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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[G.R. No. 190682. February 13, 2019]

PAUL C. DAGONDON, *petitioner, vs.* **ISMAEL LADAGA,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; A JUDGMENT THAT IS FINAL AND EXECUTORY BECOMES IMMUTABLE AND UNALTERABLE, AND MAY NO LONGER BE MODIFIED IN ANY RESPECT, EXCEPT TO CORRECT CLERICAL ERRORS, OR TO MAKE *NUNC PRO TUNC* ENTRIES, OR WHEN IT IS A VOID JUDGMENT; ANY AMENDMENT OR ALTERATION THAT SUBSTANTIALLY AFFECTS THE FINAL AND EXECUTORY JUDGMENT IS NULL AND VOID FOR LACK OF JURISDICTION, AND THE NULLITY EXTENDS TO THE ENTIRE PROCEEDINGS HELD FOR THAT PURPOSE.— x x x [T]he CA overlooked that the matter concerning the exemption of the subject property from the coverage of P.D. No. 27 had been settled in the earlier case of the protest, and the ruling had attained finality even prior to the institution of the petitioner's action for the cancellation of the emancipation patent. The CA thus grossly erred in still reopening the matter of the exemption of the subject land from the coverage of P.D. No. 27 especially so because the petitioner's action for the cancellation of the emancipation patent had been commenced to implement the final decision in favor of the petitioner and in consonance with the express advice

for that purpose given by Secretary Garilao. Settled is the rule that a judgment that is final and executory becomes immutable and unalterable, and may no longer be modified in any respect, except to correct clerical errors, or to make *nunc pro tunc* entries, or when it is a void judgment. Outside of these exceptions, the court that rendered the judgment only has the ministerial duty to issue the writ of execution. The judgment also becomes the law of the case regardless of any claim that it is erroneous. Any amendment or alteration that substantially affects the final and executory judgment is null and void for lack of jurisdiction, and the nullity extends to the entire proceedings held for that purpose.

APPEARANCES OF COUNSEL

Banac Law Office for petitioner.
Bureau of Agrarian Legal Assistance for respondent.

D E C I S I O N

BERSAMIN, *C.J.*:

The petitioner appeals the adverse decision promulgated on February 25, 2009,[1] whereby the Court of Appeals (CA) reversed the ruling handed down in his favor by the Department of Agrarian Reform Adjudication Board (DARAB) and declared that the respondent's Emancipation Patent No. 010271[2] as well as the corresponding Original Certificate of Title No. EP-169[3] were valid and subsisting.

The CA further denied the petitioner's motion for reconsideration through the resolution promulgated on November 17, 2009.[4]

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[1] *Rollo*, pp. 37-44; penned by Associate Justice Mario V. Lopez, and concurred in by Associate Justice Edgardo A. Camello and Associate Justice Elihu A. Ybañez.

[2] *Id*. at 97-102.

[3] *Id*. at 103-107.

[4] *Id.* at 45-46.

Antecedents

In the early 1970's, the parcel of riceland consisting of 4,147 square meters (subject property) owned by Jose L. Dagondon was placed under the coverage of Operation Land Transfer (OLT) pursuant to Presidential Decree No. 27 (P.D. No. 27).[5] The respondent, who was the tenant of Jose L. Dagondon, was declared the beneficiary of the coverage.[6]

The petitioner, one of the children of Jose L. Dagondon, filed a protest with the Ministry of Agrarian Reform (MAR) on the basis that the subject property was exempt from the coverage of P.D. No. 27 because the income derived therefrom had been inadequate to support the landowner and his family.[7] Both the Provincial and Regional Offices of the MAR denied the protest.[8]

Consequently, the petitioner appealed to the MAR, which also denied the protest through its order dated February 28, 1986 issued by then Minister Conrado Estrella (Estrella Order).[9]

The petitioner moved to reconsider the denial of the protest on August 21, 1986, but the protest was not immediately acted upon.[10]

On March 5, 1987, Minister Heherson T. Alvarez authorized the issuance in favor of the respondent of Original Certificate of Title No. EP-169 based on Emancipation Patent No. 010271 pertaining to the subject property. Emancipation Patent No. 010271 was registered with the Registry of Deeds of the Province of Camiguin on August 24, 1988.[11]

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[5] Entitled *Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanisms Therefor*.

[6] *Rollo*, pp. 37-38.

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

[8] *Id*. at 38.

[9] *Id*. at 73-76.

[10] *Id*. at 77-78.

[11] *Id*. at 38.

On August 29, 1994, the petitioner filed another protest with the Department of Agrarian Reform (DAR) whereby he reiterated that the income derived from his father's landholding was insufficient to support the needs of the landowner's family.[12]

Treating the protest of the petitioner as a motion for reconsideration *vis-à-vis* the Estrella Order, DAR Secretary Ernesto Garilao issued an order on February 21, 1995 setting aside the Estrella Order, and exempting the subject property from the coverage of P.D. No. 27. In the order, DAR Secretary Garilao explained that agricultural land could be exempt from the coverage of the OLT upon proof of the landowner's inability to derive adequate income therefrom to support himself and his family; that because the investigation report rendered in relation to the subject property showed that the income derived by the landowner from his land was not adequate to support his family, the subject property was exempt from the coverage of OLT.[13]

The respondent moved for reconsideration. However, the motion for reconsideration was denied through the order dated April 19, 1996.[14]

The Provincial Office of the DAR in Camiguin appealed to the Office of the President (OP), which dismissed the appeal through the decision dated September 12, 2002.[15]

After the respondent did not move for reconsideration or did not appeal from the OP decision dated September 12, 2002,[16] the petitioner brought his petition for the cancellation of Emancipation Patent Title No. 169 and for the reconveyance of the subject property in the Provincial Agrarian Reform Office (PARO) in Mambajao, Camiguin.[17]

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[12] *Id*.

[13] *Id*. at 81-85.

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

[15] *Id*. at 91-96.

[16] *Id*. at 152.

[17] *Id*. at 39.

On July 28, 2003,[18] the PARO rendered its decision in favor of the petitioner, ruling thusly:

WHEREFORE, the foregoing premises considered, decision is hereby rendered:

(1) Directing the Register of Deeds of Camiguin to cancel Original Certificate of Title no. EP-169 issued in the name of respondent Ismael Ladaga and to reinstate the title of ownership of the late Jose Dagondon if any; or for the municipal assessor to reinstate or re-issue the previous Tax Declaration covering said property in the name of the late Jose Dagondon;

(2) For the MARO of DAR, Mambajao, Camiguin to place the subject landholding under leasehold with petitioner as the lessor being the land Administrator and herein private respondent;

(3) For respondent Ismael Ladaga to account for and pay the petitioner the landowners' share of the harvest of the landholding reckoned from September 12, 2002 based on their previous sharing up until a leasehold contract shall have been executed;

(4) For the Land Bank of the Philippines (Camiguin Branch) to disburse and/or release the amount paid for by respondent Ismael Ladaga for the value of the subject landholding in favor of herein petitioner Paul Dagondon which is hereby constituted as reasonable rentals of the landholding.

All other claims are **DENIED** for lack of basis.

SO ORDERED.[19]

The respondent appealed to the DARAB, which denied his appeal on April 1, 2005,[20] disposing as follows:

WHEREFORE, premises considered, instant appeal is dismissed and the decision appealed from is hereby AFFIRMED IN TOTO.

SO ORDERED.[21]

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[18] *Id*. at 97-102.

[19] *Id*. at 102.

[20] *Id*. at 103-107.

[21] *Id*. at 107.

The respondent appealed by petition for review to the CA, which stated the threshold issue to be "the authority of the Secretary of the Department of Agrarian Reform to reverse and set aside the Order of his predecessor which already attained finality."[22]

As earlier mentioned, the CA promulgated the assailed decision on February 25, 2009, *to wit*:

ACCORDINGLY, the petition is **GRANTED**. The assailed Decision dated April 1, 2005, of the Department of Agrarian Reform Adjudication Board in DARAB CASE No. 12583, and the Order dated February 21, 1995, of the former Secretary of the Department of Agrarian Reform Ernesto Garilao, exempting the 4,147 square meters of riceland from the coverage of Presidential Decree No. 27 is **REVERSED** and **SET ASIDE**. The Emancipation Patent No. 010271 and the corresponding Original Certificate of Title No. EP-169 issued to Ismael Ladaga is hereby declared **VALID** and **SUBSISTING**.

SO ORDERED.[23]

The petitioner moved to reconsider but the CA denied his motion on November 17, 2009.[24]

Hence, this appeal, wherein the petitioner insists that:

1. The Decision of the Court of Appeals is based on the Estrella Order which is null and void.
2. Secretary Garilao was not ousted of jurisdiction to review the Estrella Orders.
3. The property is not subject of Operation Land Transfer (OLT).
4. The DARAB-Central Decision dated April 1, 2005 and its June 30, 2006 Resolutions granted what is, in actuality, a motion for execution of a decision which has attained finality.

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[22] *Id*. at 41.

[23] *Id*. at 44.

[24] *Id*. at 45-46.

5. The proper remedy of the respondent in assailing the grant of the petition for exemption should have been to appeal the decision in said case.

6. The Emancipation Patent did not attain indefeasibility.[25]

The petitioner argues that the Estrella Order did not attain finality considering that it was based on MAR Ministry Circular No. 11 that was unenforceable because of lack of publication, as ruled by Secretary Garilao and enunciated in *Association of Small Landowners in the Phils., Inc. v. Secretary of Agrarian Reform*, G.R. No. 78742, July 14, 1989, 175 SCRA 343; that OLT coverage requires the landowner to have other agricultural lands with an aggregate area of more than seven hectares and for the landowner to derive adequate income from the other agricultural lands; that the subject property does not qualify for coverage under the OLT because the aggregate lands of the late Jose L. Dagondon did not produce adequate income; that the issuance, recall or cancellation of CLTs fell within Secretary Garilao's jurisdiction as the implementor of P.D. No. 27; that Secretary Garilao's order dated February 21, 1995 already attained finality when the respondent did not pursue further remedies; that the cancellation of the emancipation patent was a mere post-judgment incident and the necessary consequence of the finality of the order of Secretary Garilao, as affirmed by the OP; and that the DAR Secretary has the authority to order the cancellation of the emancipation patent upon a finding that its issuance violated agrarian laws.[26]

In rebuttal, the respondent submits that the Estrella Order had already attained finality because the petitioner permitted the lapse of 174 days before filing his motion for reconsideration *vis-à-vis* the Estrella Order; that the decision of the DAR became final and executory 15 days after the receipt of the copy thereof by the petitioner as the party thereby adversely affected; that any decision or order that acquired finality could no longer be modified in any respect; that the issue on the non-publication

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

[26] *Id*. at 20-32.

of the MAR Ministry Circular No. 11 rendering it null and void was evidently self-serving; that MAR Ministry Circular No. 11 had not been invalidated or declared void by proper authority; and that the DARAB could no longer cancel the respondent's certificate of title.[27]

Ruling of the Court

The appeal is meritorious.

The Court notes that this recourse emanated from the action commenced by the petitioner before the PARO in the Province of Camiguin entitled *CANCELLATION OF EMANCIPATION PATENT NO. EP-169 ISSUED TO ISMAEL LADAGA AND FOR THE RE-CONVEYANCE OF TITLE TO THE HEIRS OF LATE JOSE L. DAGONDON, EXERCISE OF RETENTION RIGHTS, ISSUANCE OF A NEW CERTIFICATE OF AGRICULTURAL LEASEHOLD (CAL) IN FAVOR OF ISMAEL LADAGA, COMPUTATION AND COLLECTION OF UNPAID RENTALS FROM 1992 UP TO THE PRESENT AND DAMAGES*.[28] The action was the offshoot of the finality of the decision dated September 12, 2002 rendered by the OP affirming the decision of Secretary Garilao exempting the subject land from the coverage of P.D. No. 27.

We note that Secretary Garilao precisely instructed the petitioner in his decision to initiate the necessary action for the cancellation of the respondent's emancipation patent in the appropriate forum, *viz*.:

WHEREFORE, premises considered, this Order is hereby issued:

1. Affirming the Order of this Office dated 21 February 1995 and denying the instant Motion for Reconsideration for lack of merit;

2. **Advising the petitioner to file the necessary action for the cancellation of the tenant's Emancipation Patent in a proper forum;**

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[27] *Id*. at 125-128.

[28] CA *rollo*, p. 42.

3. Directing the petitioner to maintain the tenant in the peaceful possession and cultivation of the subject landholding under the leasehold system;

4. Directing the preparation and issuance of a Certificate of Agricultural Leasehold (CAL) in favor of the tenant whose EP will be cancelled; and

5. Declaring that as far as this Office is concerned, this case is considered closed.

SO ORDERED. (Bold emphasis supplied)

As can be seen, the CA overlooked that the matter concerning the exemption of the subject property from the coverage of P.D. No. 27 had been settled in the earlier case of the protest, and the ruling had attained finality even prior to the institution of the petitioner's action for the cancellation of the emancipation patent. The CA thus grossly erred in still reopening the matter of the exemption of the subject land from the coverage of P.D. No. 27 especially so because the petitioner's action for the cancellation of the emancipation patent had been commenced to implement the final decision in favor of the petitioner and in consonance with the express advice for that purpose given by Secretary Garilao.

Settled is the rule that a judgment that is final and executory becomes immutable and unalterable, and may no longer be modified in any respect, except to correct clerical errors, or to make *nunc pro tunc* entries, or when it is a void judgment. Outside of these exceptions, the court that rendered the judgment only has the ministerial duty to issue the writ of execution. The judgment also becomes the law of the case regardless of any claim that it is erroneous. Any amendment or alteration that substantially affects the final and executory judgment is null and void for lack of jurisdiction, and the nullity extends to the entire proceedings held for that purpose.[29]

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[29] *Vargas v. Cajucom*, G.R. No. 171095, June 22, 2015, 759 SCRA 378, 389.

Moreover, we cannot agree with the CA that the Estrella Order had attained finality because of the failure of the petitioner to timely challenge it. That was presumptuous, and had no foundation in the records. In this regard, we adopt with approval and reiterate the following observation made by the OP in its decision dated September 12, 2002, which entirely debunked the CA's presumptuousness, to wit:

> There is no merit to appellant's claim that Secretary Garilao could no longer take cognizance of petitioner-appellee's letter of reconsideration because the Order sought to be reconsidered had allegedly attained finality. Appellant argues that petitioner-appellee elevated the matter after the lapse of almost six months or 174 days reckoned from 28 February 1986, the date of issuance of the Order up to 21 August 1986, the date of the letter of reconsideration. This claim is bereft of evidentiary support and is anchored on a wrong premise. In computing the finality of an order or decision, the reglementary period is not counted from the date of issuance of the order or decision, as what appellant did, but from the receipt of a copy of the order or decision by the party. Appellant failed to prove the date when petitioner-appellee received a copy of the Order of 28 February 1996 or the date when petitioner-appellee filed the letter of reconsideration.
>
> It is legally presumed that official duty has been regularly performed in the absence of contrary evidence (Section 3[m], Rule 131 of the Rules of Court). There being no showing that the letter for reconsideration was filed beyond the reglementary period, this Office is inclined to believe that Secretary Garilao had not been divested of authority and jurisdiction to take cognizance of the case and act on the same. The presumption of regularity in the performance of official duty must prevail. Such being the case, the action of Secretary Garilao should be accorded due respect and need not be disturbed.[30]

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the February 25, 2009 decision and November 17, 2009 resolution promulgated by the Court of Appeals in C.A.-G.R. SP No. 01232-MIN; and **REINSTATES** the decision dated July 28, 2003 rendered by

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[30] *Rollo*, pp. 93-94.

the Provincial Agrarian Reform Office in Mambajao, Province of Camiguin.

No pronouncement on costs.

SO ORDERED.

Del Castillo, Jardeleza, Gesmundo, and *Carandang, JJ.*, concur.

FIRST DIVISION

[G.R. No. 200774. February 13, 2019]

GERMAN MARINE AGENCIES, INC., *ET AL.*, *petitioners, vs.* **TEODOLAH R. CARO, in behalf of her husband EDUARDO V. CARO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; 2000 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (2000 POEA-SEC); SUBSTANTIAL EVIDENCE IS REQUIRED TO PROVE THE CONCURRENCE OF THE CONDITIONS THAT WILL MERIT COMPENSABILITY, CONSISTENT WITH THE LIBERAL INTERPRETATION ACCORDED THE PROVISIONS OF THE LABOR CODE AND THE SOCIAL JUSTICE GUARANTEE IN FAVOR OF THE WORKERS.— Under the given definition of the 2000 POEA-SEC, a work-related illness is "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied." The 2000 POEA-SEC creates a disputable presumption that illnesses not mentioned therein are work-related. However, on the ground of due process, the claimant may still prove by substantial evidence, or that amount of relevant evidence which

a person might accept as adequate to justify a conclusion, that the seafarer's work conditions caused or, at least, increased the risk of contracting the disease. This is because awards of compensation cannot rest entirely on bare assertions and presumptions; substantial evidence is required to prove the concurrence of the conditions that will merit compensability, consistent with the liberal interpretation accorded the provisions of the Labor Code and the social justice guarantee in favor of the workers.

2. ID.; ID.; THE APPLICATION OF THE LIBERAL CONSTRUCTION IN FAVOR OF LABOR IN OUR JURISDICTION AND SETTLED JURISPRUDENCE REQUIRES ONLY THAT THE REASONABLE CONNECTION BETWEEN THE NATURE OF THE OCCUPATION AND THE CAUSE OF DEATH BE ESTABLISHED TO ENTITLE CLAIMANTS TO ACCOUNTABILITY.— In the early case of *Iloilo Dock & Engineering Co. v. Workmen's Compensation Commission*, this Court has already made the pronouncement that the question of compensation coverage necessarily revolves around the core requirement of work-connection, and the corresponding evidence that establishes it. This Court has also taken the early occasion to qualify that when it comes to evaluating work-relatedness with respect to its guiding provisions in labor laws and their implementing rules, the same must always be construed fairly, reasonably, or liberally in favor, or for the benefit, of employees and their dependents, with all doubts as to the right to compensation being resolved, and all presumptions indulged in their favor. This liberal construction of the rules pertaining to compensability has been affirmed time and again, as in the recent case of *Canuel v. Magsaysay Maritime Corporation*, x x x The application of the liberal construction in favor of labor in our jurisdiction and settled jurisprudence requires only that a reasonable connection between the nature of the occupation and the cause of death be established to entitle claimants to accountability, as aptly defined in the case of *Wallem Maritime Services, Inc. v. NLRC*: x x x Veritably, if the illness which caused the employee's death was either contracted in the course of his employment or aggravated during the same period, the clear causal connection between such illness and the employee's eventual death already legally exists, making the death compensable regardless of when such subsequent death occurred.

> It is not even required that the illness contracted during the course of employment be the exact same illness that caused the eventual death, for as long as it can be established that the work-related ailment he contracted during the course of his employment be that which triggered the deterioration of his body's resistance against the said illness, any related condition, or any other affliction that he may have subsequently had.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Caranto Law Office for respondent.

D E C I S I O N

JARDELEZA, *J.*:

This petition for review on *certiorari*[1] assails the December 22, 2011 Decision[2] and February 24, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 109711. The CA reversed the Resolutions of the National Labor Relations Commission (NLRC) dated January 30, 2009[4] and April 30, 2009 in LAC No. 07-000550-08,[5] and ordered petitioners German Marine Agencies, Inc., (German Marine) and/or Baltic Marine Mgt., Ltd. (Baltic Marine), or Carlos Anacta to pay respondent Teodolah R. Caro (Teodolah) death benefits and burial expenses in accordance with the 2000 Philippine Overseas Employment Administration-Standard Employment Contract[6] (2000 POEA-SEC) for the death of her husband Eduardo V. Caro (Eduardo).

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[1] *Rollo*, pp. 28-72.

[2] *Id.* at 14-24. Penned by Associate Justice Fernanda Lampas Peralta, concurred in by Associate Justices Mario V. Lopez and Socorro B. Inting.

[3] *Id.* at 26.

[4] *Id.* at 173-180.

[5] *Id.* at 200-201.

[6] POEA Memorandum Circular No. 9, Series of 2000, Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers On Board Ocean-going Vessels.

German Marine is a domestic corporation which recruited Eduardo for and in behalf of its foreign principal, Baltic Marine.[7] Since May 1996, German Marine had continuously hired Eduardo until he signed his last employment contract with them as Second Officer on February 15, 2005 for a period of nine months.[8] Prior to the signing of this contract, Eduardo underwent the Pre-Employment Medical Examination and was declared "[f]it to [w]ork."[9] Eduardo thereafter boarded the vessel "Pacific Senator" on March 16, 2005.[10]

On January 3, 2006, Eduardo finished his contract of employment and was repatriated.[11] On June 25, 2007, Eduardo died of "acute respiratory failure" while he was confined at the National Kidney and Transplant Institute.[12]

On August 28, 2007, Teodolah filed a complaint[13] with the Labor Arbiter for death benefits, medical expenses, and attorney's fees. Teodolah alleged that: (1) during Eduardo's employment, he suffered dry cough and experienced difficulty in breathing and urinating; (2) Eduardo's illness, which he tried to address by self-medication, is attributed to exposure to chemicals on board the vessel; (3) Eduardo felt very ill at the time of his repatriation but he merely endured it in the hopes of getting another contract; and (4) Eduardo consulted a physician at the Lung Center of the Philippines who diagnosed him to be suffering from bronchial asthma induced by chemicals.[14]

The Labor Arbiter, in his Decision,[15] dismissed Teodolah's complaint for lack of merit. He ruled that Eduardo's death is

[7] *Rollo*, p. 34.

[8] *Id.* at 173-174.

[9] *Id.* at 150.

[10] *Id.* at 34, 151.

[11] *Id.* at 85.

[12] *Id.*

[13] *Rollo*, pp. 267-268.

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

[15] *Id.* at 149-153.

not compensable because it occurred after the expiration of his employment contract. The Labor Arbiter further reasoned that even assuming Eduardo died during the term of the contract, it was not clearly and sufficiently established that the cause of death was work-related or considered an occupational disease.[16]

Upon appeal, the NLRC affirmed the Labor Arbiter's Decision, noting that Teodolah would be entitled to death benefits only if Eduardo died during the term of his employment contract.[17] Since Eduardo died one (1) year, five (5) months, and twenty-three (23) days after the expiration of the contract, the employer-employee relationship already ceased to exist prior to his death; thus, Teodolah cannot be granted death benefits.[18] The NLRC likewise denied the motion for reconsideration filed by Teodolah.[19]

In its Decision[20] dated December 22, 2011, the CA reversed the ruling of the NLRC. It held that a perusal of the record reveals that Teodolah was able to present substantial evidence to show her entitlement to death benefits. First, Eduardo's series of employment contracts with Baltic Marine covered a total lengthy period of almost 10 years. Second, on March 19, 2001, March 27, 2001, July 19, 2001, July 30, 2001, October 8, 2001, December 3, 2001, November 4, 2003, March 7, 2005, October 7, 2006, January 12, 2007, and January 26, 2007, Eduardo consulted at the Lung Center of the Philippines where he was diagnosed with allergic rhinitis, bronchial asthma, sinusitis, and bronchitis. Third, Eduardo, as a Second Officer (formerly Third Officer) on board the vessel, was exposed to toxic fumes, chemicals, and such other hazards which contributed to his lung illness. Fourth, the immediate cause of Eduardo's death was

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[16] *Id.* at 152.

[17] *Id.* at 178.

[18] *Id.*

[19] *Supra* note 5.

[20] *Supra* note 2.

"Acute Respiratory Failure" and the antecedent cause was "Prob. Sec. to Pulmonary Thromboembolism."[21]

The CA found that Eduardo acquired bronchial asthma, an occupational disease under Section 32-A of the 2000 POEA-SEC, within the period of his service with Baltic Marine. For the CA, there was at least a reasonable connection between Eduardo's job as a Second Officer and his bronchial asthma, which eventually developed into acute respiratory failure. It likewise held that it is of no moment that Eduardo died after the expiration of his last contract, because what is controlling is the fact that he acquired his lung disease while he was still rendering sea services. Such disease was further aggravated by continued exposure to chemicals while on board.[22] The CA held that the NLRC gravely abused its discretion in affirming the Labor Arbiter's dismissal of the complaint considering that there was substantial evidence showing a causal connection between Eduardo's lung illness and his work as a seaman. It thus ordered petitioners to pay Teodolah death benefits and burial expenses in accordance with the 2000 POEA-SEC.[23]

The petitioners filed the instant petition after the CA issued a Resolution denying their motion for reconsideration.[24] They argue that: Teodolah is not entitled to death compensation considering that Eduardo died after the termination of his contract;[25] there was no proof that Eduardo's illness, which resulted in his death, was work-related;[26] the mere fact that the immediate cause of Eduardo's death was acute respiratory failure does not necessarily mean that he died due to a lung disease because the term acute respiratory failure merely refers to a stage of lung failure due to complications arising from a person's

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[21] *Rollo*, p. 21.

