ng Pilipinas is mandated to pay the sugar producers; the money to be used to compensate these sugar producers should come from the sugar restitution fund; without the fund, there is no restitution to speak of at all; petitioner cannot effect the restitution since neither the Presidential Commission on Good Government nor other government agencies have turned over funds to it for the sugar producers' compensation. (*Id*.)

VENUE

Personal action — If the action is a personal action, the action shall be filed with the proper court where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff; it has

been consistently held that an action for collection of sum of money is a personal action. (Hygienic Packaging Corp. *vs*. Nutri-Asia, Inc., G.R. No. 201302, Jan. 23, 2019) p. 1

Real action — The venue of an action depends on whether the action is a real or personal action; should the action affect title to or possession of real property, or interest therein, it is a real action; the action should be filed in the proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated. (Hygienic Packaging Corp. *vs*. Nutri-Asia, Inc., G.R. No. 201302, Jan. 23, 2019) p. 1

Rules on — Since there is no contractual stipulation that can be enforced on the venue of dispute resolution, the venue of petitioner's personal action will be governed by the 1997 Revised Rules of Civil Procedure; venue is the place of trial or geographical location in which an action or proceeding should be brought; in civil cases, venue is a matter of procedural law; a party's objections to venue must be brought at the earliest opportunity either in a motion to dismiss or in the answer; otherwise the objection shall be deemed waived; when the venue of a civil action is improperly laid, the court cannot *motu proprio* dismiss the case. (Hygienic Packaging Corp. *vs*. Nutri-Asia, Inc., G.R. No. 201302, Jan. 23, 2019) p. 1

— While the rules on venue are for the convenience of plaintiffs, these rules do not give them unbounded freedom to file their cases wherever they may please; the rules on venue, like the other procedural rules, are designed to insure a just and orderly administration of justice or the impartial and even-handed determination of every action and proceeding; the choice of venue should not be left to the plaintiff's whim or caprice; he or she may be impelled by some ulterior motivation in choosing to file a case in a particular court even if not allowed by the rules on venue. (*Id*.)

WITNESSES

Credibility of — In rape cases, the credibility of the victim is almost always the single most important issue; if the testimony of the victim passes the test of credibility, which means it is credible, natural, convincing and consistent with human nature and the normal course of things, the accused may be convicted solely on that basis; the rule is settled that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are accorded finality, unless the records show facts or circumstances of material weight and substance that the lower court overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case; the rule finds an even more stringent application where the said findings are sustained by the CA. (People *vs*. Navasero, Sr. *y* Hugo, G.R. No. 234240, Feb. 6, 2019) p. 564

— The determination of the credibility of the offended party's testimony is a most basic consideration in every prosecution for rape, for the lone testimony of the victim, if credible, is sufficient to sustain the verdict of conviction; as in most rape cases, the ultimate issue in this case is credibility. (People *vs*. Elimancil, G.R. No. 234951, Jan. 28, 2019) p. 186

— Time and again, the Court has held that there is no uniform behavior that can be expected from those who had the misfortune of being sexually molested; while there are some who may have found the courage early on to reveal the abuse they experienced, there are those who have opted to initially keep the harrowing ordeal to themselves and attempt to move on with their lives; this is because a rape victim's actions are oftentimes overwhelmed by fear rather than by reason; incestuous rape further magnifies this terror, for the perpetrator in these cases, such as the victim's father, is a person normally expected to give solace and protection to the victim; moreover, in incest, access to the victim is guaranteed

by the blood relationship, magnifying the sense of helplessness and the degree of fear. (People *vs*. Navasero, Sr. *y* Hugo, G.R. No. 234240, Feb. 6, 2019) p. 564

— When the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question as it heard the witnesses themselves and observed their deportment and manner of testifying during trial; the exceptions to the rule are when such evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied some facts or circumstance of weight and substance which could affect the result of the case. (People *vs*. Elimancil, G.R. No. 234951, Jan. 28, 2019) p. 186

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Alabang Country Club, Inc. *vs*. NLRC, 569 Phil. 68, 78 (2008) 392
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Department of Agrarian Reform Administrative Order No. 01-03 (2003)
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Department of Agrarian Reform Administrative Order No. 03-03
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Department of Agrarian Reform Administrative Order No. 07-03
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DOJ Department Circular No. 018-14 213
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Implementing Rules and Regulations of RA 9165
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Sec. 21(a), Art. II 408
OCA Circular
No. 49-2003 842
Office of the Court Administrator (OCA) Circular
No. 49-2003 (B) 954
Revised Implementing Rules and Regulations of RA 9184
Sec. 47 693-694
Revised Rules of Administrative Cases in the Civil Service (RRACCS)
Rule 10, Sec. 46 238
Revised Rules of Procedure of the Pollution Adjudicatory Board
Rule X, Sec. 1 889
Revised Rules of the Pollution Adjudicatory Board on Pleading, Practice and Procedure in Pollution Cases
Rule III, Sec. 1(B)(2) 889
Secs. 2, 4-6 890
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Rules of Procedure of the Commission on Bar Discipline
Rule III, Sec. 2 617
Senate Rules of Procedure Governing Inquiries in Aid of Legislation
Secs. 17-18 966
Supreme Court Administrative Circular
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D. BOOKS
(Local)

Joaquin G. Bernas, S.J., The 1987 Constitution of the Republic of the Philippines: A Commentary, 867- 870 (2003 ed.) 927
Gorospe, Rene, B., Constitutional Law, Notes and Readings on the Bill of Rights, Citizenship and Suffrage, Volume I (2006), pp. 9, 12 ..... 799, 942
Edgardo L. Paras, Civil Code of the Philippines Annotated (16th ed., 2008) 453
L. Reyes, The Revised Penal Code Book One 265 (13th ed., 1993), 264-265 139

II. FOREIGN AUTHORITIES

A. STATUTES

1966 International Covenant on Civil and Political Rights Art. 12, part III 817

B. BOOKS

Black's Law Dictionary, 9th Ed. (2009), West Publishing Co., p. 1498 679
Webster's Third New International Dictionary of the English Language Unabridged (1993), p. 786 837