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

[23] *Id.* at 23.

[24] *Supra* note 3.

[25] *Rollo*, p. 38.

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

illness, which in this case, is his prostate cancer;[27] and Eduardo failed to comply with the mandatory three-day reportorial requirement under the 2000 POEA-SEC.[28]

The petition is unmeritorious.

The pertinent provision of Section 20(A) on Compensation and Benefits for Death under the 2000 POEA-SEC reads:

> A. Compensation and benefits for death
>
> 1. In case of work-related death of the seafarer[,] during the term of his contract[,] the employer shall pay his beneficiaries the Philippine Currency equivalent to the amount of Fifty Thousand US dollars (US$50,000.00) and an additional amount of Seven Thousand US dollars (US$7,000.00) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment.

When a party claims benefits for the death of a seafarer due to a work- related illness, one must be able to establish that: (1) the death occurred during the term of his employment; and (2) the illness is work-related.[29]

Here, there is no contest that Eduardo's death occurred more than one year after the end of his employment contract. The only issue for our consideration is whether Eduardo's death is compensable for having been caused by an illness contracted during his employment; in other words, whether Eduardo's death is work-related.

The CA concluded that Eduardo acquired bronchial asthma, an occupational disease under Section 32-A of the 2000 POEA-SEC, during his employment with petitioners. The CA further found that there was a reasonable connection between Eduardo's

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[27] *Id.* at 60.

[28] *Id.* at 62.

[29] *Estate of Posedio Ortega v. Court of Appeals*, G.R. No. 175005, April 30, 2008, 553 SCRA 649, 654. Citation omitted.

job as a Second Officer and his bronchial asthma, which eventually developed into an acute respiratory failure and ultimately caused his death.[30]

We agree.

The causes of Eduardo's death as stated in his Certificate of Death[31] are:

17. CAUSES OF DEATH

I. Immediate cause: a. ACUTE RESPIRATORY FAILURE

Antecedent cause: b. PROB. SEC. TO PULMONARY THROMBOEMBOLISM

Underlying cause: c. SEC. TO PROSTATE CA

Under the given definition of the 2000 POEA-SEC, a work-related illness is "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied."[32] The 2000 POEA-SEC creates a disputable presumption that illnesses not mentioned therein are work-related.[33] However, on the ground of due process, the claimant may still prove by substantial evidence, or that amount of relevant evidence which a person might accept as adequate to justify a conclusion, that the seafarer's work conditions caused or, at least, increased the risk of contracting the disease. This is because awards of compensation cannot rest entirely on bare assertions and presumptions;[34] substantial evidence is required to prove the concurrence of the conditions that will merit compensability,

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[30] *Rollo*, pp. 90-91.

[31] *Id.* at 303.

[32] 2000 POEA-SEC, Definition of Terms.

[33] 2000 POEA-SEC, Sec. 20(B)(4).

[34] *OSG Ship Management Manila, Inc. v. Monje*, G.R. No. 214059, October 11, 2017, 842 SCRA 486, 499.

consistent with the liberal interpretation accorded the provisions of the Labor Code and the social justice guarantee in favor of the workers.[35]

In the present case, Teodolah was able to prove through substantial evidence the causal connection between Eduardo's work as a seafarer and his cause of death. Evidence substantiating the same included an enumeration of Eduardo's exposure to chemicals, noise and whole-body vibrations, strong draft winds and stormy weather, cold stress and heat stress, excessive heat from burners and steam pipes, and ultraviolet radiation during welding operations while on board and in the exercise of his duties as a Second Officer for petitioners.

In point of fact, Teodolah already established the causal link between the nature of Eduardo's work and the cause of the deterioration of his health leading to his repatriation at the first instance in her complaint[36] before the Labor Arbiter. There, she contended, among others, that after his repatriation, a physician at the Lung Center of the Philippines diagnosed him then to have been suffering from bronchial asthma, which was chemical-induced. These claims were not dispelled by the Labor Arbiter but were merely disregarded on the reasoning that Eduardo's death was not compensable because it occurred after the expiration of his employment contract.[37]

Upon full consideration of the evidence presented by Teodolah, the CA correctly found that there is at least reasonable correlation established between the nature of Eduardo's work and the cause of his death. Under settled jurisprudence, reasonable correlation is all that is required to prove a rightful claim for death benefits.

In the early case of *Iloilo Dock & Engineering Co. v. Workmen's Compensation Commission*,[38] this Court has already

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[35] *Quizon v. Employees' Compensation Commission*, G.R. No. 87590, November 12, 1991, 203 SCRA 426, 434.

[36] *Rollo*, pp. 267-268.

[37] *Id.* at 152.

[38] G.R. No. L-16202, June 29, 1962, 5 SCRA 394.

made the pronouncement that the question of compensation coverage necessarily revolves around the core requirement of work-connection, and the corresponding evidence that establishes it.[39] This Court has also taken the early occasion to qualify that when it comes to evaluating work-relatedness with respect to its guiding provisions in labor laws and their implementing rules, the same must always be construed fairly, reasonably, or liberally in favor, or for the benefit, of employees and their dependents, with all doubts as to the right to compensation being resolved, and all presumptions indulged in their favor.[40]

This liberal construction of the rules pertaining to compensability has been affirmed time and again, as in the recent case of *Canuel v. Magsaysay Maritime Corporation*,[41] where we said:

> However, a strict and literal construction of the 2000 POEA-SEC, especially when the same would result into inequitable consequences against labor, is not subscribed to in this jurisdiction. Concordant with the State's avowed policy to give **maximum aid and full protection to labor** as enshrined in Article XIII of the 1987 Philippine Constitution, contracts of labor, such as the 2000 POEA- SEC, are deemed to be so impressed with public interest that the more beneficial conditions must be endeavoured in favor of the laborer. The rule therefore is one of liberal construction. x x x[42] (Emphasis supplied; citations omitted.)

The application of the liberal construction in favor of labor in our jurisdiction and settled jurisprudence requires only that a reasonable connection between the nature of the occupation and the cause of death be established to entitle claimants to accountability, as aptly defined in the case of *Wallem Maritime Services, Inc. v. NLRC*:[43]

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[39] *Id.* at 396.

[40] *Iloilo Dock & Engineering Co. v. Workmen's Compensation Commission*, G.R. No. L-17283, July 31, 1962, 5 SCRA 765, 769. Citations omitted.

[41] G.R. No. 190161, October 13, 2014, 738 SCRA 120.

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

[43] G.R. No. 130772, November 19, 1999, 318 SCRA 623.

It is not required that the employment be the sole factor in the growth, development or acceleration of the illness to entitle the claimant to the benefits provided therefor. **It is enough that the employment had contributed, even in a small degree, to the development of the disease and in bringing about his death.**

It is indeed safe to presume that, at the very least, the nature of Faustino Inductive's employment had contributed to the aggravation of his illness-if indeed it was pre-existing at the time of his employment and therefore it is but just that he be duly compensated for it. It cannot be denied that there was at least a reasonable connection between his job and his lung infection, which eventually developed into *septicemia* and ultimately caused his death. As a utility[ ]man on board the vessel, he was exposed to harsh sea weather, chemical irritants, dusts, etc., all of which invariably contributed to his illness.

Neither is it necessary, in order to recover compensation, that the employee must have been in perfect condition or health at the time he contracted the disease. Every working[ ]man brings with him to his employment certain infirmities, and while the employer is not the insurer of the health of the employees, he takes them as he finds them and assumes the risk of liability. If the disease is the proximate cause of the employee's death for which compensation is sought, the previous physical condition of the employee is unimportant and recovery may be had therefor independent of any pre-existing disease.[44] (Emphasis supplied; citation omitted.)

Veritably, if the illness which caused the employee's death was either contracted in the course of his employment or aggravated during the same period, the clear causal connection between such illness and the employee's eventual death already legally exists, making the death compensable regardless of when such subsequent death occurred.[45] It is not even required that the illness contracted during the course of employment be the exact same illness that caused the eventual death, for as long as it can be established that the work-related ailment he contracted during the course of his employment be that which triggered

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[44] *Id.* at 632.

[45] See *Inter-Orient Maritime, Incorporated v. Candava*, G.R. No. 201251, June 26, 2013, 700 SCRA 174, 182-184.

the deterioration of his body's resistance against the said illness, any related condition, or any other affliction that he may have subsequently had.[46]

In the present case, Eduardo's causes of death included acute respiratory failure which was diagnosed as secondary to pulmonary thromboembolism. It does not demand a stretch of the imagination to reasonably presume that the conditions to which Eduardo was exposed to during the fulfillment of his duties as Second Officer aboard petitioners' vessel at the very least contributed to either the contracting of said respiratory illness or the aggravation thereof.

Such a seafarer's sacrifice of labor and health for the petitioners' ultimate profit as in this case demands that the death resulting therefrom be duly indemnified, consistent with our avowed doctrine of protection of the rights of labor and our high aspirations for social justice.

WHEREFORE, the petition is **DENIED**. The assailed Decision dated December 22, 2011 and Resolution dated February 24, 2012 of the Court of Appeals in CA-G.R. SP No. 109711 are **AFFIRMED**.

SO ORDERED.

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

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[46] See *Canuel v. Magsaysay Maritime Corporation, supra* note 41.

SECOND DIVISION

[G.R. No. 209608. February 13, 2019]

DIGITAL PARADISE, INC., as represented by FEDERICO EUGENIO, *petitioner, vs.* **HON. ORLANDO C. CASIMIRO, in his capacity as the overall Deputy Ombudsman; HON. DENNIS L. GARCIA, in his capacity as Director; HON. ROLANDO W. CERVANTES, in his capacity as Graft Investigation and Prosecution Officer; P/CINSP. JOEL MANUEL A. ANA, PSI RONNIE FAILOGA, PO3 DEMETRIO PRIETO,[*] and PO1 SAMUEL ESCARIO DONES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; ERRORS OF JUDGMENT AS DISTINGUISHED FROM ERRORS OF JURISDICTION, ARE NOT WITHIN THE PROVINCE OF A SPECIAL CIVIL ACTION FOR *CERTIORARI*, WHICH IS MERELY CONFINED TO ISSUES OF JURISDICTION OR GRAVE ABUSE OF DISCRETION; EXPLAINED.— A petition for *certiorari* under Rule 65 of the Rules of Court alleging grave abuse of discretion is an independent action. It is neither a continuation nor a part of the trial resulting in the judgment complained of. Its use is confined to extraordinary cases wherein the action of the inferior court is wholly void. Its aim is to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction. As an independent action, the issue in a petition for *certiorari* would always be the existence of grave abuse of discretion in the assailed act; as an extraordinary remedy, the petitioner is obliged to prove that the subject tribunal not merely erred, but, most importantly, gravely abused its discretion in doing so. Ordinarily, a petition

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[*] Also referred to as "Demetrio Mangaoang" and "Demetrio Prieto, Jr." in some parts of the *rollo*.

for *certiorari* does not include an inquiry into the correctness of its evaluation of the evidence. Errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for *certiorari*, which is merely confined to issues of jurisdiction or grave abuse of discretion. To justify judicial intervention, the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty, or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.

2. POLITICAL LAW; OFFICE OF THE OMBUDSMAN; PLENARY AND UNQUALIFIED INVESTIGATORY AND PROSECUTORY POWER OF THE OMBUDSMAN; THE SUPREME COURT WOULD NOT ORDINARILY INTERFERE WITH THE OMBUDSMAN'S EXERCISE OF ITS INVESTIGATORY AND PROSECUTORIAL POWER WITHOUT GOOD AND COMPELLING REASONS.— The Ombudsman was constitutionally created to be the "protector of the people." The office was given the mandate to act promptly on complaints filed in any form or manner against officers or employees of the government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people. To aid it in fulfilling its mandate, the Constitution, as well as R.A. No. 6770 or "The Ombudsman Act of 1989" vested the Ombudsman with the powers to investigate and prosecute any public officer or employee whose act or omission appear to be illegal, unjust, improper or inefficient. x x x The Ombudsman's investigatory and prosecutory power has been characterized as plenary and unqualified. In recognition of these plenary and unqualified powers, the Court has consistently adhered to the general rule of upholding the principle of non-interference by the courts in the exercise by the Ombudsman of its investigative and prosecutorial powers. This means that the Court would not ordinarily interfere with the Ombudsman's exercise of its investigatory and prosecutorial powers without good and compelling reasons. x x x Settled is the rule that if the Ombudsman, using professional judgment, finds the case

dismissible, the Court shall respect such findings, unless the exercise of such discretionary powers is tainted by grave abuse of discretion. Similarly, the Court shall also respect a finding of the existence of probable cause. The Ombudsman is empowered to determine whether there exists a reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof, and, thereafter, to file the corresponding information with the appropriate courts.

3. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; A FINDING OF PROBABLE CAUSE NEEDS ONLY TO REST ON EVIDENCE SHOWING THAT MORE LIKELY THAN NOT, A CRIME HAS BEEN COMMITTED, AND THAT IT WAS COMMITTED BY THE ACCUSED.— Probable cause for purposes of filing a criminal information is defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. A finding of probable cause needs only to rest on evidence showing that more likely than not, a crime has been committed, and that it was committed by the accused. Probable cause, although it requires less than evidence justifying a conviction, demands more than bare suspicion.

APPEARANCES OF COUNSEL

Baterina Baterina Casals Lozada & Tiblani for petitioner.
Aida D. Dizon for private respondents Ana, Failoga & Prieto.

D E C I S I O N

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

This is a petition for *certiorari* under Rule 65 of the Rules of Court which seeks to set aside the Joint Resolution[1] dated July 19, 2012 and Joint Order[2] dated January 28, 2013 in OMB-P-C-11-0784-I and OMB-P-A-11-0766-I, issued by the Overall

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[1] *Rollo*, pp. 61-68.

[2] *Id.* at 69-77.

Deputy Ombudsman Orlando C. Casimiro (Casimiro) of the Office of the Ombudsman (Ombudsman), which dismissed the criminal complaints for Robbery with Force Upon Things, Incriminating Against Innocent Persons, Other Forms of Trespass, and Grave Coercion, filed by herein petitioner Digital Paradise, Inc. (DPI) against herein respondents Police Chief Inspector Joel Manuel A. Ana (PCI Ana), Police Senior Inspector Ronnie L. Failoga (PSI Failoga), Police Officer 3 Demetrio M. Prieto (PO3 Prieto), and Police Officer 1 Samuel Escario Dones (PO1 Dones).

The Facts

On September 16, 2011, petitioner DPI, through its Assistant Logistics Officer Federico Eugenio (Eugenio), filed before the Ombudsman a Complaint-Affidavit[3] for: (1) two counts of Robbery with Force Upon Things; (2) two counts of Other Forms of Trespass; (3) Incriminating Innocent Persons; (4) Grave Coercion; (5) violation of the Code of Conduct and Ethical Standard for Public Officials and Employees; and (6) violation of Section 3(e) of Republic Act (R.A.) No. 3019 against herein respondents PCI Ana, PSI Failoga, PO3 Prieto, and PO1 Dones. Attached to the complaint-affidavit is the Affidavit[4] of Michael Manese (Manese).

In its complaint, DPI alleged that it is a domestic corporation engaged in the business of computer rentals; and that in 2011, it was leasing one of the warehouse units of CH King and Sons Warehouse Complex (CHKS Complex) located at No. 1 Carlos Caparas St., Barangay Ugong, Pasig City.[5]

On September 13, 2011, at around 10:00 p.m., eight men in civilian clothes, and who identified themselves as policemen, suddenly barged inside the premises of CHKS Complex without the benefit of a search warrant. Also present at that time were Manese, the on-duty security guard, and a certain Joseph Seciban

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[3] *Id.* at 78-96.

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

[5] *Id.* at 78-79.

(Seciban), a driver who was renting a parking space at the CHKS Complex. The policemen then ordered Manese and Seciban to lie face down on the ground.[6] Two of the policemen watched over Manese and Seciban while the rest proceeded to the guard house to disconnect and destroy the telephone line there. The policemen also took the cellular phones of Manese and Seciban without any reason.[7]

The policemen then brought inside the CHKS Complex a Kia L300 van and a Toyota Hi-Ace van, and parked them in front of DPI's leased unit and unloaded several boxes. Immediately thereafter, they broke the padlock and the door of the subject unit, then brought the boxes and left them inside DPI's unit. They also unlawfully took several items from DPI's unit. An inventory of DPI's properties would reveal that the following items were missing and/or stolen: (1) 5 pieces of Nokia 1200 CE0434, BLACK worth ₱1,500.00; (2) 2 pieces of Nokia 1200 CE0434, BLUE worth ₱1,500.00; (3) 1 piece of Nokia Landline CE0434 with number 5574375; and (4) Smart Broadband, White Color, No. 09396927599 worth ₱1,000.00.[8] They then left the CHKS Complex.[9] After about 30 minutes, the policemen returned and ordered Manese to open DPI's unit. They took photographs of the leased unit and the boxes they brought therein. After one hour, Barangay Councilor Ernesto Cruz II (Councilor Cruz), Chairman of Peace and Order of Barangay Ugong, and his team arrived. However, the policemen were no longer inside the CHKS Complex.[10]

DPI alleged that the acts committed by the policemen, which include the herein respondents, constituted two counts of Robbery with Force Upon Things, Incriminating Innocent Person, two counts of Other Forms of Trespass, and Grave Coercion, all

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[6] *Id*. at 79-80; 97.

[7] *Id*. at 80.

[8] *Id*. at 84.

[9] *Supra* note 7.

[10] *Rollo*, pp. 81; 98.

under the Revised Penal Code (RPC). DPI further alleged that the respondent police officers committed violations of the Code of Conduct and Ethical Standard for Public Officials and Employees as well as Section 3(e) of R.A. No. 3019.

In their Joint Counter-Affidavit,[11] PCI Ana, PSI Failoga, and PO3 Prieto, denied the accusations made by DPI contending that what transpired was a legitimate police operation. They narrated that on September 13, 2011, at around 2:00 p.m., an informant went to their office and reported that electronic devices owned by Amkor Tech Phils., Inc. (Amkor) were hijacked and that these devices will be hauled out by a group of men from Giant Building Compound located at J. Caparas St., Barangay Ugong, Pasig City. Allegedly, the electronic devices will be loaded on a white Kia L300 commercial van with Plate No. RGP 382. A team led by PCI Ana was immediately formed. They coordinated with Danilo Morales, senior security officer of Amkor, who confirmed the hijacking of Amkor's electronics integrated circuits worth US$441,518.00.

On or about 6:45 p.m. of the same day, the team, together with Amkor representatives and in coordination with the Pasig City Police, conducted a surveillance operation at the compound of Giant Building. At around 8:10 p.m. of the same day, a white Kia L300 van with Plate No. RGP 382 came out of the main gate with three male persons on board. SPO2 Bernard Valen (SPO2 Valen), SPO1 Fernando Rey Gapuz (SPO1 Gapuz) and PO3 Wilfredo Reyes (PO3 Reyes) flagged down the van for violation of R.A. No. 8750 or the Seatbelt Law. While SPO2 Valen was explaining the violation to Jimmy T. Francisco (Francisco), the driver of the van, one of the passengers, later identified as Roderick Colala (Colala), alighted and ran towards the compound. SPO1 Gapuz, PO3 Reyes and an Amkor representative approached the van and asked about its contents. Francisco readily opened the vehicle's door, revealing inside it were the electronic equipment hijacked from Amkor. Given the circumstances, SPO1 Gapuz restrained Francisco and

[11] *Id*. at 108-126.

informed him of his right. At this juncture, the remaining passenger of the van, identified as Joselito Dela Cruz (Dela Cruz), alighted and also ran towards the compound. PSI Failoga and his team members gave chase and caught Dela Cruz inside the warehouse of DPI. Colala was likewise seen hiding inside DPI's warehouse.

Further, PSI Failoga and his team members saw several boxes inside the warehouse with Amkor commercial invoices and shipment waybill. Upon inspection, the Amkor representatives identified the contents of the boxes as part of the goods taken from Amkor. Thus, the police officers arrested Dela Cruz and Colala. Thereafter, a certain Jayson Bistal (Bistal) arrived and interfered with the operation. He also claimed that he supervised the delivery of the goods upon the instruction of his bosses identified as "Rebecca" and "Cris." Thus, Bistal was likewise arrested. Later, PO3 Prieto arrived with PO1 Dones and the barangay officials.

The Information for violation of the Anti-Fencing Law were filed against Bistal, Colala, Francisco, Dela Cruz, *alias* "Rebecca," and *alias* "Chris."

The respondents maintained that the criminal and administrative complaints against them have no factual and legal basis. They denied violating Articles 281 and 286 of the RPC arguing that their entry inside the Giant Building compound and DPI's warehouse was justified under Section 5, Rule 113 and Section 7, Rule 126 of the Revised Rules on Criminal Procedure.

They likewise denied planting incriminating evidence against any person and/or robbing DPI of its properties. Respondents averred that such concocted allegations were intended merely to harass them. They pointed out that no independent evidence other than the self-serving allegations of the petitioner would support the claim that the electronic equipments, which were worth several millions of pesos, confiscated from its warehouse were merely planted, and that any of its properties were missing.

The respondents also belied the alleged violation of Section 3(e) of R.A. No. 3019. They asserted that there was no showing that any of them have benefited from, or that they acted with partiality when they conducted the subject legitimate police operation.

Finally, they denied committing any violation of the Code of Conduct and Ethical Standards for Public Officials and Employees. The respondents insisted that they performed their functions and duties in accordance with the law and relevant procedures.

For his part, PO1 Dones averred that he was not part of the raiding team and that he arrived at the CHKS Complex only later together with Barangay Councilor Cruz.[12]

Ruling of the Ombudsman

In its assailed Joint Resolution dated July 19, 2012, the Ombudsman dismissed the criminal cases against the respondents for lack of probable cause. It likewise dismissed the administrative complaints against respondents for DPI's failure to prove its case by substantial evidence.

The Ombudsman ruled that DPI's claim of robbery of its properties could not be given merit considering that it was not supported by any evidence. It noted that Manese and Seciban did not corroborate DPI's allegation that respondents unlawfully took its private properties; and that DPI's inventory failed to convince it that the alleged missing items were indeed stolen by the respondents. It also emphasized that Eugenio's allegation on these points are insufficient considering that he was not present during the alleged robbery. No credence was also given by the Ombudsman with respect to the accusation that the respondents took the cellular phones of Manese and Seciban. It pointed out that Manese, in his affidavit, stated that the police officers "confiscated" the subject cellular phones,[13] thereby

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[12] *Rollo*, p. 64.

[13] *Id*. at 98.

negating the presence of intent to gain which is an essential element in the crime of robbery.

The Ombudsman also rejected all other criminal accusations by DPI. It noted that the allegations involving commission of incriminating innocent persons and grave coercion, as well as violation of Section 3(e) of R.A. No. 3019, were neither substantiated by any evidence nor corroborated by any witness. Moreover, DPI failed to show any reason which could have impelled respondents to implicate DPI in the hijacking of Amkor's properties. The Ombudsman also observed that there was no showing that the respondents would stand to gain by or benefit anything by incriminating DPI. It pointed out that neither DPI nor any of its officers were even made party-respondents to the Anti-Fencing case filed by Amkor.

As regards the administrative charge, the Ombudsman held that DPI failed to meet the quantum of proof required to hold respondents administratively liable. Thus, the presumption of regularity in the performance of duty was upheld in favor of the respondents.

DPI moved for reconsideration, but the same was denied by the Ombudsman in its Joint Order dated January 28, 2013.

Hence, this petition for *certiorari*.[14]

The Issue

WHETHER THE OFFICE OF THE OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE CRIMINAL COMPLAINTS AGAINST RESPONDENTS FOR LACK OF PROBABLE CAUSE.

DPI argues that the allegations against respondents are duly supported by evidence. It insists that Manese corroborated its allegations in all material points; that its inventory could be

[14] Petitioner DPI also filed a Petition for Review under Rule 43 of the Rules of Court before the Court of Appeals regarding the dismissal of the administrative aspect of the case. The case was docketed as CA-G.R. No. 131958; *id*. at 35-53.

used to prove that the respondents committed the crime of robbery; and that Manese's statement under oath that his and Seciban's cellular phones were taken is more than enough evidence that the respondents committed the crime of robbery as charged. DPI further avers that all the elements of the crimes of incriminating innocent persons, other forms of trespass, grave coercion, and violation of Section 3(e) of R.A. No. 3019, were sufficiently alleged in its complaint-affidavit.

In their Comment[15] dated March 31, 2014, PCI Ana, PSI Failoga, and PO3 Prieto, maintain that the operation on September 13, 2011, was in pursuance of their police duties. Thus, the Ombudsman did not abuse its discretion when it sustained the presumption of regularity in the performance of their official duty over DPI's uncorroborated accusations. In his Comment[16] dated March 7, 2014, PO1 Dones reiterates his defense that he was not part of the raiding team on September 13, 2011, and that he arrived at the premises of CHKS Complex with the barangay officials after the operation.

For its part, the Ombudsman, in its Comment[17] dated April 11, 2014, restates the reasons why it dismissed DPI's criminal complaints in its July 19, 2012 Joint Resolution and January 28, 2013 Joint Order. It further argues that it is beyond the power of the courts to review the discretion of the Ombudsman in prosecuting or dismissing a complaint filed before it, save in cases where there is a clear showing of grave abuse of discretion amounting to lack of jurisdiction. It submits that DPI failed to show that it gravely abused its discretion when it dismissed the criminal complaints against the respondents.

The Court's Ruling

The petition lacks merit.

A petition for *certiorari* under Rule 65 of the Rules of Court alleging grave abuse of discretion is an independent action. It

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[15] *Id*. at 671-680.

[16] *Id.* at 630-633.

[17] *Id*. at 702-726.

is neither a continuation nor a part of the trial resulting in the judgment complained of.[18] Its use is confined to extraordinary cases wherein the action of the inferior court is wholly void. Its aim is to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction.[19] As an independent action, the issue in a petition for *certiorari* would always be the existence of grave abuse of discretion in the assailed act; as an extraordinary remedy, the petitioner is obliged to prove that the subject tribunal not merely erred, but, most importantly, gravely abused its discretion in doing so.

Ordinarily, a petition for *certiorari* does not include an inquiry into the correctness of its evaluation of the evidence. Errors of judgment, as distinguished from errors of jurisdiction, are not within the province of a special civil action for *certiorari*, which is merely confined to issues of jurisdiction or grave abuse of discretion.[20] To justify judicial intervention, the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty, or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[21]

In this regard, the Court is convinced that no grave abuse of discretion could be attributed to the Ombudsman relative to the July 19, 2012 Joint Resolution and January 28, 2013 Joint Order dismissing the criminal complaints against the respondents.

The Ombudsman was constitutionally created to be the "protector of the people." The office was given the mandate to act promptly on complaints filed in any form or manner against officers or employees of the government, or of any subdivision,

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[18] *Philippine Veterans Bank v. Solid Homes, Inc.*, 607 Phil. 14, 23 (2009).

[19] *People v. Court of Appeals (Fifteenth Div.),* 545 Phil. 278, 293-294 (2007).

[20] *Philippine National Bank v. Gregorio*, G.R. No. 194944, September 18, 2017, 840 SCRA 37, 51, citing *Leonis Navigation Co., Inc. v. Villamater*, 628 Phil. 81, 92 (2010).

[21] *Unilever Philippines, Inc. v. Tan*, 725 Phil. 486, 493-494 (2014).

agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.[22] To aid it in fulfilling its mandate, the Constitution, as well as R.A. No. 6770 or "The Ombudsman Act of 1989" vested the Ombudsman with the powers to investigate and prosecute any public officer or employee whose act or omission appear to be illegal, unjust, improper or inefficient. Thus:

Article XI, 1987 Constitution.

SEC. 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

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R.A. No. 6770.

SEC. 15. *Powers, Functions and Duties.* — The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases;

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The Ombudsman's investigatory and prosecutory power has been characterized as plenary and unqualified.[23]

In recognition of these plenary and unqualified powers, the Court has consistently adhered to the general rule of upholding

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[22] CONSTITUTION, (1987), Art. XI, Secs. 5 and 12; Republic Act No. 6770, Section 13.

[23] *Office of the Ombudsman v. Valera*, 508 Phil. 672, 697 (2005).

the principle of non-interference by the courts in the exercise by the Ombudsman of its investigative and prosecutorial powers.[24] This means that the Court would not ordinarily interfere with the Ombudsman's exercise of its investigatory and prosecutorial powers without good and compelling reasons.[25]

The Court finds no compelling reason to depart from its long-standing policy of non-interference in the exercise by the Ombudsman of its plenary investigatory and prosecutorial powers. The Court opines that there is merit in the Ombudsman's assessment that the pieces of evidence presented by DPI were insufficient to demonstrate the existence of probable cause.

Probable cause for purposes of filing a criminal information is defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof. A finding of probable cause needs only to rest on evidence showing that more likely than not, a crime has been committed, and that it was committed by the accused. Probable cause, although it requires less than evidence justifying a conviction, demands more than bare suspicion.[26]

As observed by the Ombudsman, DPI's bare allegations were neither supported by sufficient evidence nor corroborated by any witness on its material points. DPI heavily relied on Manese's affidavit to demonstrate its accusations against respondents. As aptly explained by the Ombudsman, however, the statements made by Manese in his affidavit were severely lacking and unconvincing. Manese stated that he had no idea what the respondents did inside the warehouse. Thus, the Ombudsman is justified when it ruled that Manese failed to corroborate DPI's allegations that the respondents unlawfully took its private properties, that they planted incriminating evidence therein, and that they violated Section 3(e) of R.A. No. 3019.

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[24] *Dimayuga v. Office of the Ombudsman*, 528 Phil. 42, 46 (2006).

[25] *Morales v. Carpio Morales*, 791 Phil. 539, 553 (2016).

[26] *Callo-Claridad v. Esteban,* 707 Phil. 172, 185 (2013).

Likewise, DPI's claim that respondents also robbed Manese and Seciban of their cellular phones does not find support in Manese's affidavit. As observed by the Ombudsman, Manese admitted that his cellular phone was confiscated by the respondents. That Manese's cellular phone was confiscated, instead of stolen, is consistent with the respondents' claim that what transpired was a legitimate police operation. Further, the dismissal of the cases for Other Forms of Trespass and Grave Coercion were also reasonable. Indeed, the respondents' entry inside the subject warehouse and the command to Manese and Seciban for them to lie down on the ground are still very much consistent with the presumption of regularity in the performance of the respondents' official duties as police officers.

Even assuming, for argument's sake, that the Ombudsman erred when it dismissed the criminal complaints against the respondents, such error would still be within the permissible limits of its plenary powers, absent a clear showing of grave abuse of discretion.

Settled is the rule that if the Ombudsman, using professional judgment, finds the case dismissible, the Court shall respect such findings, unless the exercise of such discretionary powers is tainted by grave abuse of discretion.[27] Similarly, the Court shall also respect a finding of the existence of probable cause. The Ombudsman is empowered to determine whether there exists a reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof, and, thereafter, to file the corresponding information with the appropriate courts.[28] As succinctly explained in *Vergara v. Hon. Ombudsman*:[29]

> The Ombudsman has the discretion to determine whether a criminal case, given its attendant facts and circumstances, should be filed or not. The Ombudsman may dismiss the complaint should the

[27] *Presidential Commission on Good Government v. Desierto*, 563 Phil. 517, 526 (2007).

[28] *Angeles v. Gutierrez*, 685 Phil. 183, 194 (2012).

[29] 600 Phil. 26, 41 (2009).

Ombudsman find the complaint insufficient in form or substance, or the Ombudsman may proceed with the investigation if, in the Ombudsman's view, the complaint is in due form and substance. Hence, the filing or non-filing of the information is primarily lodged within the "full discretion" of the Ombudsman. (Citations omitted)

It is clear that DPI anchored its case mainly on the Ombudsman's supposed failure to consider that the elements of the crimes allegedly committed by the respondents were sufficiently alleged in the complaint-affidavit and were amply substantiated by evidence and corroborated by a witness. In effect, DPI is questioning how the Ombudsman assessed the pieces of evidence it presented — an inquiry which could not be the proper subject of a petition for *certiorari*.

Simply stated, no grave abuse of discretion may be attributed to the Ombudsman merely because of its alleged misappreciation of facts and evidence. The petitioner in a *certiorari* proceeding, such as DPI in this case, must clearly demonstrate that the court or tribunal blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.[30]

Unfortunately, DPI utterly failed to show that the Ombudsman gravely abused its discretion when it dismissed the criminal cases against the respondents. Instead, the instant petition is bereft of any statement or allegation purportedly showing that the Ombudsman exercised its power in an arbitrary or despotic manner by reason of passion or hostility. Since DPI failed to exhibit even a tinge of grave abuse of discretion on the part of the Ombudsman, the assailed Joint Resolution and Joint Order must be upheld, and the instant petition must be dismissed.

WHEREFORE, the present petition for *certiorari* is **DISMISSED** for lack of merit.

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Perlas-Bernabe, Caguioa*, and *Hernando*,[**] *JJ*., concur.

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[30] *People v. Court of Appeals (Fifteenth Div.), supra* note 19, at 294.

[**] Additional Member per S.O. No. 2630 dated December 18, 2018.

THIRD DIVISION

[G.R. No. 210731. February 13, 2019]

SIMEON LAPI *y* MAHIPUS, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL; IN CRIMINAL CASES, THE FINDING OF GUILT IS ESSENTIALLY A QUESTION OF FACT, HENCE, THE ENTIRE RECORDS OF A CRIMINAL CASE ARE THROWN OPEN FOR THE COURT'S REVIEW.— A petition for review on *certiorari* under Rule 45 of the Rules of Court must, as a general rule, only raise questions of law. Parties may only raise issues that can be determined without having to review or reevaluate the evidence on record. This Court generally gives weight to the factual findings of the lower courts "because of the opportunity enjoyed by the [lower courts] to observe the demeanor of the witnesses on the stand and assess their testimony." In criminal cases, however, the accused has the constitutional right to be presumed innocent until the contrary is proven. To prove guilt, courts must evaluate the evidence presented in relation to the elements of the crime charged. Thus, the finding of guilt is essentially a question of fact. For this reason, the entire records of a criminal case are thrown open for this Court's review. x x x This Court is not precluded from reviewing the factual findings of the lower courts, or even arriving at a different conclusion, "if it is not convinced that [the findings] are conformable to the evidence of record and to its own impressions of the credibility of the witnesses." The lower court's factual findings will not bind this Court if facts that could affect the result of the case "were overlooked and disregarded[.]"

2. ID.; ID.; SEARCH AND SEIZURE; THE CONSTITUTION GUARANTEES AGAINST UNREASONABLE WARRANTLESS SEARCHES AND SEIZURES, WHICH PRESUPPOSES THAT THE STATE MAY DO SO AS LONG AS THEY ARE REASONABLE; SITUATIONS WHERE A WARRANTLESS SEARCH AND SEIZURE

MAY BE DECLARED VALID, ENUMERATED.— A citizen's right to be secure against any unreasonable searches and seizures is sacrosanct. No less than the Constitution guarantees that the State cannot intrude into the citizen's persons, house, papers, and effects without a warrant issued by a judge finding probable cause: x x x The Constitution guarantees against "unreasonable" warrantless searches and seizures. This presupposes that the State may do so as long as they are reasonable. *People v. Aruta* outlines the situations where a warrantless search and seizure may be declared valid: 1. Warrantless search incidental to a lawful arrest recognized under Section 12, Rule 126 of the Rules of Court and by prevailing jurisprudence; 2. Seizure of evidence in "plain view," the elements of which are: (a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties; (b) the evidence was inadvertently discovered by the police who had the right to be where they are; (c) the evidence must be immediately apparent[;] and (d) "plain view" justified mere seizure of evidence without further search; 3. Search of a moving vehicle. Highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity; 4. Consented warrantless search; 5. Customs search; 6. Stop and Frisk; and 7. Exigent and Emergency Circumstances.

3. **ID.; ID.; ID.; ANY OBJECTION INVOLVING A WARRANT OF ARREST OR THE PROCEDURE FOR THE ACQUISITION BY THE COURT OF JURISDICTION OVER THE PERSON OF THE ACCUSED MUST BE MADE BEFORE HE ENTERS HIS PLEA, OTHERWISE, THE OBJECTION IS DEEMED WAIVED; CASE AT BAR.—** Here, petitioner admits that he failed to question the validity of his arrest before arraignment. He did not move to quash the Information against him before entering his plea. He was assisted by counsel when he entered his plea. Likewise, he was able to present his evidence. In *People v. Alunday:* The Court has consistently ruled that any objection involving a warrant of arrest or the procedure for the acquisition by the court of jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived.

> We have also ruled that an accused may be estopped from assailing the illegality of his arrest if he fails to move for the quashing of the information against him before his arraignment. x x x In *Bolasa,* the accused were charged with possession of illegal drugs. This Court not only contended with the validity of the warrantless arrest, but also examined the validity of the subsequent search of the accused and the seizure of items in their possession. As with certain constitutional rights, the right to question the validity of a warrantless arrest can be waived. This waiver, however, does not carry with it a waiver of the inadmissibility of the evidence seized during the illegal arrest.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONEN, *J.*:

The right to question the validity of an arrest may be waived if the accused, assisted by counsel, fails to object to its validity before arraignment.

This is a Petition for Review on *Certiorari*[1] assailing the April 29, 2013 Decision[2] and December 10, 2013 Resolution[3] of the Court of Appeals in CA-G.R. CEB-CR No. 01564, which upheld the Regional Trial Court September 15, 2010 Decision.[4]

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[1] *Rollo,* pp. 8-21.

[2] *Id.* at 68-73. The Decision was penned by Associate Justice Ramon Paul L. Hernando (now an Associate Justice of this Court) and concurred in by Associate Justices Gabriel T. Ingles and Ma. Luisa C. Quijano-Padilla of the Special Twentieth Division, Court of Appeals, Manila.

[3] *Id*. at 78-79. The Resolution was penned by Associate Justice Ramon Paul L. Hernando (now an Associate Justice of this Court) and concurred in by Associate Justices Gabriel T. Ingles and Ma. Luisa C. Quijano-Padilla of the Special Twentieth Division, Court of Appeals, Manila.

[4] *Id*. at. 38-45. The Decision was penned by Judge Edgar G. Garvilles of Branch 47, Regional Trial Court, Bacolod City.

The trial court found Simeon M. Lapi (Lapi) guilty beyond reasonable doubt of having violated Article II, Section 15 of Republic Act No. 9165[5] and sentenced him to six (6) months of rehabilitation at a government-approved facility.

In an Information dated April 20, 2006, Lapi, Allen Sacare (Sacare), and Kenneth Lim (Lim) were charged with violation of Article II, Section 15 of Republic Act No. 9165. The Information read:

> That on or about the 17th day of April, 2006, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused conspiring, confederating and acting in concert, not being authorized by law to smoke, consume, administer to oneself, ingest or use a dangerous drug, did, then and there willfully, unlawfully and feloniously engage in ingesting and introducing to their bodies a dangerous drug known as methylamphetamine hydrochloride or shabu and after confirmatory test on the qualitative examination of the urine sample on the three accused, they were found positive to the test for Methylamphetamine, a dangerous drug, per Chemistry Report Nos. DT-042-2006, DT-043-2006 and DT-045-2006, respectively, in violation of the aforementioned law.
>
> Act contrary to law.[6]

On arraignment, Lapi, Sacare, and Lim pleaded not guilty to the crime charged. At pre-trial, Sacare and Lim changed their pleas to guilty, and were sentenced to rehabilitation for six (6) months at a government-recognized center. Only Lapi was subjected to trial on the merits.[7]

According to the prosecution, at around 1:50 p.m. on April 17, 2006, operatives of the Bacolod City Anti-Illegal Drug Special Operation Task Group conducted a stake-out operation in Purok Sigay, Barangay 2, Bacolod City. During the operation, Police Officer 2 Ronald Villeran (PO2 Villeran) heard noises from

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[5] The Comprehensive Dangerous Drugs Act of 2002.

[6] *Rollo,* p. 69.

[7] *Id*.

one (1) of the houses. He "peeped through its window"[8] and saw Lapi, Sacare, and Lim "having a pot session."[9]

PO2 Villeran tried to enter the house through the main door, but the door was locked. He then tried to enter through the kitchen door. Upon entry, he met someone trying to flee, but PO2 Villeran restrained the person.[10]

Then, PO2 Villeran "peeked into the adjacent room"[11] and saw that the pot session was ongoing. He entered the room and introduced himself as a police officer. Lapi, Sacare, and Lim tried to escape, but were caught by PO2 Villeran's team members, who were waiting by the main door.[12]

Having been arrested and their paraphernalia seized, the men were then brought to the City Anti-Illegal Drug Special Operation Task Group Office, where a police blotter was filed. They were later brought to the Philippine National Police Crime Laboratory to undergo drug tests.[13]

The initial laboratory report found that Lapi, Sacare, and Lim tested positive for methylamphetamine hydrochloride (*shabu*), while their companions, Noel Canlas and Carmelo Limbaco,[14] tested negative. Another test conducted yielded the same results.[15]

In his defense, Lapi alleged that on April 17, 2006, he was in Purok Sigay, Barangay 2, Bacolod City to deliver a mahjong

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[8] *Id.*

[9] *Id*.

[10] *Id*. This person was not named in the records.

[11] *Id.*

[12] *Id.*

[13] *Id*.

[14] The factual antecedents of the trial court and the Court of Appeals do not mention that two (2) other persons were apprehended. This Court presumes that there were about five (5) people involved and apprehended in the alleged pot session.

[15] *Rollo,* pp. 69-70.

set to a certain Antonio Kadunggo. On his way home, two (2) persons approached him and searched his pocket. They took his money, handcuffed him, and boarded him on a tricycle with four (4) other persons whom he did not know.[16]

Lapi stated that upon reaching the Taculing Police Headquarters, he and the others were subjected to a drug test. They were then escorted to their detention cell without being informed of the test results. Rolando Cordova, a barbecue vendor in the area, corroborated Lapi's testimony.[17]

In its September 15, 2010 Decision,[18] the Regional Trial Court found Lapi guilty. It ruled that the warrantless arrest against him was legal since he was caught *in flagrante delicto*.[19]

The dispositive portion of the Regional Trial Court Decision read:

> WHEREFORE, finding accused Simeon Lapi y Mahipus guilty beyond reasonable doubt of Violation of Section 15, Article II of R.A. 9165 (Use of Dangerous Drugs) as charged, judgment is hereby rendered imposing upon him the penalty of a minimum of Six (6) Months rehabilitation in any government recognized government center, this being apparently his first offense, to start within fifteen (15) here-from.
>
> The doctor-in-charge of said rehabilitation facility is also required to render a written report of the progress of the program and the termination of the rehabilitation of the accused.
>
> SO ORDERED.[20]

Lapi appealed to the Court of Appeals.[21]

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[16] *Id*. at 70.

[17] *Id*.

[18] *Id*. at 38-45.

[19] *Id.* at 43.

[20] *Id.* at 44-45.

[21] *Id*. at 70.

In its April 29, 2013 Decision,[22] the Court of Appeals denied the Appeal and affirmed the Regional Trial Court Decision.

The Court of Appeals ruled that PO2 Villeran, upon seeing the pot session, "had reasonable ground to believe that [Lapi was] under the influence of dangerous drugs. Thus, he was justified and even obligated by law to subject him to drug screening laboratory examination."[23]

Lapi filed a Motion for Reconsideration,[24] but it was denied by the Court of Appeals in its December 10, 2013 Resolution.[25]

Hence, Lapi filed this Petition.[26]

Petitioner argues that while he raises factual questions, his case falls under the exceptions under the Rules of Court. He claims that the Court of Appeals' factual findings "are totally bereft of support in the records and so glaringly erroneous as to constitute a serious abuse of discretion."[27]

Petitioner asserts that while he failed to question the validity of his arrest before entering his plea, his warrantless arrest was illegal from the start. Hence, any evidence obtained cannot be used against him. He argues that PO2 Villeran committed "a malevolent intrusion of privacy"[28] when he peeped through the window; had he not done so, he would not see what the people in the house did.[29] He contends that this intrusion into his privacy "cannot be equated in plain view[;] therefore[,] petitioner cannot

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[22] *Id*. at 68-73.

[23] *Id*. at 72.

[24] *Id*. at 74-77.

[25] *Id*. at 78-79.

[26] *Id*. at 8-21. Respondent filed its Comment *(rollo,* pp. 94-106) on June 25, 2014. Petitioner filed his Manifestation in Lieu of Reply *(rollo,* pp. 113-115) on September 17, 2014.

[27] *Id*. at 12.

[28] *Id.* at 16.

[29] *Id*. at 16.

be considered caught *in flagrante delicto.*"[30] He submits that to "rule otherwise would be like giving authority to every police officer to intrude into the private homes of anyone in order to catch suspended drug offenders."[31]

Respondent, on the other hand, counters that petitioner prays for a review of the facts and evidence, which is beyond the province of a petition for review on *certiorari*.[32] It asserts that the warrantless arrest was valid, as "[t]he act of having a pot session is clearly the overt act required under the law, which indicates that petitioner is actually committing an offense."[33] It argues that what prompted PO2 Villeran to enter the house was not the noise from one (1) of the houses, but what he saw petitioner and his companions were doing in the house where they were apprehended.[34]

Further, respondent claims that since petitioner was not the owner of that house, he had no "reasonable expectation of privacy that must be upheld."[35] It submits that "[a] houseguest who was merely present in the house with the consent of the householder cannot claim a reasonable expectation of privacy in his host's home."[36]

This Court is asked to resolve the issue of whether or not the warrantless arrest against petitioner Simeon M. Lapi was valid. However, this Court must first pass upon the procedural question of whether or not the Petition should be denied for raising questions of fact.

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[30] *Id*. at 17.

[31] *Id*.

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

[33] *Id*. at 99.

[34] *Id*. at 100.

[35] *Id*. at 102.

[36] *Id*.

I

This Court is not a trier of facts.[37] A petition for review on *certiorari* under Rule 45 of the Rules of Court must, as a general rule, only raise questions of law.[38] Parties may only raise issues that can be determined without having to review or reevaluate the evidence on record.[39] This Court generally gives weight to the factual findings of the lower courts "because of the opportunity enjoyed by the [lower courts] to observe the demeanor of the witnesses on the stand and assess their testimony."[40]

In criminal cases, however, the accused has the constitutional right to be presumed innocent until the contrary is proven.[41] To prove guilt, courts must evaluate the evidence presented in relation to the elements of the crime charged.[42] Thus, the finding of guilt is essentially a question of fact.[43] For this reason, the entire records of a criminal case are thrown open for this Court's review. In *Ferrer v. People*:[44]

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[37] *Korean Airlines v. Court of Appeals,* 238 Phil. 204 (1987) [Per *J.* Cruz, First Division] citing *Chemplex, Inc. v. Pamatian,* 156 Phil. 408 (1974) [Per *C.J.* Makalintal, *En Banc*]; *Ereñeta v. Bezore,* 153 Phil. 299 (1973) [Per *J.* Castro, First Division]; and *Miguel, et al. v. Catalina,* 135 Phil. 229 (1968) [Per *J.* Reyes, J.B.L., *En Banc*].

[38] RULES OF COURT, Rule 45, Sec. 1 provides:

SECTION 1. Filing of petition with Supreme Court. — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari.* The petition shall raise only questions of law which must be distinctly set forth.

[39] *Century Iron Works v. Bañas,* 711 Phil. 576 (2013) [Per *J.* Brion, Second Division].

[40] *People v. Macasinag,* 255 Phil. 279, 281 (1989) [Per *J.* Cruz, First Division].

[41] CONST. Art. III, Sec. 14 (2).

[42] See *Macayan, Jr. v. People,* 756 Phil. 202 (2015) [Per *J.* Leonen, Second Division].

[43] *Id*.

[44] 518 Phil. 196 (2006) [Per *J.* Austria-Martinez, First Division].

It is a well-settled rule that an appeal in a criminal case throws the whole case wide open for review and that it becomes the duty of the Court to correct such errors as may be found in the judgment appealed from, whether they are assigned as errors or not.[45]

This Court is not precluded from reviewing the factual findings of the lower courts, or even arriving at a different conclusion, "if it is not convinced that [the findings] are conformable to the evidence of record and to its own impressions of the credibility of the witnesses."[46] The lower court actual findings will not bind this Court if facts that could affect the result of the case "were overlooked and disregarded[.]"[47]

An examination of the factual findings of the trial court and the Court of Appeals shows no error that requires this Court's review. On this ground, the Petition can be outright dismissed.

II

Even if this Court reviews the substantial merits of this case, the Petition is still denied. The Court of Appeals did not err in affirming the trial court's finding of guilt beyond reasonable doubt.

A citizen's right to be secure against any unreasonable searches and seizures is sacrosanct. No less than the Constitution guarantees that the State cannot intrude into the citizen's persons, house, papers, and effects without a warrant issued by a judge finding probable cause:

Article II
Bill of Rights

. . . . . .

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[45] *Id*. at 220 citing *Aradillos v. Court of Appeals,* 464 Phil. 650 (2004) [Per *J*. Austria-Martinez, Second Division].

[46] *People v. Macasinag,* 255 Phil. 279, 281 (1989) [Per *J*. Cruz, First Division].

[47] *People v. Ortiz,* 334 Phil. 590, 601 (1997) [Per *J*. Francisco, Third Division].

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.[48]

The Constitution guarantees against "unreasonable" warrantless searches and seizures. This presupposes that the State may do so as long as they are reasonable. *People v. Aruta*[49] outlines the situations where a warrantless search and seizure may be declared valid:

1. Warrantless search incidental to a lawful arrest recognized under Section 12, Rule 126 of the Rules of Court and by prevailing jurisprudence;
2. Seizure of evidence in "plain view," the elements of which are:
   (a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties;
   (b) the evidence was inadvertently discovered by the police who had the right to be where they are;
   (c) the evidence must be immediately apparent[;] and
   (d) "plain view" justified mere seizure of evidence without further search;
3. Search of a moving vehicle. Highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity;
4. Consented warrantless search;

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[48] CONST., Art. III, Sec. 2.

[49] 351 Phil. 868 (1998) [Per *J*. Romero, Third Division].

5. Customs search;

6. Stop and Frisk; and

7. Exigent and Emergency Circumstances.[50]

For a warrantless arrest to be valid, the arrest must have been committed under the following circumstances:

RULE 113
ARREST

. . . . . .

SECTION 5. Arrest without warrant; when lawful. — A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112.[51]

Here, petitioner was seen by police officers participating in a "pot session."[52] PO2 Villeran, respondent's primary witness,

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[50] *Id*. at 879-880 citing RULES OF COURT, Rule 126, Sec. 12; *Padilla v. Court of Appeals and People,* 336 Phil. 383 (1997) [Per *J*. Francisco, Third Division]; *People v. Solayao,* 330 Phil. 811 (1996) [Per *J*. Romero, Second Division]; and *People v. De Gracia,* 304 Phil. 118-138 (1994) [Per *J*. Regalado, Second Division].

[51] RULES OF COURT, Rule 113, Sec. 5.

[52] *Rollo,* p. 69. This Court has never defined a "pot session." The closest

testified that on the day of the incident, he and other police operatives were conducting a "stake-out operation" in Purok Sigay, Barangay 2, Bacolod City. He stated:

> While I was passing on that house and upon hearing that there was a noise inside the house, I peeped on the window and I was able to see three persons sitting with a small table on the middle of them, one of those person (sic) was holding an alumin[u]m foil which was rolled and was used as a straw and placed on his mouth while there was another foil with a lighted lighter in the bottom of that foil with the fume from that foil he was sniffing through his mouth and after that he passed that aluminum foil from him to another.[53]

Petitioner was arrested and subjected to drug testing. When he tested positive for *shabu*, he was subsequently charged with having violated Article II, Section 15 of Republic Act No. 9165,[54] which reads:

> SECTION 15. Use of Dangerous Drugs. — A person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test, shall be imposed a penalty of a minimum of six (6) months rehabilitation in a goverrnnent center for the first offense, subject to the provisions of Article VIII of this Act. If apprehended using any dangerous drug for the second time, he/she shall suffer the penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and a fine ranging from Fifty thousand pesos (₱50,000.00) to Two hundred thousand pesos (₱200,000.00): Provided, That this Section shall not be applicable

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definition is mentioned in *Garcia v. Court of Appeals* (324 Phil. 846 [1996] [Per *J*. Panganiban, Third Division]), where the Information stated that a "pot session" was in violation of Section 27 of Republic Act No. 6425, the previous law against dangerous drugs:

> SECTION 27. Criminal Liability of Possessor or User of Dangerous Drugs During Social Gatherings. — The maximum of the penalties provided for in Section 8, Article II and Section 16, Article III of this Act shall be imposed upon any person found possessing or using any dangerous drug during a party or at a social gathering or in a group of at least five persons possessing or using such drugs.

[53] *Id*. at 54.

[54] The Comprehensive Dangerous Drugs Act of 2002.

where the person tested is also found to have in his/her possession such quantity of any dangerous drug provided for under Section 11 of this Act, in which case the provisions stated therein shall apply.

Petitioner argues that his warrantless arrest was illegal since PO2 Villeran had to peep through the window to ascertain that something illegal was occurring. He posits that his case is similar to that of *People v. Bolasa*.[55] In *Bolasa,* the police were tipped off by an informant that people were packing drugs in a certain house. Upon reaching it, the police officers peeked into a window, where they saw a man and a woman repacking marijuana. The officers entered the house, introduced themselves as police officers, and arrested the pair. This Court held that the arrests and the subsequent searches and seizures were invalid as the arresting officers had no personal knowledge that the people in the house were committing a crime.

Here, however, petitioner admits that he failed to question the validity of his arrest before arraignment.[56] He did not move to quash the Information against him before entering his plea.[57] He was assisted by counsel when he entered his plea.[58] Likewise, he was able to present his evidence.[59] In *People v. Alunday*:[60]

> The Court has consistently ruled that any objection involving a warrant of arrest or the procedure for the acquisition by the court of jurisdiction over the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived. We have also ruled that an accused may be estopped from assailing the illegality of his arrest if he fails to move for the quashing of the information against him before his arraignment. And since the legality of an arrest affects only the jurisdiction of the court over the person of the accused, any defect in the arrest of the accused may be deemed cured when

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[55] 378 Phil. 1073 (1999) [Per *J*. Bellosillo, Second Division].

[56] *Rollo,* p. 18.

[57] *Id*. at 38.

[58] *Id*.

[59] *Id*. at 41-42.

[60] 586 Phil. 120 (2008) [Per *J*. Chico-Nazario, Third Division].

he voluntarily submits to the jurisdiction of the trial court. We have also held in a number of cases that the illegal arrest of an accused is not a sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error; such arrest does not negate the validity of the conviction of the accused.

Herein, accused-appellant went into arraignment and entered a plea of not guilty. Thereafter, he actively participated in his trial. He raised the additional issue of irregularity of his arrest only during his appeal to this Court. He is, therefore, deemed to have waived such alleged defect by submitting himself to the jurisdiction of the court by his counsel-assisted plea during his arraignment; by his actively participating in the trial and by not raising the objection before his arraignment.

It is much too late in the day to complain about the warrantless arrest after a valid information has been filed, the accused arraigned, trial commenced and completed, and a judgment of conviction rendered against him.

Accused-appellant was not even denied due process by virtue of his alleged illegal arrest, because of his voluntary submission to the jurisdiction of the trial court, as manifested by the voluntary and counsel-assisted plea he entered during arraignment and by his active participation in the trial thereafter.[61]

In *Bolasa,* the accused were charged with possession of illegal drugs. This Court not only contended with the validity of the warrantless arrest, but also examined the validity of the subsequent search of the accused and the seizure of items in

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[61] *Id*. at 133-134 citing *People v. Tidula,* 354 Phil. 609, 624 (1998) [Per *J*. Panganiban, First Division]; *People v. Montilla,* 349 Phil. 640, 661 (1998) [Per *J*. Regalado, *En Banc*]; *People v. Cabiles,*348 Phil. 220 (1998) [Per *J*. Melo, Third Division]; *People v. Mahusay,* 346 Phil. 762, 769 (1997) [Per *J*. Romero, Third Division]; *People v. Rivera,* 315 Phil. 454, 465 (1995) [Per *J*. Vitug, Third Division]; *People v. Lopez, Jr.,* 315 Phil. 59, 71-72 (1995) [Per *J*. Kapunan, First Division]; *People v. Hernandez,* 347 Phil. 56, 74-75 (1997) [Per *J*. Puno, Second Division]; *People v. Nazareno,* 329 Phil. 16, 22 (1996) [Per *J*. Mendoza, Second Division]; *People v. Emoy,* 395 Phil. 371, 384 (2000) [Per *J*. Pardo, First Division]; and *People v. Navarro,* 357 Phil. 1010, 1032-1033 (1998) [Per *J*. Panganiban, First Division].

their possession. As with certain constitutional rights,[62] the right to question the validity of a warrantless arrest can be waived. This waiver, however, does not carry with it a waiver of the inadmissibility of the evidence seized during the illegal arrest.[63]

Petitioner does not deny that his drug test yielded positive for illegal drugs. What he questions is the alleged illegality of his arrest.

Petitioner, however, has already waived the right to question the validity of his arrest. No items were seized from him during his arrest as he was not charged with possession or sale of illegal drugs. Thus the trial court and the Court of Appeals did not err in finding him guilty beyond reasonable doubt in violation of Article II, Section 15 of Republic Act No. 9165.

WHEREFORE, the Petition is **DENIED.** The April 29, 2013 Decision and December 10, 2013 Resolution of the Court of Appeals in CA-G.R. CEB-CR No. 01564 are **AFFIRMED.**

SO ORDERED.

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

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[62] See *Cagang v. Sandiganbayan,* G.R. Nos. 206438, 206458, and 210141-42, July 31, 2018, < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/july2018/206438.pdf> [Per *J.* Leonen, *En Banc*].

[63] See *People v. Lapitaje,* 445 Phil. 729 (2003) [Per *J.* Austria-Martinez, *En Banc*].

[*] 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.

SECOND DIVISION

[G.R. No. 214262. February 13, 2019]

LOCAL GOVERNMENT UNIT OF SAN MATEO, ISABELA, represented by CRISPINA R. AGCAOILI, Municipal Mayor, ARMISTACIO VILORIA, BEATRIZ RAMOS, JOSEFINA CABANILLA, HONORATO CALANTES, LORNA BUSTO, FLORDELIZA DELOS TRINOS, ROMEO REGINALDO, GUDIE REGINALDO, FRANCISCO RICAFORT, FELICIANO AGUSTIN, REGIDOR DIZON, ISABELO BRILLANTES, OLIVER MALAPIT, FERNANDO QUIPSE, FLOR VISAYA CADELIÑA, RUEDA MARQUEZ, MERCEDES CADIZ, PROCESO CADIZ, ANTONIO MANZANILLO, VIDAL CADIZ, WILSON VISAYA, NOIMI *VDA. DE* CADIZ, GERARDO CABANTUNGAN, LORENZO GANNABAN, ANTONIO GANNABAN, JOSE SALVADOR, VIRGINIA SALVADOR, CONSTANTE BURGOS, LORETO JUAN, LORENZO SIA, ENCARNACION FLORENDO, PAULINA TABALNO, BENITO FLORENDO, ROGELIO FLORENDO, ROMULO FLORENDO, JESSIE CLEMENTE, PEDRO CIRINEO, CRESENCIO BARBASA, BARTOLOME DURAN, PRIMITIVO SIA, PLACIDO CUNANAN, REYNALDO CUNANAN, FLAVIANO CUNANAN, ROGELIO CUNANAN, ANDRES VIERNES, GERARDO CAYMO, BENJAMIN SANTOS, ISMAEL ESCOBIA, VICTORIA *VDA. DE* ESCOBIDO, ABRAHAM FLORES, MARIA *VDA. DE* BARBERO, ROMULO ALCOREZA, VICTORINO LUGA, JR., FRANCISCO COMA, FABIAN TAGANAS, ROSALINA TAGANAS, SANTIAGO MANUEL, EDGARDO VISPERAS, CARLITO JUAN, ARMANDO YAP, MARITES FERRER, MARIANO FERRER, PERLITO YABUT, DAMIAN FERRER, NECITAS MARCELINO, BONIFACIO GUILLERMO, AURELIO CASTILLO, DANILO GONZALES, EPIFANIO

SORIANO, LIWLIWA EPISTOLA, JOEL EPISTOLA, MAYA FERRER, SANAITA OLA, ROMEO BAUTISTA, ANTONIO VICTORIA, CARLOS SINAGUB, REYDANTE RODRIGUEZ, SILVIO DEL ROSARIO, FERNANDO COMA, FLORDELIZA SALVADOR, NENITA A. ABAD, JERTHEY PASCUA, TERESITA MATEO, TERESITA ARELLANO, JAKIE RUIZ, LEONORA PALACIO, FELICITAS DELOS TRINOS, WINNIE DELOS TRINOS, PRISILLA MARIANO, LUCILA ALCOREZA, BRUGILDA BAYSA, MELENCIO DOMINGO, MARTIN CALIGAN, JESUS G. BERMUDEZ, LEO R. DELOS TRINOS, CONSTANTE BURGOS, CONSORCIA L. BURGOS, LAUREANA L. UMIPIG, PEPITO PUCUT, EVARISTO SORIANO, LOLITO RAMOS, JUANITO TUNGPALAN, JONATHAN BARANGAN, PATROCINIO ALCOREZA, LINDON BAGAYAN, RAUL FERRER, VIRGILIO FRANCISCO, ERNESTO PADUA, TERESITA PINTO, MELANIO PASCUA, RAYMUNDO PRIETO, FLORENTINO GALASINAO, CRISPULO DATU, ANGELITA PASCUA, GREG JUANGA, LOLITA REYES, EDUARDO VELASCO ABAD, SAN MATEO DWELLERS, ROMMEL JUANGA, EDGAR GARCIA, JAIME CALIGAN, SR., RUDY TIMBREZA, DIONICIO FERRER, INOCENCIO MANUEL, JESUS PALOMO, FE MENDOZA, OFELIA GAVANES, LITO LAURESTA, EMELITA TAGUIMCOM, ROBERT YUSON, ELPIDIO MACALANDA, ROGELIO RIVERA, ANDRES ANTOLIN, ERNESTO ADION, ICHAEL ADION, JUANITO IDOS, ROSALIA SINAGUB, ROMY YUSON, WILSON YUSON, DELIA GARO, MANUEL CASTRO, SR., AURELIO TUMAMAO, LOLITO RAMONES, BERNARD REGANIT, CATALINO ABAD, MARTIN CALIGAN, RELY ROY, PESING MARIANO, BRIGIDA BAYSON, ALICE CORTEZ, GIL TENEFRANCIA, EVELYN GARCIA, JESS MARTINES, FEMIA JUANGA, MAGDALENA BENONILLA, GERRY V. ROY, JUANITO

TUNGPALAN, JR., GEORGE BARBOZA, LITO SANTIAGO, JAIME ROY, CESARIO MALLARI, ROY, LOLITA TOLENTINO, MARVI ROY, BENJAMIN RETOTAR, JOSEPHINE MANEJA, PETRONILA SINOTO, ESTELITA PUCUT, LUISITO FERNANDEZ, MANUEL ENCARNACION, JULIE RUIZ, GAUDENCIO SOLOMON, MARITES YANOS, JEFFERSON SANIDAD, JAIME GAUIRAN, ELMER YUZON, RODRIGO CASTILLO, SR., FLORENCIO BLANCHE, NELSON YUSON, MARY ANN RUMBAOA, TIOFILO SARABIA, AMADO GAMINO, REMEDIOS ROQUE, CARLITO VILORIA, RODOLFO SAMBRANO, EMILIO DE LEON, TERESITA SUMAWAY, WILLY BAQUIL, MERILOU BAQUIL, MARIA MARTIN, EDITHA SINAGUB, LORETO SOLOMON, ALBERTO LADERAS, LEONORA OLA, *petitioners, vs.* **ESTEFANIA MIGUEL *VDA. DE* GUERRERO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; EXISTS WHERE AN ACT IS PERFORMED WITH A CAPRICIOUS OR WHIMSICAL EXERCISE OF JUDGMENT EQUIVALENT TO LACK OF JURISDICTION; ABSENT IN CASE AT BAR.— The grant of a Rule 65 petition for *certiorari* requires grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion exists where an act is performed with a capricious or whimsical exercise of judgment equivalent to lack of jurisdiction. The abuse of discretion must be so patent and so gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility. Mere errors of law are not correctible *via* petition for *certiorari.* The CA did not err in holding that no such grave abuse of discretion is extant in the instant case; no error of law, more so grave abuse of discretion, was committed by the

DENR in deciding not to stay the execution of its final and executory Orders dated October 26, 2006 and April 24, 2008. It is not disputed by any party that the aforesaid Orders of the DENR, the execution of which are sought to be enjoined by the petitioners, have already attained **finality,** with the petitioners failing to timely appeal the same. Hence, the DENR did not commit any whimsical or capricious act in holding in its Letter dated February 10, 2009 that its previous Orders are "already final and executory there being no appeal or motion for reconsideration that was filed by the aggrieved party as per Certification dated July 3, 2008 issued by the DENR Records Management & Documentation Division. Precisely the complete records of the case were already forwarded to the Regional Office for proper implementation and execution."

2. ID.; ID.; ID.; THE SUPREME COURT'S JURISDICTION IS LIMITED TO REVIEWING AND REVISING ERRORS OF LAW; CASE AT BAR.— The Court notes that the *Certiorari* Petition did not invoke at all as grounds for grave abuse of discretion the purported erroneous factual findings supposedly made by the DENR in its Orders dated October 26, 2006 and April 24, 2008. Accordingly, the assailed Decision and Resolution of the CA delved solely on the Letter dated February 10, 2009 and not the Orders dated October 26, 2006 and April 24, 2008, as the latter Orders were beyond the scope of the petitioners' *Certiorari* Petition. To be sure, the Court's jurisdiction in a petition for review is limited to reviewing or revising errors of law allegedly committed by the appellate court. Hence, any issue beyond the scope of the CA' s assailed Decision and Resolution, such as the issues raised by the petitioners in the instant Petition concerning the DENR's other Orders, are not reviewable by the Court. Further, it is elementary that the Court is not a trier of facts. Its jurisdiction is limited to reviewing and revising errors of law, with the findings of fact being generally conclusive and not reviewable by the Court. Hence, to dwell and rule on the various factual issues raised by the petitioners in the instant Petition, as the petitioners would want the Court to do, would be a clear violation of this basic principle.

3. ID.; EVIDENCE; CREDIBILITY; FACTUAL FINDINGS OF ADMINISTRATIVE BODIES CHARGED WITH THEIR SPECIFIC FIELD OF EXPERTISE ARE AFFORDED

GREAT WEIGHT BY THE COURT AND SHOULD NOT BE DISTURBED ABSENT A SUBSTANTIAL SHOWING THAT THEY WERE MADE FROM AN ERRONEOUS ESTIMATION OF THE EVIDENCE PRESENTED; CASE AT BAR.— The factual findings of administrative bodies charged with their specific field of expertise, such as the DENR, are afforded great weight by the courts, and in the absence of substantial showing that such findings were made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed. In the instant case, the records show that the factual findings of the DENR in its final and executory Orders dated October 26, 2006 and April 24, 2008, the execution of which were not allowed to be stayed by the DENR in the assailed Letter dated February 10, 2009, were reached after a protracted, comprehensive and exhaustive investigative procedure conducted by the DENR. The Court does not see any cogent reason to reverse the DENR's factual findings. And to reiterate once again, the factual findings contained in the DENR's Orders that are being assailed by the petitioners in the instant Petition have already attained finality, there being no previous appeal or motion for reconsideration filed by the petitioners to assail such findings. Therefore, the factual issues raised by the petitioners in the instant case are not cognizable by the Court.

APPEARANCES OF COUNSEL

Cesar M. Dumlao for respondent.

D E C I S I O N

CAGUIOA, *J.:*

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court filed by petitioners Local Government Unit of San Mateo, Isabela (petitioner Municipality of San Mateo) and several residents of Barangays

[1] *Rollo,* pp. 14-36.

3 and 4, San Mateo, Isabela (collectively, the petitioners) against respondent Estefania Miguel *vda.* De Guerrero (Estefania).

The instant Petition assails the Decision[2] dated November 15, 2013 (assailed Decision) and Resolution[3] dated August 14, 2014 (assailed Resolution) promulgated by the Court of Appeals[4] (CA) in CA-G.R. SP No. 108108, which denied the petitioners' Petition for *Certiorari*[5] (*Certiorari* Petition) that sought the annulment of the Department of Environment and Natural Resources' (DENR) Letter[6] dated February 10, 2009.

The Facts and Antecedent Proceedings

As culled from the assailed Decision, as well as the records of the case, the essential facts and antecedent proceedings of the instant case are as follows:

> In 1924, [respondent Estefania] filed an undated homestead application, numbered 151736 ("HA No. 151736"), over a parcel of land, subsequently denominated as Lot No. 7035 of Cad. 211, located in the *(sic)* San Mateo, Isabela.
>
> On 28 November 1946, Andres Guerrero ("Andres"), common-law husband of [respondent] Estefania, relinquished his rights over a one-hectare portion of Lot No. 7035 in favor of [petitioner Municipality of San Mateo].
>
> On 26 April 1948, allegedly under threat and intimidation by the municipal officials of San Mateo, the Guerreros executed a waiver over the remaining portions of Lot No. 7035 in favor of Angel Madrid [(Madrid)].
>
> In 1948, Lot No. 7035 was subdivided by the Bureau of Lands into Lots 7035-A to 7035-F, under Plan Bsd-10188. The lots were distributed in this manner:

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[2] *Id*. at 38-56. Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Rosmari D. Carandang (now a Member of this Court) and Leoncia Real-Dimagiba, concurring.

[3] *Id*. at 58.

[4] Fifth Division and Former Fifth Division, respectively.

[5] *Rollo,* pp. 59-89.

[6] *Id*. at 90.

• In 1950, a homestead patent covering Lot No. 7035-A was issued to [Madrid]. A certificate of title to said land was subsequently issued to him in 1955.

• Lot Nos. 7035-B to 7035-D were set aside as municipal market site, town plaza, and municipal building site in favor of the Municipality of San Mateo, pursuant to Proclamation No. 90 dated 13 September 1948.

• Lot Nos. 7035-E and 7035-F were made available for and ceded through homestead and/or sales patents, with a portion of Lot [N]o. 7035-F titled under the name of Vidal Cadiz [(Cadiz)] on 22 December 1950.

On 12 January 1953, [respondent] Estefania filed a protest ("protest") against any and all applications in conflict with her homestead application.

In the meantime, [respondent] Estefania filed on 5 May 1967 an application for registration of title before the Regional Trial Court of Cauayan, Isabela ("cadastral court"), which application was docketed as LRC Case No. N-259. This application was opposed by [petitioner] Municipality of San Mateo and the Director of Lands, among others. In the same court and proceeding, it appears that [respondent] Estefania filed a manifestation recognizing the ownership of [petitioner] Municipality of San Mateo over Lots 7035-B to 7035-D. On 9 June 1994, the cadastral court rendered a Decision dismissing [respondent] Estefania's application for registration of title over Lot 7035.

Years passed without any official action taken on [respondent] Estefania's homestead application or her protest.

It was only in 2000, through an undated letter-protest filed by Romeo T. Guerrero [(Romeo)] as attorney-in-fact of his grandmother [respondent] Estefania, that there was movement in the case. [Romeo] reiterated [respondent] Estefania's plea for the approval of her homestead application and protest against the fraudulent issuance of patents in conflict with HA No. 151736. The DENR Secretary issued DENR Special Order No. 2000-1187 creating a Special Team ("Galano Team") to investigate the claim of fraud.

On 19 November 2002, the DENR Secretary promulgated Special Order No. 2002-994 creating another Special Team ("Recalde Team") to investigate alleged anomalous issuance of patents by the DENR

personnel of Region II, this time covering several lots, though Lot 7035 was still included.

Meanwhile, in a Memorandum dated 23 December 2002, the GSD [(Geodetic Surveys Division)] informed the Recalde Team that "Bsd-10188 was found to be a survey plan of a lot located in Taguig, Rizal and is designated as a cemetery, as per inventory records of the [GSD]."

Believing that the legitimacy of [respondent] Estefania's claim would depend not only on the existence of her homestead application but more importantly, on the existence of an approved final proof which could at least confer a vested right in her favor subject to the defense to be put up by the titleholders, the Recalde Team submitted its Investigation Report on 19 May 2003, with the following comments/recommendations, to wit:

> The land whose title dates back more than fifty (50) years are no longer in the name of the original titleholder. A great bulk of the lots involved has passed to innocent purchasers for value. These purchasers were transferees of the heirs of the homesteader *[e.g.]* Madrid and of Teodoro dela Cruz. They relied on the certificates of title of their vendors. To question the validity of its issuance after more than fifty (50) years ago would prejudice the rights of innocent purchasers, cause the citizens to lose confidence in the integrity of the Torrens certificates of title, disturb property right, and subvert public peace. This could be peculiarly unfair in that on its face it is directed against the alleged violators of the law but in reality it is the innocent persons who stand to fell (sic) the impact of the action. And when it is considered that it is not really the homesteader or the original titleholder who will bear the brunt of punishment but the innocent transferees the injustice would become seriously disturbing.
>
> The facts and fundamental legal and equitable consideration preclude impugnation of the titles which have gone through several buyers and transferees in good faith and for valuable consideration during a period of more than fifty (50) years. It will undermine the principle of indefeasibility of titles which is a basic underpinning of the Torrens System of land registration and which was precisely instituted to quiet title to land.

The DENR Secretary instructed the Regional Executive Director ("Regional Executive Director") of DENR-Region II to resolve the

issue involving Estefania's claim over Lot 7035 in a Memorandum dated 22 August 2003. Thus, on 22 September 2003, the Regional Executive Director promulgated Special Order No. 328 creating another team ("Pablo Team") to investigate [respondent] Estefania's claim.

On 6 January 2004, the Pablo Team submitted its Investigation Report, finding that there was no official rejection of HA No. 151736. It did not give credence to the notation "Rejected August 1931" handwritten on the upper left portion of the homestead application for the following reasons:

> 1. Resolution No. 84, dated October 1, 1946 of the Municipality of San Mateo resolving to obtain a Deed of Donation from lot owners where the Municipal Government Site and Public Market would be transferred;
>
> 2. Affidavit, dated November 28, 1946 of Andres Guerrero, husband of [respondent Estefania], forfeiting rights over a 1-hectare portion of Lot 7035 under H.A. 151736;
>
> 3. The records show that after the alleged 1931 rejection of H.A. 151736, there were still several investigations conducted by the Land District Office No. 4 of Ilagan, Isabela involving Lot 7035 pursuant to the directives of the Director of Lands;
>
> 4. Preliminary Investigation Report, dated November 30, 1946 stating that: the lot applied for by [respondent Estefania] is not claimed by anybody; applicant has been occupying and cultivating the land since 1930; the husband of the applicant is a qualified entry man; and the application of [respondent Estefania] was recommended that it be given due course.

The Pablo Team maintained that, based on the Certification of the Bureau of Lands (Central Office) that Plan Bsd-10188 does not correspond to any tract of land in Isabela but is located in Taguig, Rizal, any subdivision of Lot 7035 using Plan Bsd-10188 is fraudulent, spurious and irregular. Contrary to the recommendation of the Recalde Team, the Pablo Team believed that the certificates of title covering Lots 7035-A, 7035-E and 7035-F are not indefeasible because the original owners obtained them through fraud and misrepresentation. It thus submitted the following recommendations:

> Considering that there are two (2) conflicting reports on the instant case rendered by the two (2) teams headed by officials belonging to a superior Office — Director Estanislao Z. Galano

being from the Office of the Secretary and Atty. Alberto R. Recalde being the OIC, Assistant Director, LMB, it is strongly recommended that the herein treated case be referred back to the DENR Central Office thru the Director, Lands Management Bureau for final decision taking into account our findings that the application of [respondent Estefania] was never rejected and that the issuance of title over Lot 7035 was tainted with fraud.

Further, the following courses of action are recommended[,] to wit:

A. To set aside and/or declare Bsd-10188 non-existent in so far as the subdivision of Lot 70335 *(sic),* CAD 211 is concerned;

B. To initiate the proper proceedings for the cancellation of titles issued to certain individuals covering portions of Lot 7035 on the basis of adopting Bsd-10188 which is non-existent;

C. To relocate the metes and bounds of Lot 7035 in accordance with Bsd-6434 which was the first subdivision plan of Lot 7035 and was approved on October 11, 1938.

On 11 February 2004, the Regional Executive Director submitted its Memorandum for the DENR Secretary, concurring with the recommendation of the Regional Investigating Committee (the Pablo Team).

On 12 May 2005, [respondent Estefania] and the Heirs of [Andres], represented by Maria Teresa Guerrero and [Romeo], filed before the DENR Secretary an Urgent Omnibus Petition and Executive Summary re: the Miguel-Guerrero Case[7] praying that the recommendation by the Regional Investigating Committee be affirmed and issue orders accordingly.

The DENR Secretary dismissed the petition in its Order[8] dated 25 October 2005, finding that on two separate occasions, [respondent] Estefania and Andres executed documents waiving their rights to the land subject of their homestead application. The DENR Secretary

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[7] *Id*. at 91-100.

[8] *Id*. at 103-111.

reasoned that even if the execution of said waivers was allegedly vitiated by force, threat and intimidation, the Guerreros failed to have the purportedly voidable waivers annulled. The DENR Secretary concluded that, in the light of the waivers, the fact that [respondent] Estefania's homestead application was not rejected no longer has bearing.

The DENR Secretary also reasoned that, since the records show that the land covered by Plan Bsd-10188 had long been divided, with patents issued and registered under the Torrens system, the rights to these parcels of land had long been vested. Absent any showing that the subsequent transfers had been tainted by fraud, these rights must be protected.

The Guerreros moved for reconsideration, which was granted by the DENR Secretary in its Order[9] dated 26 October 2006, the dispositive portion of which reads:

> WHEREFORE, above premises considered, judgment is hereby rendered as follows:
>
> 1.The Order, dated October 25, 2005 of this Office is hereby REVERSED.
>
> 2. The Homestead Application No. 151736 of [respondent Estefania] is hereby AMENDED to cover only Lot Nos. 7035-A, 7035-E and 7035-F, using the technical descriptions of said lots with that of Plans Ap-2590, Bsd-6434 as reference, and subsequently, the said Homestead Application be given FURTHER DUE COURSE. Accordingly, all present pending public land applications covering the said lots are hereby REJECTED.
>
> 3. Plan Bsd-10188 is hereby declared as nonexistent insofar as the subdivision of Lot 7035, Cad 211 is concerned and Plan Bsd-6434 is hereby RECOGNIZED being the original Subdivision Plan for San Mateo Cadastre, Province of Isabela;
>
> 4. Lot Nos. 7035-B, 7035-C and 7035-D, having been reserved for public purposes of the Municipality of San Mateo under Proclamation 90, Series of 1948, are hereby segregated from the coverage of this case. Accordingly, the Municipality of San Mateo, Province of Isabela shall initiate appropriate legal actions

[9] *Id*. at 114-138.

to correct whatever defects that are found in its titles on the aforementioned lots;

5. The Regional Executive Director, DENR Region II, Tuguegarao, Cagayan, is hereby directed to immediately initiate cancellation and reversion proceedings against the Original Certificate of Titles issued over Lots 7035-A, 7035-E and 7035-F, Plan Bsd-10188, or portions thereof, for not only utilizing a fictitious and spurious subdivision plan but for having been acquired through fraud and misrepresentation.

SO ORDERED.

In reversing the 25 October 2005 Order, the DENR Secretary found that there was fraudulent issuances of homestead patents to [Madrid] and [Cadiz], and accordingly ordered the Regional Executive Director to initiate cancellation and reversion proceedings. It also found that [respondent] Estefania had prefe[re]ntial right and interest over the lot.

[Petitioner] Municipality of San Mateo moved for the reconsideration of the above Order, while [respondent] Estefania manifested that [petitioner] Municipality of San Mateo is not entitled to Lot Nos. 7035-B, 7035-C and 7035-D except the one-hectare portion donated by [Andres]. Edgardo L. Dela Cruz and 40 other persons moved to intervene with attached comment in intervention.

The DENR Secretary dismissed all motions in its Order[10] dated 24 April 2008, x x x [.]

x x x x x x x x x

The above Order became final and executory on 30 July 2008. [11]

[More than four (4) months after the finality of the DENR's Order, on 3 December 2008, [petitioner] Municipality of San Mateo filed a Motion to Stay Execution. [12] It also filed a Supplemental Motion to Stay Execution[13] on 5 January 2009. It subsequently filed a Motion for Ocular Inspection[14] on 16 January 2009.

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[10] *Id*. at 141-149.

[11] Emphasis and underscoring supplied.

[12] *Rollo*, pp. 168-176.

[13] *Id*. at 177-179.

[14] *Id*. at 180.

The DENR, through Undersecretary Sering, informed [petitioner] Municipality of San Mateo by [a L]etter[15] dated 10 February 2009 that it has no more jurisdiction to act on the motions, xx x[.]

x x x x x x x x x

Petitioners filed a Motion for Clarification[16] of the 10 February 2009 [L]etter, which was received by the DENR on 16 February 2009. Petitioners aver that this Motion for Clarification had not been resolved by the DENR.

Aggrieved, [the petitioners filed a] Petition for Certiorari [17] [before the CA], raising this issue:

> THE DENR COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DID NOT RESOLVE THE MOTION TO STAY EXECUTION, SUPPLEMENTAL MOTION TO STAY EXECUTION AND MOTION FOR OCULAR INSPECTION.

Petitioners argue that by disowning jurisdiction to resolve the three motions, the DENR gravely and seriously abused its discretion amounting to lack or excess of jurisdiction. They insist that the three motions were properly filed, and the motion to stay execution was directed to a final and executory judgment. They submit that the DENR['s L]etter dated 10 February 2009 did not resolve the pending motions and instead evaded resolution by simply stating that it has no jurisdiction. Verily, they pray that [the CA] nullify and set aside the [L]etter dated 10 February 2009 and grant their motion to stay execution.[18]

The Ruling of the CA

In its assailed Decision, the CA dismissed petitioner Municipality of San Mateo's *Certiorari* Petition. The dispositive portion of the assailed Decision of the CA reads:

WHEREFORE, premises considered, the instant petition is **DISMISSED** for lack of merit.

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[15] *Id*. at 90.

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

[17] *Id*. at 59-89.

[18] *Id*. at 42-52.

SO ORDERED.[19]

As explained in the assailed Decision, the CA found in the main that the DENR did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it did not resolve the Motion to Stay Execution in favor of the petitioners in its Letter dated February 10, 2009.

Petitioner Municipality of San Mateo filed a Motion for Reconsideration[20] dated December 18, 2013 and a Supplemental Motion for Reconsideration[21] dated February 11, 2014, which was subsequently denied by the CA in its assailed Resolution.[22]

Hence, the instant Petition.

In a Resolution[23] dated December 8, 2014, the Court required Estefania to submit her Comment to the instant Petition. However, the records reveal that Estefania failed to submit any Comment as required by the Court.

Issue

The central question to be resolved by the Court is whether the CA was correct in ruling that the DENR did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the Letter dated February 10, 2009 denying the Motion to Stay Execution filed by petitioner Municipality of San Mateo.

The Court's Ruling

The instant Petition is bereft of merit. Hence, the Court resolves to DENY the instant Petition.

The grant of a Rule 65 petition for *certiorari* requires grave abuse of discretion amounting to lack or excess of jurisdiction.

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[19] *Id*. at 56.

[20] *Id*. at 277-285.

[21] *Id*. at 286-296.

[22] *Id*. at 58.

[23] *Id*. at 319-320.

Grave abuse of discretion exists where an act is performed with a capricious or whimsical exercise of judgment equivalent to lack of jurisdiction. The abuse of discretion must be so patent and so gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility. Mere errors of law are not correctible *via* petition for *certiorari.*[24]

The CA did not err in holding that no such grave abuse of discretion is extant in the instant case; no error of law, more so grave abuse of discretion, was committed by the DENR in deciding not to stay the execution of its final and executory Orders dated October 26, 2006 and April 24, 2008.

It is not disputed by any party that the aforesaid Orders of the DENR, the execution of which are sought to be enjoined by the petitioners, have already attained **finality,** with the petitioners failing to timely appeal the same.

Hence, the DENR did not commit any whimsical or capricious act in holding in its Letter dated February 10, 2009 that its previous Orders are "already final and executory there being no appeal or motion for reconsideration that was filed by the aggrieved party as per Certification dated July 3, 2008 issued by the DENR Records Management & Documentation Division. Precisely the complete records of the case were already forwarded to the Regional Office for proper implementation and execution."[25]

According to jurisprudence, "[p]ublic policy and sound practice demand that, at the risk of occasional errors, judgments of courts should become final and executory at some definite time fixed by law; and **this rule holds true over decisions rendered by administrative bodies exercising quasi-judicial**

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[24] *Casent Realty & Development Corp. v. Premiere Development Bank,* 516 Phil. 219, 226-227 (2006).

[25] *Rollo,* p. 90.

powers."[26] Thus, as correctly held by the CA in its assailed Decision, as the Orders of the DENR had already become final and executory, there is no valid reason for the DENR to stay their execution.

Moreover, a perusal of the grounds and issues raised in the instant Petition reveal that, in alleging grave abuse of discretion on the part of the DENR in issuing its Letter dated February 10, 2009, the petitioners are raising factual matters, asking the Court to rule on the factual circumstances surrounding the DENR's final and executory Orders dated October 26, 2006 and April 24, 2008.

The Court cannot take cognizance of such issues.

Foremost, it must be stressed that the subject matter of the instant case, as made manifest in the petitioners' *Certiorari* Petition,[27] is the purported grave abuse of discretion committed by the DENR in issuing its **Letter dated February 10, 2009, and not its Orders dated October 26, 2006 and April 24, 2008.**

Also, as seen in the allegations contained in the *Certiorari* Petition, the denial of which by the CA is the subject matter of the instant Petition, grave abuse of discretion was imputed against the DENR in issuing its Letter dated February 10, 2009, not because it previously ruled erroneously on the facts and the law surrounding its previous Orders, but due to the alleged evasion of duty supposedly committed by the DENR in holding that it no longer had any jurisdiction to stay the execution of its final and executor Orders.

The Court notes that the *Certiorari* Petition did not invoke at all as grounds for grave abuse of discretion the purported erroneous factual findings supposedly made by the DENR in its Orders dated October 26, 2006 and April 24, 2008. Accordingly, the assailed Decision and Resolution of the CA

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[26] *Brett v. Intermediate Appellate Court,* 269 Phil. 722, 733 (1990). Emphasis supplied.

[27] See *rollo,* p. 61.

delved solely on the Letter dated February 10, 2009 and not the Orders dated October 26, 2006 and April 24, 2008, as the latter Orders were beyond the scope of the petitioners' *Certiorari* Petition.

To be sure, the Court's jurisdiction in a petition for review is limited to reviewing or revising errors of law allegedly committed by the appellate court.[28] Hence, any issue beyond the scope of the CA' s assailed Decision and Resolution, such as the issues raised by the petitioners in the instant Petition concerning the DENR's other Orders, are not reviewable by the Court.

Further, it is elementary that the Court is not a trier of facts. Its jurisdiction is limited to reviewing and revising errors of law, with the findings of fact being generally conclusive and not reviewable by the Court.[29] Hence, to dwell and rule on the various factual issues raised by the petitioners in the instant Petition, as the petitioners would want the Court to do, would be a clear violation of this basic principle.

The factual findings of administrative bodies charged with their specific field of expertise, such as the DENR, are afforded great weight by the courts, and in the absence of substantial showing that such findings were made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed.[30]

In the instant case, the records show that the factual findings of the DENR in its final and executory Orders dated October 26, 2006 and April 24, 2008, the execution of which were not allowed to be stayed by the DENR in the assailed Letter dated February 10, 2009, were reached after a protracted, comprehensive and exhaustive investigative procedure conducted by the DENR. The Court does not see any cogent reason to

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[28] *Omandam v. Court of Appeals,* 402 Phil. 511, 518 (2001).

[29] *Donato, Jr. v. Civil Service Commission,* 543 Phil. 731, 742-743 (2007).

[30] See *Jose v. Novida,* 738 Phil. 99, 120 (2014).

reverse the DENR's factual findings. And to reiterate once again, the factual findings contained in the DENR' s Orders that are being assailed by the petitioners in the instant Petition have already attained finality, there being no previous appeal or motion for reconsideration filed by the petitioners to assail such findings. Therefore, the factual issues raised by the petitioners in the instant case are not cognizable by the Court.

In any case, the issues raised by the petitioners in the instant Petition, which, in essence, delve into why the certificates of title covering the subject lots should not be cancelled, should be raised instead in the proper cancellation and reversion proceedings, and not in the instant case. To stress, the DENR's Orders dated October 26, 2006 and April 24, 2008 merely ordered the Regional Executive Director, DENR-Region II, Tuguegarao, Cagayan to initiate cancellation and reversion proceedings. Hence, the issues raised by the petitioners in the instant Petition should be properly ventilated in such cancellation and reversion proceedings, and not in the instant case where the sole issue is centered on the propriety of the DENR' s Letter dated February 10, 2009 denying petitioner Municipality of San Mateo's Motion to Stay Execution.

All told, the Court finds that there was no reversible error committed by the CA in issuing its assailed Decision and Resolution that warrants the Court's exercise of its discretionary appellate jurisdiction.

WHEREFORE, premises considered, the instant Petition is hereby **DENIED.** The Decision dated November 15, 2013 and Resolution dated August 14, 2014 promulgated by the Court of Appeals in CA-G.R. SP No. 108108 are **AFFIRMED.**

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe, Reyes, J. Jr.,* and *Hernando,*[*] *JJ.*, concur.

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[*] Designated Additional Member per Special Order No. 2630 dated Deecember 18, 2018.

SECOND DIVISION

[G.R. No. 218731. February 13, 2019]

NICOMEDES AUGUSTO, GOMERCINDO JIMENEZ, MARCELINO PAQUIBOT, and ROBERTA SILAWAN, *petitioners, vs.* **ANTONIO CARLOTA DY and MARIO DY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PRE-TRIAL; APPEARANCE OF PARTIES AND THEIR COUNSEL IS REQUIRED; EFFECT OF FAILURE TO APPEAR AT A PRE-TRIAL; WHEN FAILURE TO APPEAR MAY BE EXCUSED; CASE AT BAR.— We cannot fault the RTC for allowing the respondents to present their evidence *ex parte* in view of the failure of petitioners to attend the pre-trial conference as it merely adhere to the Rules. x x x [Rule 18, Section 5 of the 1997 Rules of Court] explicitly provides that both parties (and their counsel) are mandated to appear at a pre-trial except for: (1) a valid excuse; and (2) appearance of a representative on behalf of a party who is fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and documents. In the present case, petitioners failed to attend the pre-trial conference. They did not even give any excuse for their non-appearance. It was only during the appeal in the RTC that petitioners explained that their non-attendance was due to the fact that their counsel lost his calendar. At any rate, this still cannot be considered a justifiable excuse for their non-attendance as it bespeaks of carelessness and indifference to the importance of pre-trial to explore possible ways to avoid a protracted trial. Thus, the RTC properly issued an Order allowing respondents to present evidence *ex parte*. As it now stands, the RTC could only render judgment based on the evidence offered by respondents during the trial. The petitioners lost their right to present their evidence during the trial and, *a fortiori*, on appeal due to their inattentiveness and disregard of the mandatory attendance in the pre-trial conference.

2. CIVIL LAW; CIVIL CODE; CONJUGAL PARTNERSHIP OF GAINS; GOVERNS THE PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE WHOSE MARRIAGE WAS SOLEMNIZED PRIOR TO THE EFFECTIVITY OF THE FAMILY CODE AND NO MARRIAGE SETTLEMENT WAS PROVIDED; EQUAL SHARING BETWEEN THE SURVIVING SPOUSE AND THE LEGITIMATE CHILD TO THE DECEASED'S ESTATE, PROPER IN CASE AT BAR.— It must be stated at the outset that the disputed property, with an area of 5,327 sq. m. and covered by OCT No. RO-3456, is conjugal in nature being registered under the names of spouses Sixto and Marcosa. Since Sixto and Marcosa were married prior to the effectivity of the Family Code and no marriage settlement was provided, their property relations were governed by the conjugal partnership of gains as provided under Article 119 of the Civil Code. Thus, upon the death of Marcosa on October 5, 1931, the conjugal nature of the property was dissolved and the interest of Sixto (surviving spouse), with respect to his undivided one-half share on the conjugal property goes to and becomes vested on him. In other words, by virtue of such dissolution, one-half of the property should pertain to Sixto as his share from the conjugal estate plus another one-fourth representing his share as surviving spouse of Marcosa. Roberta, as the sole legitimate child of the spouses is entitled to the other one-fourth of the property. This equal sharing between the surviving spouse and the legitimate child to the deceased's estate is in accordance with Article 996 of the Civil Code as clarified by this Court in the case of *In Re: Santillon v. Miranda.*

3. ID.; ID.; CO-OWNERSHIP; EACH CO-OWNER OF PROPERTY WHICH IS HELD *PRO-INDIVISO* EXERCISES HIS RIGHTS OVER THE WHOLE PROPERTY AND MAY USE AND ENJOY THE SAME WITH NO OTHER LIMITATION THAN THAT HE SHALL NOT INJURE THE INTERESTS OF HIS CO-OWNERS; CASE AT BAR.— After the death of Marcosa (one of the registered owners), the subject property became co-owned by Sixto and Roberta. In other words, before actual partition, co-ownership between Sixto and Roberta was formed over the subject property. Thus, each co-owner of property which is held *pro indiviso* exercises his rights over the whole property

and may use and enjoy the same with no other limitation than that he shall not injure the interests of his co-owners. Thus: This Court has ruled in many cases that even if a co-owner sells the whole property as his, the sale will affect only his own share but not those of the other co-owners who did not consent to the sale. This is because the sale or other disposition of a co-owner affects only his undivided share and the transferee gets only what would correspond to his grantor in the partition of the thing owned in common.

4. ID.; ID.; SALES; A PERSON CAN SELL ONLY WHAT HE OWNS OR IS AUTHORIZED TO SELL, AND THE BUYER CAN, AS A CONSEQUENCE, ACQUIRE NO MORE THAN WHAT THE SELLER CAN LEGALLY TRANSFER; CASE AT BAR.—The problem now is the sale transactions made by Mariano to three persons. Since Mariano had validly purchased from Severino 1,331.75 sq. m. of the property, it follows then that the sale transaction between him (Mariano) and Nicolas on June 18, 1968 is valid up to the said aliquot share, which is 1,331.75 sq. m. This is the only area which he could validly dispose. Equally valid is the subsequent sale made by Nicolas to Gomercindo up to the said undivided portion which is 1,331.75 sq. m. Since there was nothing more from the undivided portion that was left to Mariano, his subsequent sale to Marcelino on July 14, 1987 and to Rodulfo in May 1990 of the portion of the property cannot be given effect. As discussed, the property was already sold by Mariano in favor of Nicolas in 1968, who, in turn, sold the same to Gomercindo on February 16, 1978. Jurisprudence teaches us that "a person can sell only what he owns or is authorized to sell; the buyer can as a consequence, acquire no more than what the seller can legally transfer." No one can give what he does not have — *nemo dat quod non habet*. The sale of the property to Marcelino and Rodulfo is null and void insofar as it prejudiced Gomercindo's rights and interest as co-owner of the subject property. Clearly, as there was no valid sale that was consummated between Mariano and Rodulfo, the latter has nothing to transmit to respondent Mario. Thus, the sale between Rodulfo and Mario is likewise void and cannot be recognized.

5. ID.; ID.; ID.; PURCHASER IN GOOD FAITH; ONE WHO BUYS PROPERTY WITHOUT NOTICE THAT SOME OTHER PERSON HAS A RIGHT TO OR INTEREST IN

SUCH PROPERTY AND PAYS ITS FAIR PRICE BEFORE HE OR SHE HAS NOTICE OF THE ADVERSE CLAIMS AND INTEREST OF ANOTHER PERSON IN THE SAME PROPERTY; CASE AT BAR.— Marcelino, Rodulfo and Mario cannot claim that they are purchasers in good faith. A purchaser in good faith is one who buys property without notice that some other person has a right to or interest in such property and pays its fair price before he or she has notice of the adverse claims and interest of another person in the same property. In this case, they purchased the property knowing that it was registered in the name of another person, not of the seller. This fact alone should put them in inquiry as to the status of the property. It is axiomatic that one who buys from a person who is not a registered owner is not a purchaser in good faith. Hence, they cannot invoke good faith on their part. They are not, however, without remedy. They can still go after their respective transferors (sellers) and their heirs.

6. ID.; LAND TITLES AND DEEDS; TORRENS SYSTEM; REGISTERING A PIECE OF LAND UNDER THE TORRENS SYSTEM DOES NOT CREATE OR VEST TITLE BECAUSE REGISTRATION IS NOT A MODE OF ACQUIRING OWNERSHIP; ISSUANCE OF CERTIFICATE OF TITLE IN FAVOR OF A PARTICULAR PERSON DOES NOT FORECLOSE THE POSSIBILITY THAT THE REAL PROPERTY MAY BE CO-OWNED WITH PERSONS NOT NAMED IN THE CERTIFICATE OR THAT IT MAY BE HELD IN TRUST FOR ANOTHER PERSON BY THE REGISTERED OWNER; CASE AT BAR.— [I]t bears to stress that even if some of the existing titles that were already issued (*i.e.*, in the name of spouses Nicomedes and Gaudencia, and Gomercindo) were consistent with the pronouncement of this Court in this Decision, it is imperative that all of the said titles must still be cancelled as they were based on erroneous partition of the rightful owners' undivided share on the land. Registering a piece of land under the Torrens System does not create or vest title, because registration is not a mode of acquiring ownership. To be sure, a certificate of title is merely an evidence of ownership or title over the particular property described therein. Its issuance in favor of a particular person does not foreclose the possibility that the real property may be co-owned with persons not named

in the certificate, or that it may be held in trust for another person by the registered owner. In view of the Court's ruling, the subject land is co-owned not only by Nicomedes and Gaudencia, and Gomercindo and Estela, but also by Roberta, and Antonio and Jean. Hence, a new partition is in order.

APPEARANCES OF COUNSEL

Igot and Hiyas Law Office for petitioners.
Ivan Herrero for respondents.

D E C I S I O N

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

The Facts

Subject of the present controversy is a parcel of land designated as Lot No. 4277, consisting of 5,327[1] square meters (sq m), located in Lapu-Lapu City, originally registered in the name of spouses Sixto Silawan and Marcosa Igoy (Sixto and Marcosa) under Original Certificate of Title (OCT) No. RO-3456.[2] The spouses Sixto and Marcosa had only one child, petitioner Roberta Silawan (Roberta).

On July 16, 2002, respondent Antonio Carlota Dy (Antonio) filed a Complaint for Declaration of Nullity of Deeds, Titles, Tax Declaration with Partition and/or Recovery of Shares, Attorney's Fees, Damages and Costs against petitioners Nicomedes Augusto (Nicomedes), Gomercindo Jimenez (Gomercindo), Marcelino Paquibot (Marcelino), Roberta (collectively, the petitioners) and the Register of Deeds of Lapu-Lapu City. He claimed to own a portion of Lot No. 4277 pursuant to a purchase he made on November 25, 1989. Allegedly, his acquisition of the said property can be traced as follows:

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[1] Sometimes referred as 5,237 sq m in some parts of the *rollo*.

[2] *Rollo*, pp. 62-67.

1) On March 31, 1965, Sixto sold Lot No. 4277 with an area of 5,327 sq m to Severino Silawan (Severino), married to Cornelia Gungob;

2) On May 7, 1965, Severino sold one-half portion of the property, or 2,663.5 sq m to Isnani Maut (Isnani) and Lily Silawan (Lily);

3) On September 16, 1966, Isnani and Lily sold the 2,663.5 sq m which they acquired to Filomeno Augusto (Filomeno) and Lourdes Igot (Lourdes);

4) On November 25, 1989, Filomeno and Lourdes sold the 2,363-sq m portion of which they acquired to Antonio and disposed the remaining 300 sq m to Nicomedes Augusto (Nicomedes) and Gaudencia Augusto (Gaudencia).

While initiating the paperworks to secure a certificate of title in his name sometime in January 2002, he discovered that Transfer Certificates of Title (TCTs)[3] over Lot No. 4277 were already issued in petitioners' names, as follows:

Lot No.	TCT No.	Registered Owner	Area
Lot No. 4277-A	48562	Sps. Nicomedes Augusto & Gaudencia Augusto	300 sq m
Lot No. 4277-B	48563	Gomercindo Jimenez married to Estela Jimenez	1,331 sq m
Lot No. 4277-C	48564	Marcelino Paquibot married to Elena Paquibot	1,332.50 sq m
Lot No. 4277-D	48565	Roberta Silawan, widow	2,363.50 sq m

The aforesaid TCTs replaced OCT No. RO-3456. It appears that the issuance of the said TCTs were effected by virtue of a document entitled "Extrajudicial Settlement By Sole and Only Heir with Confirmation of the Deed of Absolute Sale[s]"[4]

[3] *Id*. at 8.

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

executed by Sixto and Marcosa's only heir, Roberta, on June 27, 2001 and which was annotated in OCT No. RO-3456 on December 14, 2001.[5] In the said document, Roberta declared that she was the only heir of Sixto and Marcosa who died on December 29, 1968 and October 5, 1931, respectively. She adjudicated unto herself the ownership of the entire Lot No. 4277 and confirmed the disposition and subsequent transfers made by her father, Sixto, to quote:

> Deed of Sale per [D]oc. [N]o. 130 in favor of Severino Silawan m/t Cornelia Gungob; Deed of Sale [D]oc. [N]o. 343 in favor of Mariano Silawan and Consorcia Ocomen; Deed of Sale [D]oc. [N]o. 46 in favor of Marcelino Paquibot[,] married; Deed of Sale [D]oc. [N]o. 113 in favor of Sps. Nicolas Aying and Maura Augusto; Deed of Sale [D]oc. [No.] 486 in favor of Gomercindo [Jimenez], married; Deed of Sale [D]oc. [N]o. 288 in favor of Nicomedes Augusto and Gaudencia Augusto, of the parcel of land herein described subject to all terms and conditions, set forth [in] the document on file acknowledged before Notary Public Alfredo S. Pancho as per [D]oc. [N]o. 141; [P]age [N]o. 28; [B]ook [N]o. 1; [S]eries of 2001.[6]

The mentioned Deeds of Absolute Sale were all annotated in the OCT No. RO-3456 on December 14, 2001.[7]

Also annotated in the same OCT were: (a) the aforesaid Deeds of Sale as mentioned by Roberta in her Extrajudicial Settlement; (b) the Letter-Request[8] made by petitioners requesting the Register of Deeds to cancel OCT No. RO-3456 and in lieu thereof, to issue certificates of title in their names for the portions which they acquired; and (c) the Deed of Partition[9] executed by petitioners. Incidentally, the Register of Deeds favorably acted on petitioners' letter-request and issued TCTs in their respective names on December 14, 2001.

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[5] *Id.* at 63.

[6] *Id.*

[7] *Id.* at 64-66.

[8] *Supra* note 5.

[9] *Rollo*, p. 66.

Antonio asserted that Roberta's act of executing the Extrajudicial Settlement, which apparently paved the way for the succeeding sales to the other petitioners, had no basis because when she executed said document, the property was already previously sold by the spouses Sixto and Marcosa to Antonio's predecessor-in-interest. He, thus, prayed for the nullity of the said Deed of Extrajudicial Settlement together with the resulting titles arising from such documents and for repartition of the property in order for the area corresponding to what he bought be delivered to him.

On September 6, 2002, Roberta filed her Answer. The other petitioners also filed their Answer.

Meanwhile, respondent Mario Dy (Mario) filed a Motion for Intervention. Mario also claimed ownership of the portion of Lot No. 4277 which allegedly can be traced as follows:

1) On March 31, 1965, Sixto sold the entire 5,327 sq m of Lot No. 4277 to Severino;

2) On September 15, 1965, Severino sold half of the portion (2,663.5 sq m) of Lot No. 4277 to Mariano Silawan (Mariano) married to Consorcia Ocomen (Consorcia);

3) On May 12, 1990, Mariano and Consorcia sold a portion of their acquisition specifically 1,332.5 sq m to Rodulfo Augusto (Rodulfo) and Gloria Pinote (Gloria);

4) On May 23, 1994, Rodulfo and Gloria sold such portion to him (Mario).

At the pre-trial, petitioners and their counsel did not appear. Thus, the RTC declared them in default and allowed Antonio to present evidence *ex parte*. Petitioners' counsel moved to lift the order of default citing as reason that his 2009 calendar was lost. Unfortunately, the motion was denied in an Order dated September 14, 2010.

The Decision of the RTC

On November 9, 2012, the RTC rendered a Decision[10] granting the complaint and ordered the new partition of the property.

[10] *Id*. at 32-33.

The RTC declared as null and void the following: (a) the Extrajudicial Settlement by Sole and Only Heir with confirmation of the Deed of Absolute Sale executed by Roberta; (b) the Affidavit of Loss executed by Marcelino; (c) the Letter-Request of the petitioners to cancel OCT No. RO-3456; (d) the Deed of Partition executed by the petitioners; and (e) the Deed of Sale between spouses Mariano and Consorcia in favor of Marcelino. Consequently, the RTC also ordered the cancellation of all the TCTs issued in favor of the petitioners.

In so ruling, the RTC reasoned out that the sale in favor of Nicomedes cannot be traced back to the original owner (Sixto). From among the series of transfers of the property from Sixto all the way to Nicomedes, the RTC found an irregularity in the sale in favor of Marcelino. At that point, it was alleged that the tracing cloth of the approved subdivision plan for Lot No. 4277 was lost. But the fact is, said tracing cloth was all along in possession of Antonio. The RTC then doubted how Marcelino was able to obtain the 1,332-sq m lot in 1997 when the same had been sold to a certain Rodulfo and Gloria. Marcelino cannot, therefore, be considered as buyer in good faith and for value because of his prior knowledge of the existence of a previous purchaser who had the tracing cloth.

Thus, the RTC ordered a new partition of Lot No. 4277 as follows:

1. To spouses Antonio and Jean Dy — 2,363.50 sq m, more or less;
2. To spouses Mario and Luisa Dy — 1,332.50 sq m, more or less;
3. To spouses Gomercindo and Estela Jimenez — 1,331 sq m, more or less; and
4. To spouses Nicomedes Augusto and Gaudencia Augusto — 300 sq m, more or less.

Dissatisfied with the RTC Decision, the petitioners filed an appeal with the CA.

Ruling of the CA

In the assailed Decision[11] dated November 20, 2014, the Court of Appeals-Cebu City (CA) in CA-G.R. CEB C.V. No. 04753 affirmed *in toto* the findings of the RTC.

The CA, in sustaining the RTC, held that Roberta cannot unilaterally rescind the sale executed by her father. The sale was made way back in 1965 and it can be safely presumed that proprietary rights had already been acquired by the buyers in interim. Moreover, she failed to bring the proper action in court to defend her claims. At the time the subject property was offered to the buyers, there was yet no annotation that would place them on guard that what was being sold to them was infirmed. The CA opined that since the Extrajudicial Settlement executed by Roberta cannot be given probative value, all accompanying documents executed pursuant to it should also be nullified since these were executed fraudulently.

Petitioners filed a Motion for Reconsideration.[12] The motion was denied by the CA in a Resolution[13] dated June 2, 2015. Undaunted, petitioners filed the instant petition with this Court arguing as follows:

1. THE DECISION OF THE [CA] FAILED TO SPECIFICALLY ADDRESS THE ISSUE REGARDING THE PROPRIETY OF THE TRIAL COURT'S REFUSAL TO LIFT ORDER OF DEFAULT AGAINST PETITIONERS;

2. THE DECISION OF THE [CA] FAILED TO CONSIDER THAT ALTHOUGH PETITIONERS WERE UNABLE TO PRESENT EVIDENCE DUE TO THE ORDER OF DEFAULT AGAINST THEM, RESPONDENTS' VERY OWN EVIDENCE, SPECIFICALLY EXHIBIT "B" (OCT.) NO. 3456, SHOWED THAT PETITIONERS'

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[11] Penned by then Court of Appeals Associate Justice Ramon Paul L. Hernando (now a Member of the Court), with Associate Justices Ma. Luisa C. Quijano-Padilla and Marie Christine Azcarraga-Jacob; *rollo,* pp. 28-39.

[12] *Id*. at 44-53.

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

TRANSACTIONS WERE MADE EARLIER THAN THAT OF THE RESPONDENTS AND WERE ALSO DULY REGISTERED AND ANNOTATED ON THE SAID OCT;

3. THE DECISION OF THE [CA] FAILED TO CONSIDER THAT PETITIONERS WERE THE FIRST REGISTRANTS OF THE PROPERTY SOLD TWICE BY SIXTO SILAWAN;

4. THE DECISION OF THE [CA] FAILED TO CONSIDER THAT PETITIONERS WERE BUYERS IN GOOD FAITH AND THAT THE TRIAL COURT CANNOT JUST SUMMARILY DECLARE PETITIONERS' TRANSACTIONS AS FRAUDULENT; [and]

5. THE DECISION OF THE [CA] FAILED TO ADDRESS THE ISSUE ON THE IMPROPRIETY OF GRANTING RELIEF TO RESPONDENT MARIO DY AND FURTHER ERRED IN SUSTAINING THE PARTITION ORDERED BY THE TRIAL COURT.[14]

From the above arguments, two main issues need to be threshed out: (1) the propriety of declaring petitioners in default and allowing respondents to present evidence *ex parte*; and (2) the propriety of cancelling petitioners' TCTs.

I.

We cannot fault the RTC for allowing the respondents to present their evidence *ex parte* in view of the failure of petitioners to attend the pre-trial conference as it merely adhered to the Rules. Thus, Rule 18, Section 5 of the 1997 Rules of Court:

> Section 5. *Effect of failure to appear*. — The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.

The aforesaid rule explicitly provides that both parties (and their counsel) are mandated to appear at a pre-trial except for:

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

(1) a valid excuse; and (2) appearance of a representative on behalf of a party who is fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and documents.[15]

In the present case, petitioners failed to attend the pre-trial conference. They did not even give any excuse for their non-appearance. It was only during the appeal in the RTC that petitioners explained that their non-attendance was due to the fact that their counsel lost his calendar. At any rate, this still cannot be considered a justifiable excuse for their non-attendance as it bespeaks of carelessness and indifference to the importance of pre-trial to explore possible ways to avoid a protracted trial. Thus, the RTC properly issued an Order allowing respondents to present evidence *ex parte*.

As it now stands, the RTC could only render judgment based on the evidence offered by respondents during the trial.[16] The petitioners lost their right to present their evidence during the trial and, *a fortiori*, on appeal due to their inattentiveness and disregard of the mandatory attendance in the pre-trial conference.[17] As held by this Court:

> The pre-trial cannot be taken for granted. It is not a mere technicality in court proceedings for it serves a vital objective: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation. More significantly, the pre-trial has been institutionalized as the answer to the clarion call for the speedy disposition of cases. Hailed as the most important procedural innovation in Anglo-Saxon justice in the nineteenth century, it paved the way for a less cluttered trial and resolution of the case. It is, thus, mandatory for the trial court to conduct pre-trial in civil cases in order to realize the paramount objective of simplifying, abbreviating and expediting trial.[18]

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[15] *Benavidez v. Salvador*, 723 Phil. 332, 350-351 (2013).

[16] *Spouses Salvador v. Spouses Rabaja*, 753 Phil. 175, 192 (2015).

[17] *Aguilar v. Lightbringers Credit Cooperative*, 750 Phil. 195, 210 (2015).

[18] *Id*. at 209.

II.

In reviewing the merits of the case, this Court, just like the RTC and the CA, shall only consider evidence which were presented *ex parte* by respondents during the trial, consisting of OCT No. RO-3456 and the annotations thereof, and the Deeds of Absolute Sale, as appreciated by the CA. These pieces of evidence, if juxtaposed together would show the transfers and dispositions of the subject property from the original registered owner to the subsequent purchasers. To illustrate:

In March 1965, Sixto Silawan sold the entire property involving 5,327 sq m to Severino.[19] The Annotation in OCT No. RO-3456 indicated, however, that the sale transaction was March 30, 1959.[20]

Severino, in turn, sold his purchased property to two persons. Such that on May 7, 1964, Severino sold half of the undivided portion (2,663.5 sq m) to Isnani and Lily.[21] On September 15, 1965, Severino sold the remaining half (2,663.5 sq m) to Mariano (the document of sale had a notation that half of the property was sold to another person).[22]

From Isnani and Lily, the property which they purchased (involving 2,663.5 sq m) was thereafter sold to spouses Filomeno and Lourdes on September 16, 1966.[23] On November 25, 1989, spouses Filomeno and Lourdes sold the 2,363.5 sq m of their purchased property to Antonio.[24] The remaining portion of 300 sq m was, in turn, sold to Nicomedes and Gaudencia in October 1989.[25]

Mariano, on the other hand, disposed of his purchased property (2,663.5 sq m) as follows:

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[19] CA Decision, *rollo*, p. 36.

[20] See *rollo*, p. 64.

[21] *Supra* note 19.

[22] *Id.*

[23] *Id*. at 37.

[24] *Id*.

[25] *Id*. at 37 and 66.

a) On July 18, 1968, Mariano sold 1,332.5 sq m of his purchased property to Nicolas[26] and Maura, who, in turn, sold their purchased property to Gomercindo,[27] who had been issued a TCT as of 2001. It bears to stress that we cannot just disregard OCT No. RO-3456 and the annotations thereof. Apart from the fact that this title was mentioned by respondent Antonio in his Complaint *a quo* as Exhibit "B,"[28] the said document is likewise the mother title from which the disputed properties came from. Hence, thl same must be considered.

b) On July 14, 1987, Mariano sold 1,332.5 sq m of the property to Marcelino[29] who had been issued a TCT as of 2001.

c) In May 1990, Mariano sold again the 1,332.5 sq m to Rodulfo[30] who, in turn, sold his purchased property to respondent Mario and Luisa Dy (Luisa), on May 23, 1994.[31]

However, a closer perusal of the foregoing transfers and dispositions would show an invalid conveyance made by the original owner, Sixto, as to his undivided share of the subject property.

The subject property is originally conjugal in nature

It must be stated at the outset that the disputed property, with an area of 5,327 sq m and covered by OCT No. RO-3456, is conjugal in nature being registered under the names of spouses Sixto and Marcosa. Since Sixto and Marcosa were married prior to the effectivity of the Family Code and no marriage settlement was provided, their property relations were governed by the conjugal partnership of gains as provided under Article 119 of

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[26] See Annotation in OCT No. RO-3456, *rollo*, p. 65.

[27] *Id.*

[28] *Id*. at 47.

[29] *Id*. at 66.

[30] *Supra* note 23.

[31] *Id.*

the Civil Code.[32] Thus, upon the death of Marcosa on October 5, 1931, the conjugal nature of the property was dissolved and the interest of Sixto (surviving spouse), with respect to his undivided one-half share on the conjugal property goes to and becomes vested on him.[33]

In other words, by virtue of such dissolution, one-half of the property should pertain to Sixto as his share from the conjugal estate plus another one-fourth representing his share as surviving spouse of Marcosa.[34] Roberta, as the sole legitimate child of the spouses is entitled to the other one-fourth of the property.[35] This equal sharing between the surviving spouse and the legitimate child to the deceased's estate is in accordance with Article 996[36] of the Civil Code as clarified by this Court in the case of *In Re: Santillon v. Miranda*.[37]

Upon the death of Marcosa, co-ownership was formed between Sixto and Roberta over the subject property

After the death of Marcosa (one of the registered owners), the subject property became co-owned by Sixto and Roberta.[38] In other words, before actual partition, co-ownership between

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[32] Art. 119. The future spouses may in the marriage settlements agree upon absolute or relative community of property, or upon complete separation of property, or upon any other regime. In the absence of marriage settlements, or when the same are void, the system of relative community or conjugal partnership of gains as established in this Code, shall govern the property relations between husband and wife.

[33] *Taningco v. Register of Deeds of Laguna*, 115 Phil. 374, 376 (1962).

[34] *Olegario v. Court of Appeals*, 308 Phil. 98, 103-104 (1994).

[35] *Id*. at 104.

[36] Art. 996. If a widow or widower and legitimate children or descendants are left, the surviving spouse has in the succession the same share as that of each of the children.

[37] 121 Phil. 1351, 1355 (1965).

[38] Art. 1078 of the Civil Code provides, "Where there are two or more heirs, the whole estate of the decedent is, before its partition, owned in common by such heirs, subject to the payment of debts of the deceased."

Sixto and Roberta was formed over the subject property. Thus, each co-owner of property which is held *pro indiviso* exercises his rights over the whole property and may use and enjoy the same with no other limitation than that he shall not injure the interests of his co-owners.[39] Thus:

> This Court has ruled in many cases that even if a co-owner sells the whole property as his, the sale will affect only his own share but not those of the other co-owners who did not consent to the sale. This is because the sale or other disposition of a co-owner affects only his undivided share and the transferee gets only what would correspond to his grantor in the partition of the thing owned in common.[40]

Sale between Sixto and Severino is valid up to Sixto's rightful undivided share in the subject property

Hence, the sale transaction between Sixto and Severino could be legally recognized only with respect to the former's *pro indiviso* share in the co-ownership.[41] Clearly then, at the time of sale by Sixto in favor of Severino, the former could only dispose of his three-fourths undivided share of the entire property. The remaining one-fourth belonging to Roberta has yet to be partitioned. Hence, the sale executed by Sixto in favor of Severino in 1965 is valid up to three-fourths undivided portion of the property, which is 3,995.25 sq m and void as to the remaining one-fourth or 1,331.75 sq m, which pertains to Roberta's undivided share. This is consistent with the rule that one cannot sell what he does not own.[42]

Severino's sale of one-half of the subject property to Isnani and Lily is valid

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[39] *Alejandrino v. Court of Appeals*, 356 Phil. 851, 863 (1998).

[40] *Torres, Jr. v. Lapinid*, 748 Phil. 587, 597 (2014).

[41] *Heirs of the late Spouses Balite v. Lim*, 487 Phil. 281, 296 (2004).

[42] *Gacos v. Court of Appeals*, 287 Phil. 9, 22 (1992).

Consistent with the said principle, it is logical then that all the subsequent sales and conveyances made by Severino would only be valid up to the portion that he owns.

Since Severino purchased the three-fourths undivided share of Sixto to the property, then this is the extent of the area of the property (consisting of 3,995.25 sq m) which he could validly dispose and sell. Hence, the sale by Severino to Isnani and Lily on May 7, 1964 involving the 2,663.5 sq m is valid as the area sold wholly covers what Severino purchased from Sixto.

Severino's sale of another one-half of the subject property to Mariano is void

However, the subsequent sale by Severino to Mariano on September 15, 1965 can be given effect only to the extent of 1,331.75 sq m — the remaining undivided portion of Severino's interest in the property that was not sold to Isnani. Thus, as between Isnani and Mariano, the former who is first in time (as the first vendee) is preferred in right. *Prior tempore, potior jure*.[43] This is true since there was no allegation whatsoever of who between them first possessed and who first registered the sale in good faith.

All subsequent sales made by spouses Isnani and Lily are valid

At this point, we see no problem with the dispositions made by spouses Isnani and Lily. Being the co-owner of 2,663.5 sq m undivided portion of the subject land, their sale to Filomeno of the said portion of the property is valid. In turn, Filomeno's subsequent sale to Antonio, involving 2,363.5 sq m of the property on November 25, 1989 and the sale to Nicomedes involving 300 sq m of the property in October 1989 were all valid and can be recognized as the areas sold were covered by the area of the property which Filomeno owned.

Mariano's sale of the undivided portion of his purchased property is partly infirmed

[43] *Cuizon v. Remoto*, 509 Phil. 258, 267 (2005).

The problem now is the sale transactions made by Mariano to three persons. Since Mariano had validly purchased from Severino 1,331.75 sq m of the property, it follows then that the sale transaction between him (Mariano) and Nicolas on June 18, 1968 is valid up to the said aliquot share, which is 1,331.75 sq m. This is the only area which he could validly dispose. Equally valid is the subsequent sale made by Nicolas to Gomercindo up to the said undivided portion which is 1,331.75 sq m.

Since there was nothing more from the undivided portion that was left to Mariano, his subsequent sale to Marcelino on July 14, 1987 and to Rodulfo in May 1990 of the portion of the property cannot be given effect. As discussed, the property was already sold by Mariano in favor of Nicolas in 1968, who, in turn, sold the same to Gomercindo on February 16, 1978. Jurisprudence teaches us that "a person can sell only what he owns or is authorized to sell; the buyer can as a consequence, acquire no more than what the seller can legally transfer." No one can give what he does not have — *nemo dat quod non habet*.[44] The sale of the property to Marcelino and Rodulfo is null and void insofar as it prejudiced Gomercindo's rights and interest as co-owner of the subject property.

Clearly, as there was no valid sale that was consummated between Mariano and Rodulfo, the latter has nothing to transmit to respondent Mario. Thus, the sale between Rodulfo and Mario is likewise void and cannot be recognized.

Marcelino, Rodulfo and Mario cannot claim that they are purchasers in good faith. A purchaser in good faith is one who buys property without notice that some other person has a right to or interest in such property and pays its fair price before he or she has notice of the adverse claims and interest of another person in the same property.[45] In this case, they purchased the

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[44] *Nool v. Court of Appeals*, 342 Phil. 106, 118 (1997).

[45] *Heirs of Macalalad v. Rural Bank of Pola, Inc.*, G.R. No. 200899, June 20, 2018.

property knowing that it was registered in the name of another person, not of the seller. This fact alone should put them in inquiry as to the status of the property. It is axiomatic that one who buys from a person who is not a registered owner is not a purchaser in good faith.[46] Hence, they cannot invoke good faith on their part. They are not, however, without remedy. They can still go after their respective transferors (sellers) and their heirs.

Roberta is only entitled to one-fourth undivided portion of the property

It was equally erroneous for Roberta to adjudicate to herself the entire property and make selective confirmation of the Deeds of Absolute Sale executed by her father. As earlier discussed, Roberta is only entitled to one-fourth of the subject property, which is her undivided share in the estate of her mother (Marcosa) who had long passed away in the 1930s. Roberta can no longer lay claim on the three-fourths undivided share of her father (Sixto) to the subject property at the time of his death. As records show, during the lifetime of Sixto, the latter had already sold his undivided share in the subject property, hence, Roberta could no longer inherit it. Hence, the "Extrajudicial Settlement by Sole and Only Heir"[47] executed by Roberta is void insofar as she adjudicated unto herself the entire subject property, to the prejudice of those persons who have already acquired proprietary rights over their respective shares. Also the Confirmation of Deed of Absolute Sale which is also embodied in the said Extrajudicial Settlement cannot be given effect. Apart from the reasons as exhaustively discussed earlier, it is not necessary for Roberta to confirm said sales in order to validate them. Her father, being the rightful owner of his undivided share in the co-owned property had all the rights to dispose of the same (in his lifetime) without any need of subsequent ratification from his co-owners/heirs.

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[46] *Samonte v. Court of Appeals*, 413 Phil. 487, 498 (2001).

[47] See Annotation in OCT No. 3456, *rollo*, p. 63.

Finally, it bears to stress that even if some of the existing titles that were already issued (*i.e.*, in the name of spouses Nicomedes and Gaudencia, and Gomercindo) were consistent with the pronouncement of this Court in this Decision, it is imperative that all of the said titles must still be cancelled as they were based on erroneous partition of the rightful owners' undivided share on the land. Registering a piece of land under the Torrens System does not create or vest title, because registration is not a mode of acquiring ownership.[48] To be sure, a certificate of title is merely an evidence of ownership or title over the particular property described therein.[49] Its issuance in favor of a particular person does not foreclose the possibility that the real property may be co-owned with persons not named in the certificate, or that it may be held in trust for another person by the registered owner.[50] In view of the Court's ruling, the subject land is co-owned not only by Nicomedes and Gaudencia, and Gomercindo and Estela, but also by Roberta, and Antonio and Jean. Hence, a new partition is in order, to wit: (a) to Gomercindo, married to Estela, an area containing 1,331.75 sq m, more or less; (b) to spouses Antonio and Jean, an area containing 2,363.5 sq m, more or less; (c) to spouses Nicomedes and Gaudencia, an area containing 300 sq m, more or less; and (d) to Roberta, an area containing 1,331.75 sq m, more or less.

Considering the foregoing disquisitions, the instant petition is **PARTLY GRANTED**. Hence, the appealed Decision dated November 20, 2014 of the Court of Appeals-Cebu City in CA-G.R. CEB C.V. No. 04753 insofar as it affirmed the RTC, is **MODIFIED** as follows:

1. The Deed of Absolute Sale dated February 16, 1978 executed by Nicolas Aying, married to Maura Augusto in favor of Gomercindo Jimenez to the extent of 1,331.75 square meters of Lot No. 4277 is declared **VALID**;

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[48] *Dy v. Aldea*, G.R. No. 219500, August 9, 2017, 837 SCRA 10, 26.

[49] *Heirs of Clemente Ermac v. Heirs of Vicente Ermac*, 451 Phil. 368, 377 (2003).

[50] *Id.*

2. The Deed of Absolute Sale dated November 25, 1989 executed by Filomeno Augusto in favor of Antonio Carlota Dy involving 2,363.5 square meters of Lot No. 4277 is declared **VALID**;

3. The Deed of Absolute Sale dated October 10, 1989 executed by Filomeno Augusto in favor of Nicomedes Augusto involving 300 square meters of Lot No. 4277 is declared **VALID**;

4. The Deed of Absolute Sale dated July l4, 1987 executed by Mariano Silawan in favor of Marcelino Paquibot is declared **VOID**;

5. The Deed of Absolute Sale dated May 23, 1994 executed by Rodulfo Augusto in favor of Mario Dy is declared **VOID**; and

6. The Extrajudicial Settlement by Sole and Only Heir executed by Roberta Silawan insofar as the 1,331.75 square meters representing one-fourth of her undivided share in Lot No. 4277 is declared **VALID**. The Confirmation of Sale embodied in the said document is **STRUCK DOWN**.

Pursuant thereto, the subject property (Lot No. 4277) comprising an area of 5,327 square meters shall be partitioned to the following persons, in the following manner:

1. To Gomercindo Jimenez, married to Estela Jimenez, an area containing 1,331.75 square meters, more or less;

2. To spouses Antonio Carlota Dy and Jean Dy, an area containing 2,363.5 square meters, more or less;

3. To spouses Nicomedes Augusto and Gaudencia Augusto, an area containing 300 square meters, more or less; and

4. To Roberta Silawan, an area containing 1,331.75 square meters, more or less.

Consequently, the Register of Deeds of Lapu-Lapu City is hereby **ORDERED** to **CANCEL** all Transfer Certificates of

Title issued replacing OCT No. RO-3456, as well as their corresponding Tax Declarations, as follows: (a) TCT No. 48562 in the name of spouses Nicomedes Augusto and Gaudencia Augusto; (b) TCT No. 48563 in the name of Gomercindo Jimenez, married to Estela Jimenez; (c) TCT No. 48564 in the name of Marcelino Paquibot, married to Elena Paquibot; and (d) TCT No. 48565 in the name of Roberta Silawan, and **ISSUE** new ones in accordance with this Decision.

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Perlas-Bernabe, Jardeleza*,* and *Caguioa, JJ.*, concur.

THIRD DIVISION

[G.R. No. 221428. February 13, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RENATO GALUGA *y* WAD-AS,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT AS AFFIRMED BY THE COURT OF APPEALS GIVEN GREAT WEIGHT AND BINDING EFFECT.— We will not disturb the weight and credence accorded by both the RTC and the Court of Appeals with respect to AAA's testimony. When it comes to credibility, the assessment by the trial court deserves great weight, and even conclusive and binding effect,

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* Designated additional member per Special Order No. 2630-1 dated January 29, 2019 in lieu of Associate Justice Ramon Paul L. Hernando who participated in the deliberation in the Court of Appeals.

unless the same is tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. Since it had the full opportunity to observe directly the deportment and the manner of testifying of the witnesses before it, the trial court is in a better position than the appellate court to properly evaluate testimonial evidence. The rule finds an even more stringent application where the Court of Appeals sustained said findings, as in this case.

2. ID.; ID.; ID.; WITNESS' TESTIMONY IS ENTITLED TO FULL CREDENCE IN THE ABSENCE OF EVIDENCE THAT SHE WAS ACTUATED BY IMPROPER MOTIVE.— AAA could not have been compelled by a motive other than to bring to justice the despoiler of her virtue. There was no showing that she was moved by anger or any ill motive against accused-appellant or that she was unduly pressured or influenced by anyone to charge accused-appellant with the serious crime of rape. Where there is no evidence that the principal witness for the prosecution was actuated by improper motive, the presumption is that he/she was not so actuated and his/her testimony is entitled to full credence.

3. CRIMINAL LAW; REVISED PENAL CODE; RAPE; PENALTY AND CIVIL LIABILITY.— Since accused-appellant is guilty beyond reasonable doubt of the crime of rape, we affirm the imposition by the RTC and the Court of Appeals of the penalty of *reclusion perpetua* under Article 266-B of the Revised Penal Code. However, in line with recent jurisprudence, we increase the awards for civil indemnity, moral damages, and exemplary damages to PhP75,000.00 each. In addition, we impose interest at the rate of six percent (6%) *per annum* on all monetary awards from date of finality of this Decision until fully paid.

4. ID.; ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY (R.A. 9346) *VIS-À-VIS* INDETERMINATE SENTENCE LAW (ACT NO. 4103); AS ACCUSED-APPELLANT IS SENTENCED TO SUFFER THE PENALTY OF *RECLUSION PERPETUA*, HE IS NOT ELIGIBLE FOR PAROLE UNDER ACT NO. 4103.— Accused-appellant, as he is sentenced herein to suffer the penalty of *reclusion perpetua,* cannot apply for parole because Section 3 of R.A. No. 9346 explicitly states that "[p]ersons convicted

of offenses punished with *reclusion perpetua,* or whose sentences will be reduced to *reclusion perpetua,* by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended."

5. ID.; PRESIDENTIAL DECREE NO. 968 AS AMENDED BY R.A. NO. 10707 (PROBATION LAW); ACCUSED-APPELLANT IS ALSO DISQUALIFIED TO APPLY FOR PROBATION.— Accused-appellant is likewise disqualified from applying for probation as Section 9(a) of the Probation Law is clear that the benefits of probation shall not extend to those sentenced to serve a maximum term of imprisonment of more than six (6) years. Irrefragably, the sentence of *reclusion perpetua* imposed on accused-appellant in this case exceeds six (6) years of imprisonment.

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

HERNANDO, *J.*:

Challenged in this appeal is the Decision dated June 9, 2015[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 05592, which affirmed with modification the Decision[2] dated November 15, 2011 of the Regional Trial Court (RTC), Branch 19 of Cauayan City, Isabela, in Criminal Case No. 19-1972, finding accused-appellant Renato Galuga *y* Wad-as guilty beyond reasonable doubt of the crime of rape committed against AAA.[3]

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[1] *Rollo,* pp. 2-19; penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Celia C. Librea-Leagogo and Melchor Q.C. Sadang, concurring.

[2] CA *rollo,* pp. 71-77; penned by Executive Judge Raul V. Babaran.

[3] Under Republic Act No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act), Republic Act No. 9262

Accused-appellant was charged before the RTC with violating Article 335 of the Revised Penal Code, as amended by Republic Act (R.A.) No. 7659, and further amended by R.A. No. 8353, in relation with R.A. No. 7610, Article III, Section 5, paragraph b, in an Information[4] that reads:

> That on or about the 16th of April, 2002, in the municipality of x x x, province of Isabela, Philippines and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation and with lewd designs, did then and there, willfully, unlawfully and feloniously, lay with, and have carnal knowledge [of] one [AAA], a minor girl of 12 years of age, thereby subjecting her to exploitation and sexual abuse, against her will and consent.
>
> With the aggravating circumstance, that the victim [AAA], is a minor below 18 years of age, during the commission of the crime.

Upon arraignment, accused-appellant pleaded not guilty to the crime charged.[5] Thereafter, trial on the merits ensued.

Private complainant herself, AAA; AAA's mother, BBB; AAA's father, CCC; Mitchell Garlitos (Garlitos); and Joselito Borja (Borja), appeared as witnesses for the prosecution. Dr. Ramon Hilomen, who allegedly conducted the physical examination of AAA, failed to appear before the RTC despite several subpoenas sent to him.

The evidence for the prosecution presented the following version of events:

In the evening of April 16, 2002, after an altercation with her father CCC, 12-year-old AAA left home and went to the barangay hall of Barangay II, San Mateo, Isabela. After 10

(Anti-Violence Against Women and Their Children Act of 2004), its implementing rules, and A.M. No. 12-7-15-SC, the real name of the woman or child victim and those of the victim's immediate relatives, as well as other personal circumstances that would establish or compromise their identities, are withheld and replaced with fictitious initials to protect the victim's privacy.

[4] Records, pp. 1-2.

[5] *Id.* at 39.

minutes, AAA proceeded to the park, sat beside the fountain, and cried for about 30 minutes. Accused-appellant approached AAA and introduced himself as "Jun-jun." When AAA refused his invitation for them to go to the plaza, he then invited her to the market place but, again, the latter refused. Accused-appellant then forcibly pulled AAA towards the market place. AAA tried to free herself from accused-appellant's grasp but she was unable to escape. At that time, there were about 12 people nearby but AAA did not cry out for help because accused-appellant threatened to kill her.

Accused-appellant managed to pull AAA towards a parlor in the market place. The parlor was already closed and had no lights on. Accused-appellant removed his clothes, laid AAA on the ground, and started removing her shorts and shirt. AAA tried to resist but accused-appellant threatened to kill her with a knife that was protruding from his bag. After removing AAA's clothes, accused-appellant went on top of her and inserted his penis into her vagina. AAA tried to push accused-appellant away but was unsuccessful. AAA cried because she was overwhelmed by fear and she could not do anything to free herself from her assailant.

At the time of the incident, witness Borja was driving his tricycle, with a passenger on-board, witness Garlitos, when they saw accused-appellant pulling AAA towards the market place. They immediately reported the incident to the victim's parents and also accompanied AAA's father, CCC, to the place where they last saw AAA, which was in front of Joy's Canteen (J's Canteen). The trio saw AAA and accused-appellant sitting on a wooden bench outside Naty's Restaurant (N's Restaurant). They confronted accused-appellant and brought him to the police station. AAA was crying and her hair was rumpled; she also appeared to be in a state of confusion.

When AAA's mother, BBB, arrived at the police station, she asked AAA what happened but she did not respond. Only when a lady police officer arrived did AAA disclose that she was raped by accused-appellant.

On the other hand, the defense presented the accused-appellant himself, accused-appellant's live-in partner, Realyn Acosta (Acosta), and Teddy Santos (Santos) as witnesses.

According to the evidence for the defense, accused-appellant was on his way home from work on April 16, 2002 when he saw AAA crying beside a fountain at the public park. Accused-appellant asked AAA to come with him to N's Restaurant, which was just across the fountain. She agreed and went with him. She then asked him to buy bread because she was hungry. However, after a few minutes, AAA's father and his two companions arrived and suddenly boxed accused-appellant. Thereafter, accused-appellant was brought to the municipal police station. Acosta and Santos both testified that many people go to the park at night since there are several mini-stores and eateries in the area.

On November 15, 2011, the RTC rendered a Decision convicting accused-appellant for the crime of rape.

The RTC found that AAA testified in open court in a straightforward and unequivocal manner and positively identified accused-appellant as the one who raped her. AAA also willingly pursued the case for three years just to finish her testimony in court despite the lengthy delay in the proceedings caused by the defense. The trial court gave greater weight to AAA's testimony as no woman would be willing to undergo a public trial, along with the shame, humiliation, and dishonor of exposing her own degradation. The fact that the doctor who allegedly examined her failed to testify in court did not destroy the prosecution's case against accused-appellant.

Moreover, the RTC adjudged that accused-appellant's denial and his self-serving assertions could not overcome AAA's affirmative, categorical, and convincing testimony. Also, accused-appellant did not deny the fact that he was with AAA during the incident which made the testimonies of defense witnesses Acosta and Santos inconsequential.

The *fallo* of the RTC judgment reads:

WHEREFORE, judgment is hereby rendered finding the accused RENATO GALUGA guilty beyond reasonable doubt of the crime of RAPE and hereby sentences him to suffer the penalty of Reclusion Perpetua without eligibility for parole and to pay complainant AAA the amount of ₱75,000.00 as moral damages, ₱75,000.00 as civil indemnity and ₱25,000.00 as exemplary damages.[6]

Accused-appellant filed an appeal before the Court of Appeals.

In its assailed Decision, the Court of Appeals denied accused-appellant's appeal. According to the appellate court, AAA's straightforward testimony satisfactorily established the elements of rape: AAA testified that the accused-appellant had carnal knowledge of her by forcibly laying her down on the floor, inserting his penis into her vagina, and threatening to kill her if she made a sound, and that she tried to push accused-appellant away but did not succeed. AAA's positive testimony thus prevailed over accused-appellant's plain denial.

The Court of Appeals ultimately affirmed with modification the RTC Decision dated November 15, 2011 as follows:

ACCORDINGLY, the appeal is **DENIED.** The assailed Decision dated November 15, 2011 is **AFFIRMED WITH MODIFICATION.** The awards of moral damages and civil indemnity are **REDUCED** from ₱75,000.00 to ₱50,000.00, each. The award of exemplary damages is **INCREASED** from ₱25,000.00 to ₱30,000.00.[7]

Hence, the present appeal.[8]

Accused-appellant and plaintiff-appellee adopted their respective briefs before the Court of Appeals.[9] Accused-appellant reiterates the following assignment of errors on the part of the RTC, and subsequently also of the Court of Appeals:

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[6] CA *rollo,* p. 77.

[7] *Rollo,* p. 18.

[8] *Id.* at 20.

[9] *Id.* at 28-32; *id.* at 36-40.

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED ALTHOUGH HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES DESPITE THEIR PATENT INCONSISTENCIES.[10]

Accused-appellant claims that the RTC gravely erred in giving credence to AAA's testimony despite numerous inconsistencies and contradictions in her testimony. He points out that the complainant claimed that there were a number of people in the park who saw them together at the time of the incident. Even the prosecution witnesses, Borja and Garlitos, narrated that they merely saw accused-appellant with AAA at the park. He additionally highlights AAA's failure to immediately inform her parents that she was raped by accused-appellant.

We find no merit in accused-appellant's contentions; hence, his appeal must be denied, subject to modification as to the amount of damages as shall hereafter be discussed.

In resolving this case, we refer to the time-tested principles in deciding rape cases, to wit:

> In the review of rape cases, we continue to be guided by the following principles: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the nature of the crime of rape where only two persons are usually involved, the testimony of the complainant is scrutinized with extreme caution; and, (3) the evidence for the prosecution stands or falls on its own merits and cannot be allowed to draw strength from the weakness of the defense. Thus, in a prosecution for rape, the complainant's credibility becomes the single most important issue.[11] (Citation omitted.)

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[10] CA *rollo,* p. 56.

[11] *People v. Ramos,* 743 Phil. 344, 355-356 (2014).

Taking into consideration the aforementioned principles, we have carefully reviewed the records of this case and saw no compelling reason to reverse or modify the factual findings of the RTC, particularly since the Court of Appeals had affirmed the same with modification only as to the amount of damages awarded to AAA.

We will not disturb the weight and credence accorded by both the RTC and the Court of Appeals with respect to AAA's testimony. When it comes to credibility, the assessment by the trial court deserves great weight, and even conclusive and binding effect, unless the same is tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. Since it had the full opportunity to observe directly the deportment and the manner of testifying of the witnesses before it, the trial court is in a better position than the appellate court to properly evaluate testimonial evidence. The rule finds an even more stringent application where the Court of Appeals sustained said findings,[12] as in this case.

The records of this case clearly bear out that accused-appellant had carnal knowledge of AAA through the use of force, threat, and intimidation. AAA categorically narrated that accused-appellant had inserted his penis into her vagina against her will, thus:

PROSECUTION:

Q: Now, after meeting Junjun, did you go somewhere else?
A: He invited me x x x to go to plaza, sir.

Q: And did you accede with his invitation?
A: No, sir.

Q: And so when you turned down his invitation what if any [did] Junjun do?
A: He asked me if I want to go to the public market, sir.

Q: And what was your reply?
A: I did not accede, sir.

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[12] *People v. Regaspi,* 768 Phil. 593, 598 (2015).

Q: And when you again declined the offer of Junjun, what if any did Junjun do?
A: He [held] me and brought me to the public market, sir.

Q: By the way, if that Junjun is in court, will you please identify?
A: Yes, sir, he is the one. (Witness pointing to a man who previously entered the courtroom wearing a green choleko (sic) and when asked by the Court Interpreter he gave his name as Renato Galuga *y* [Wad]-as).

Q: You said a while ago [that] when you refused to go [to] the public market, the accused held your arms[.] [W]hat next did he do aside from holding your arms?
A: He pulled me and brought me to the public market, sir.

Q: And did you not resist when he pulled you?
A: I resisted, sir, but he [was] stronger than me.

Q: [Were] there other people around when the accused pulled you?
A: There were, sir.

Q: How many?
A: About twelve (12) persons, sir.

Q: And did you not shout, AAA?
A: I was then confused, sir.

x x x x x x x x x

A: I was threatened by the accused and if I will shout he will kill me, sir.

x x x x x x x x x

Q: Was the accused holding anything at that time?
A: There was, sir.

Q: What?
A: He was holding a bag and inside the bag there was a protruding knife, sir.

Q: Did he bring out the knife?
A: No, sir.

Q: And did the accused succeed in bringing you to the market from the fountain?
A: Yes, sir.

x x x x x x x x x

Q: While the accused was taking you to the public market, what if any did you do, AAA?
A: I was struggling and pulling away my hands from him, sir.

Q: And did you succeed?
A: No, sir.

x x x x x x x x x

Q: Upon reaching the public market, what if any [did] the accused do?
A: We stopped at the parlor place, sir.

Q: And was that parlor [open]?
A: No, sir.

Q: What did you do then?
A: He removed his clothes, sir.

x x x x x x x x x

Q: And when the accused was removing his clothes, what did you do?
A: I was trying to pull my hand from him but still he was removing my clothes, sir.

Q: [Were] there people around [at or] near the parlor x x x?
A: None, sir.

x x x x x x x x x

Q: And after the accused [removed] his clothes, what did you do next?
A: He placed his clothes [on] the ground floor and he layed (sic) me down, sir.

Q: When the accused was already naked and when he laid you down on the ground, what occurred [in] your mind, AAA?
A: I was crying, sir.

Q: And so was the accused able to lay you down on the ground?
A: Yes, sir.

Q: Did you not resist?
A: I tried to push him, sir, but he was still strong, sir.

Q: Did you not shout?
A: If I will shout he will kill me, sir.

Q: What was your attire at that time?
A: Shorts and shirt, sir.

Q: What happened to your attire when you were already laid to the ground by the accused AAA?
A: He removed, sir.

Q: Who removed?
A: Junjun, sir.

Q: And when you were already naked, what if any [did] the accused do?
A: He went on top of me, sir.

Q: And when he was already on top of you, what if any did [he] do?
A: He inserted his penis [into] my vagina, sir.

Q: And could you tell us your x x x exact position when the accused inserted his penis [into] your vagina?
A: I was lying down, sir.

Q: What about the accused?
A: He was on top of me, sir.

Q: And could you tell us how was he able to insert his penis [into] your vagina?
A: Yes, sir.

Q: While the accused was inserting his penis [into] your vagina, did you not resist?
A: I was crying and tried to push him, sir.

Q: And did you succeed?
A: No, sir.

Q: And was he able to insert his penis [into] your vagina?
A: Yes, sir.

Q: And was he still on top of you when the accused inserted his penis into your vagina?
A: Yes, sir.

x x x x x x x x x

Q: But did you push him all the time?
A: Yes, sir.

Q: So after the accused inserted his penis into your vagina, AAA, what if any did he tell you?
A: I was crying, sir, and he threatened me that if I will make any noise he will kill me.[13]

The RTC found, and the Court of Appeals affirmed, that AAA's testimony was straightforward, convincing, and consistent. Indeed, AAA described vividly how accused-appellant deflowered her and we cannot imagine how a child, as young in years as AAA, could directly and consistently recount in open court such an ordeal, unless she, in fact, had experienced the same. Between accused-appellant's plain denial and AAA's categorical testimony, we give weight to the latter, especially because accused-appellant admitted that he was actually found together with AAA in front of N's Restaurant by AAA's father and prosecution witnesses Borja and Garlitos.

AAA could not have been compelled by a motive other than to bring to justice the despoiler of her virtue. There was no showing that she was moved by anger or any ill motive against accused-appellant or that she was unduly pressured or influenced by anyone to charge accused-appellant with the serious crime of rape. Where there is no evidence that the principal witness for the prosecution was actuated by improper motive, the presumption is that he/she was not so actuated and his/her testimony is entitled to full credence.[14]

Relevant herein are our declarations in *People v. Magtibay*:[15]

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[13] TSN, May 4, 2004, pp. 6-14.

[14] *People v. Invencion,* 446 Phil. 775, 787 (2003) citing *People v. Ramos,* 371 Phil. 66, 78 (1999).

[15] 435 Phil. 353, 370-371 (2002).

The trial court correctly gave full faith and credence to Rachelle[']s testimony. There was no showing that Rachelle had an improper motive to testify against accused-appellant. The non-attendance of any ill motive on the part of Rachelle gains more weight in the light of Merlyn Magtibay[']s description of Rachelle as a nice person. Accused-appellant also had no reason why Rachelle would falsely accuse [him] of such serious crime as rape if she were not motivated to bring her perpetrator to justice. **Needless to say, it is settled jurisprudence that testimonies of child-victims are given full weight and credit, since when a woman, more so if she is a minor, says she has been raped, she says in effect all that is necessary to show that rape was committed.** Youth and immaturity are generally badges of truth and sincerity.

A girl of such age as the victim would not concoct a tale of defloration, allow the examination of her private parts, make public the offense, undergo the trouble and humiliation of a public trial, and endure the ordeal of narrating all its gory details, if she had not in fact been raped. If the accused-appellant had really nothing to do with the crime, it would be against the natural order of events and of human nature, and against the presumption of good faith, that a prosecution witness would falsely accuse him of such a serious crime as rape. (Emphasis ours, citations omitted.)

In an attempt to raise doubts as to the credibility of AAA's testimony, accused-appellant points out that (a) AAA did not shout for help during the time of the incident; and (b) she failed to immediately inform her parents that she was raped. We have always held that there is no standard behavior expected of rape victims. Depending on the circumstances and their personal and emotional situation, victims react differently. In this case, AAA explained that she was confused at the time of the incident and afraid that if she shouted for help, accused-appellant would kill her. Also, it is not rare for young girls to hide for some time the violation of their honor because of the threats on their lives.[16] As correctly ruled by the Court of Appeals:

[BBB], the victim's mother, saw her daughter at the police precinct in a state of confusion. AAA did not respond immediately after she

[16] *People v. Cacayan,* 579 Phil. 803, 815 (2008).

was asked what happened. AAA was crying. It was only when a policewoman arrived that AAA confessed to having been raped by appellant, in the presence of her mother. AAA's initial silence, her state of confusion, and crying are natural reactions of a rape victim who suffered pain, trauma and shame in appellant's brutal hands. Besides, AAA was only a 12-year-old child at the time she got raped. Be that as it may, different people react differently to the same situation, and not every victim of a crime can be expected to act reasonably and conformably to the expectations of everyone. In any event, this matter is post facto and totally irrelevant to the fact that appellant raped the victim.[17]

Since accused-appellant is guilty beyond reasonable doubt of the crime of rape, we affirm the imposition by the RTC and the Court of Appeals of the penalty of *reclusion perpetua* under Article 266-B of the Revised Penal Code. However, in line with recent jurisprudence,[18] we increase the awards for civil indemnity, moral damages, and exemplary damages to PhP75,000.00 each. In addition, we impose interest at the rate of six percent (6%) *per annum* on all monetary awards from date of finality of this Decision until fully paid.

As a final matter, a pending incident in this case is accused-appellant's Letter dated March 20, 2017, which was received by this Court on March 25, 2017, in which he pleads for the withdrawal of his appeal, asserting that he is eligible for parole and/or probation.

We deny accused-appellant's prayer for withdrawal of his appeal as he is ineligible to apply for either parole or probation.

Accused-appellant, as he is sentenced herein to suffer the penalty of *reclusion perpetua,* cannot apply for parole because Section 3 of R.A. No. 9346[19] explicitly states that "[p]ersons convicted of offenses punished with *reclusion perpetua,* or whose sentences will be reduced to *reclusion perpetua,* by reason of

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[17] *Rollo,* p. 16.

[18] *People v. Jugueta,* 783 Phil. 806 (2016).

[19] An Act Prohibiting the Imposition of Death Penalty, approved on June 24, 2006.

this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended."

Accused-appellant is likewise disqualified from applying for probation as Section 9(a) of the Probation Law[20] is clear that the benefits of probation shall not extend to those sentenced to serve a maximum term of imprisonment of more than six (6) years. Irrefragably, the sentence of *reclusion perpetua* imposed on accused-appellant in this case exceeds six (6) years of imprisonment.

Furthermore, Section 4 of the Probation Law, as amended, reads:

> SEC. 4. *Grant of Probation.* – Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced a defendant for a probationable penalty and **upon application by said defendant within the period for perfecting an appeal,** suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best. **No application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction:** *Provided,* That when a judgment or conviction imposing a non-probationable penalty is appealed or reviewed, and such judgment is modified through the imposition of a probationable penalty, the defendant shall be allowed to apply for probation based on the modified decision before such decision becomes final. The application for probation based on the modified decision shall be filed in the trial court where the judgment of conviction imposing a non-probationable penalty was rendered, or in the trial court where such case has since been raffled. In a case involving several defendants where some have taken further appeal, the other defendants may apply for probation by submitting a written application and attaching thereto a certified true copy of the judgment of conviction. (Emphasis ours.)

Section 4 of the Probation Law, as amended, intends to put a stop to the practice of appealing from judgments of conviction even if the sentence is probationable, for the purpose of securing

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[20] Presidential Decree No. 968 as amended by R.A. No. 10707.

an acquittal and applying for the probation only if the accused fails in his bid. An accused must not have appealed his conviction before he can avail himself of probation. Jurisprudence treats appeal and probation as mutually exclusive remedies because the law is unmistakable about it. The law is very clear and a contrary interpretation would counter its envisioned mandate.[21] Thus, even assuming that herein accused-appellant is qualified to apply for parole, he has already availed himself of the remedy of appeal twice, by appealing the RTC judgment of conviction before the Court of Appeals, and then appealing the Court of Appeals decision affirming his conviction before this Court, which already proscribes him from applying for probation.

WHEREFORE, we hereby **RESOLVE** to:

(a) **DISMISS** the instant appeal and to **AFFIRM with MODIFICATION** the Decision dated June 9, 2015 of the Court of Appeals in CA-G.R. CR-H.C. No. 05592 as to the monetary awards, by ordering accused-appellant Renato Galuga *y* Wad-as to pay the private complainant AAA the amounts of PhP75,000.00 as civil indemnity, PhP75,000.00 as moral damages, and PhP75,000.00 as exemplary damages, and imposing interest of six percent (6%) per *annum* on all monetary awards from date of finality of this Decision until fully paid; and

(b) **DENY** the plea of accused-appellant Renato Galuga *y* Wad-as to withdraw his appeal.

SO ORDERED.

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

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[21] *Dimakuta v. People,* 771 Phil. 641, 660-661 (2015) citing *Sable v. People,* 602 Phil. 989, 997 (2009).

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

SECOND DIVISION

[G.R. No. 222648. February 13, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDITHA TAMPAN,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE/POSSESSION OF DANGEROUS DRUGS; ELEMENTS.—** To secure conviction for illegal sale of dangerous drugs, the prosecution must establish: (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. For illegal possession of dangerous drugs, on the other hand, these elements must concur: (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. In both offenses, the existence of the drug is of paramount importance such that no drug case can be successfully prosecuted and no judgment of conviction can be validly sustained without the identity of the dangerous substance being established with moral certainty, it being the very *corpus delicti* of the violation of the law. There must be a clear showing that "the drug itself is the object of the sale" (illegal sale) or that "it is the very thing that is possessed by the accused" (illegal possession). Thus, the chain of custody over the confiscated drugs must be sufficiently proved.

2. **ID.; ID.; ID.; CHAIN OF CUSTODY; DEFINED; LINKS IN THE CHAIN WHICH MUST BE ESTABLISHED IN THE CUSTODY, SAFEKEEPING, AND TRANSFER OF THE CONFISCATED DRUGS, ENUMERATED.—** Chain of custody is a procedural mechanism that ensures that the identity and integrity of the *corpus delicti* are clear and free from any unnecessary doubt or uncertainty. It secures the close and careful monitoring and recording of the custody, safekeeping, and transfer of the confiscated illegal drug so as to preclude any incident of planting, tampering, or switching of evidence. The

links in the chain, to wit: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the marked illegal drug seized from the forensic chemist to the court must be adequately proved in such a way that no question can be raised as to the authenticity of the dangerous drug presented in court. The Court thoroughly laid down the manner of establishing the chain of custody of seized items in *Mallillin v. People*: x x x Simply put, it is incumbent upon the prosecution to establish that the confiscated drugs and the drugs submitted in court are one and the same by providing a clear account of the following: 1) the date and time when, as well as the manner, in which the illegal drug was transferred; 2) the handling, care and protection of the person who had interim custody of the seized illegal drug; 3) the condition of the drug specimen upon each transfer of custody; and 4) the final disposition of the seized illegal drug.

3. ID.; ID.; ID.; ID.; THE CONDUCT OF THE TAKING OF PHYSICAL INVENTORY AND PHOTOGRAPH OF THE SEIZED ILLEGAL DRUG MUST COMPLY WITH THE CHAIN OF CUSTODY REQUIREMENTS; ELUCIDATED.— The chain of custody rule is embodied in Section 21, Article II of R.A. No. 9165 x x x Section 21 (a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 further provides: x x x On July 15, 2014, Section 21 was amended by R.A. No. 10640 x x x Since the offenses were committed on October 7, 2010, the Court is constrained to evaluate the apprehending officers' compliance with the chain of custody requirement in accordance with Section 21 of R.A. No. 9165. The law sets forth the fine points of the **physical inventory** and **photograph** of the seized illegal drug such that: 1. They must be done immediately after seizure or confiscation; 2. They must be done in the presence of the following persons: a) the accused or his representative or counsel; b) representative from the media; c) representative from the DOJ; and d) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; and 3. They shall be conducted at the following places: a) place where the search

warrant is served; or b) at the nearest police station or nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure. Equally telling is the **marking** of the seized illegal drugs and other related items which serves as the starting point of the custodial link. A member of the buy[-]bust team or the poseur-buyer writes his/her initials and places his signature on the seized item so that from the time of its confiscation up to its final disposition, the marked evidence remains isolated from the corpus of all other similar or related evidence. While R.A. No. 9165 is silent on the marking requirement, the Court cannot overstress its significance in illegal drugs cases as it erases any suspicion on the authenticity of the *corpus delicti*.

4. **ID.; ID.; ID.; ID.; THE CHAIN OF CUSTODY RULE ADMITS AN EXCEPTION WHICH IS THE SAVING CLAUSE INTRODUCED IN SECTION 21 (A) OF ARTICLE II OF THE IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9165; REQUISITES.—** The chain of custody rule, however, admits of an exception which is found in the saving clause introduced in Section 21 (a), Article II of the IRR of R.A. No. 9165. Less than strict compliance with the guidelines stated in Section 21 does not necessarily render void and invalid the confiscation and custody over the evidence obtained. The saving clause is set in motion when these requisites are satisfied: 1) the existence of justifiable grounds; and 2) the integrity and evidentiary value of the seized items are properly preserved by the police officers. The first requirement enjoins the prosecution to identify and concede the lapses of the buy[-]bust team and thereafter give a justifiable and credible explanation therefor.

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

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

This is an appeal filed by accused-appellant Editha Tampan (Tampan) from the Decision[1] dated April 29, 2015 of the Court of Appeals-Cebu City (CA) in CA-G.R. [CEB] CR-HC No. 01768, affirming the Decision[2] dated November 21, 2013 of the Regional Trial Court (RTC), Branch 57, Cebu City, in Criminal Case Nos. CBU-90433 and CBU-90434, finding Tampan guilty beyond reasonable doubt of illegal sale of dangerous drugs and illegal possession of dangerous drugs, defined and penalized under Sections 5 and 11, respectively, Article II of Republic Act (R.A.) No. 9165,[3] otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Information against Tampan read as follows:

[Criminal Case No.] CBU-90433

That on the 7th day of October 2010 at about 6:45 o'clock [sic] in the evening, at Barangay Liburon, Carcar, Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously sell, deliver and distribute to PDEA agent, acting as poseur buyer[,] one (1) heat[-]sealed transparent plastic pack of white crystalline substance weighing 0.02 gram, in consideration of the sum of two hundred (₱200.00) pesos, consisting of two (2) one hundred[-]peso bills with serial numbers TK935402 and VQ963956, used as buy bust money, which when subjected for laboratory examination gave positive result for the presence of methamphetamine hydrochloride, a dangerous drug.

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[1] Penned by Associate Justice Ma. Luisa C. Quijano-Padilla, with Associate Justices Edgardo L. Delos Santos and Marie Christine Azcarraga-Jacob, concurring; CA *rollo*, pp. 63-80.

[2] Penned by Presiding Judge Enriqueta Loquillano-Belarmino; *id*. at 23-27.

[3] AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

CONTRARY TO LAW.
Cebu City, Philippines, October 12, 2010[.][4]

[Criminal Case No.] CBU-90434

That on the 7th day of October 2010 at about 6:45 o'clock [sic] in the evening, at Barangay Liburon, Carcar, Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously have in her possession, custody and control[,] six (6) small heat[-]sealed transparent plastic pack of white crystalline substance weighing 0.02 gram each and one (1) medium heat[-]sealed transparent plastic pack of white crystalline substance, weighing 0.51 gram, which when subjected to laboratory examination gave positive result for the presence of methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.
Cebu City, Philippines, October 12, 2010[.][5]

When arraigned, Tampan pleaded not guilty to both charges.[6] Trial on the merits thereafter ensued.

Version of the Prosecution

On October 7, 2010, the Philippine Drug Enforcement Agency (PDEA) Regional Office No. 7, Cebu City, received information about the illegal drug activities of a certain "Editha Tampan." Intelligence Agent 3 George Cansancio (IA3 Cansancio) formed and led a team to conduct the buy bust operation and assigned Intelligence Officer 1 Joebane Labajo (IO1 Labajo) as the poseur-buyer, and IO1 Nicholas Gomez (IO1 Gomez) and some other PDEA agents as back-up officers. The buy[-]bust money, two pieces of ₱100.00-peso bill, was marked by IO1 Labajo with his initials, JL.[7]

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

[5] *Id.*

[6] *Id.* at 65.

[7] *Id.* at 44.

After the pre-operational briefing, the buy[-]bust team proceeded to Tampan's place in Sitio Lomboy, Barangay Liburon, Carcar City, Cebu. IO1 Labajo and the confidential informant went to Tampan's house as the rest of the team positioned themselves in the area. The informant called Tampan who then went out of her house. The informant introduced IO1 Labajo as his cousin who wanted to buy *shabu* from her. When Tampan asked IO1 Labajo how much *shabu* he wanted to buy, the latter did not answer and handed her the marked money worth ₱200.00. Tampan then asked him why he would only buy ₱200.00 worth of *shabu*, to which IO1 Labajo replied that he did not have any more money. Tampan went inside her house and returned with a plastic pack containing several sachets of white crystalline substance suspected to be *shabu*. She took one sachet from the pack and gave it to IO1 Labajo. Thereafter, IO1 Labajo discreetly reached for his mobile phone from his pocket and made a missed call to the other team members as a pre-arranged signal. When the members of the apprehending team rushed to their location, IO1 Labajo held Tampan, introduced himself as PDEA agent, and seized from her the pack of plastic sachets of *shabu* and the buy bust money. The pack contained six small plastic sachets of *shabu* and one medium-sized sachet of *shabu*. IO1 Labajo placed Tampan in handcuffs while IO1 Gomez informed her of her constitutional rights. Since people started to gather in the area, IA3 Cansancio instructed the buy[-]bust team to leave and conduct the inventory of the seized items in their office.[8]

The entrapment team, together with Tampan, returned to its office and prepared the booking sheet. IO1 Labajo conducted an inventory of the confiscated items in the presence of Tampan, Virgilio Salde, Jr. of *Bombo Radyo*, and Barangay Councilor Vicente Quintana, Jr., who all signed the Certificate of Inventory. IO1 Labajo placed the markings "BB-EST 10/7/10" on the sachet subject of the illegal sale and "EST-1 10/7/10" to "EST-7 10/7/10" on the sachets seized from Tampan's possession and signed each of them. He also took pictures of the sachets of *shabu*,

[8] *Id.* at 45.

the marked money, and the signing of the Certificate of Inventory. Thereafter, he prepared a letter-request for laboratory examination of the seized illegal drugs and delivered them to the Philippine National Police (PNP) Crime Laboratory. The letter-request and the seized items were received by Police Officer 3 Supilanas (PO3 Supilanas), who, in turn, delivered them to Police Superintendent Salinas (P/Supt. Salinas) for laboratory examination. The contents of the seized plastic sachets yielded positive results for the presence of methamphetamine hydrochloride, commonly known as *shabu*, a dangerous drug per Chemistry Report No. D-966-2010.[9]

Version of the Defense

Tampan denied the accusation and recalled that at around 6:00 p.m. of October 7, 2010, she was having dinner with her children and her friend when five PDEA officers entered their house and declared an arrest for the sale of *shabu*. She claimed that she only saw the plastic sachets of *shabu* allegedly seized from her at the PDEA Office when IO1 Gomez took them out of his drawer. She also averred that the PDEA officers asked for her name when she was already on board their vehicle. She later learned that the subject of the arrest was a certain "Michelle Gatelaligan"[10] whose house is located at the back of her place. She also maintained that she was made to sign the Certificate of Inventory without having been able to read its contents.[11]

In a Decision[12] dated November 21, 2013, the RTC found Tampan guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of R.A. No. 9165. The *fallo* states:

WHEREFORE, in view of the foregoing, the Court finds accused Editha Tampan guilty beyond reasonable doubt of the crimes charged.

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[9] *Id*. at 46.

[10] Sometimes referred to as "Michelle Satinigan" in some parts of the *rollo*.

[11] CA *rollo*, pp. 15-16.

[12] *Supra* note 2.

Accordingly, she is sentenced to suffer the following penalties:

1. [L]ife imprisonment and a fine of ₱500,000.00 for Violation of Section 5, Article II of [R.A. No.] 9165;

2. [T]welve (12) years and one (1) day to fifteen (15) years and a fine of ₱300,000.00 for Violation of Section 11, Article II of [R.A. No.] 9165.

The packet of [*shabu*], subject of sale, and the recovered seven (7) packs of [*shabu*] are forfeited in favor of the government.

SO ORDERED.[13]

The RTC gave credence to the categorical assertions of the police officers that the illegal sale of dangerous drugs was consummated upon the delivery of the plastic sachet of *shabu* to IO1 Labajo and the receipt of the marked money by Tampan. Further, after Tampan's arrest for illegal sale, she was found to have in her possession a pack containing seven plastic sachets of *shabu*.[14] The RTC found that the integrity and evidentiary value of the seized *shabu* have been preserved as it was shown that IO1 Labajo was always in custody of all the packs of *shabu* from the time of confiscation until their delivery to the PNP Crime Laboratory for examination. PO3 Supilanas received the seized *shabu* and turned them over to P/Supt. Salinas who conducted the laboratory examination and thereafter submitted them and her report to evidence custodian Bucayan for safekeeping. P/Supt. Salinas retrieved them from Bucayan for presentation in court.[15]

On appeal, the CA affirmed the findings of the trial court. The dispositive portion of the April 29, 2015 Decision[16] reads:

WHEREFORE, in view of all the foregoing, the appeal is **DENIED**. The Decision of the Regional Trial Court (RTC), Branch

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[13] CA *rollo*, p. 27.

[14] *Id*. at 25.

[15] *Id*. at 26.

[16] *Supra* note 1.

57, Cebu City, dated November 21, 2013, in Criminal Cases Nos. CBU-90433 and CBU-90434, finding accused-appellant Editha Tampan guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II, of Republic Act (RA) 9165, is hereby **AFFIRMED**.

SO ORDERED.

The CA declared that the prosecution has sufficiently established all the elements of the illegal sale and illegal possession of dangerous drugs. It did not give weight to Tampan's defense of frame-up and found IO1 Labajo's testimony credible and worthy of belief. It held that the apprehending officers substantially complied with the chain of custody requirement and successfully preserved the integrity and evidentiary value of the seized items. Finally, it emphasized that the marking of the seized items at the PDEA Office was justified because of the swelling crowd that gathered after Tampan's arrest, endangering not only the entrapment operation but also their lives.

Hence, the present appeal.

Our Ruling

We resolve to acquit accused-appellant Tampan on the ground of reasonable doubt.

To secure conviction for illegal sale of dangerous drugs, the prosecution must establish: (a) the identity of the buyer and the seller, the object and the consideration; and (b) the delivery of the thing sold and the payment.[17] For illegal possession of dangerous drugs, on the other hand, these elements must concur: (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.[18] In both offenses, the existence of the drug is of paramount importance such that no drug case can be successfully prosecuted and no judgment of conviction can be validly

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[17] *People v. Cuevas*, G.R. No. 238906, November 5, 2018.

[18] *Id*.

sustained without the identity of the dangerous substance being established with moral certainty, it being the very *corpus delicti* of the violation of the law.[19] There must be a clear showing that "the drug itself is the object of the sale" (illegal sale) or that "it is the very thing that is possessed by the accused" (illegal possession).[20] Thus, the chain of custody over the confiscated drugs must be sufficiently proved.

Chain of custody is a procedural mechanism that ensures that the identity and integrity of the *corpus delicti* are clear and free from any unnecessary doubt or uncertainty. It secures the close and careful monitoring and recording of the custody, safekeeping, and transfer of the confiscated illegal drug so as to preclude any incident of planting, tampering, or switching of evidence. The links in the chain, to wit: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the marked illegal drug seized from the forensic chemist to the court[21] must be adequately proved in such a way that no question can be raised as to the authenticity of the dangerous drug presented in court. The Court thoroughly laid down the manner of establishing the chain of custody of seized items in *Mallillin v. People*:[22]

> 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

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[19] *People v. Rivera*, G.R. No. 225786, November 14, 2018.

[20] *People v. Bintaib*, G.R. No. 217805, April 2, 2018.

[21] *People v. Lim*, G.R. No. 231989, September 4, 2018.

[22] *Mallillin v. People*, 576 Phil. 576, 587 (2008).

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.

Simply put, it is incumbent upon the prosecution to establish that the confiscated drugs and the drugs submitted in court are one and the same by providing a clear account of the following: 1) the date and time when, as well as the manner, in which the illegal drug was transferred; 2) the handling, care and protection of the person who had interim custody of the seized illegal drug; 3) the condition of the drug specimen upon each transfer of custody; and 4) the final disposition of the seized illegal drug.

The chain of custody rule is embodied in Section 21, Article II of R.A. No. 9165 which specifies:

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.

Section 21 (a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 further provides:

SEC. 21 (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, that **the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures**; *Provided, further*, **that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/ team, shall not render void and invalid such seizures of and custody over said items**. (Emphasis supplied)

On July 15, 2014, Section 21 was amended by R.A. No. 10640[23] to this effect:

SEC. 21. x x x

1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with **an elected public official and a representative of the National Prosecution Service or the media** who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as

[23] AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF R.A. NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002."

long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items. (Emphasis and underscoring supplied)

Since the offenses were committed on October 7, 2010, the Court is constrained to evaluate the apprehending officers' compliance with the chain of custody requirement in accordance with Section 21 of R.A. No. 9165. The law sets forth the fine points of the **physical inventory** and **photograph** of the seized illegal drug such that:

1. They must be done immediately after seizure or confiscation;
2. They must be done in the presence of the following persons: a) the accused or his representative or counsel; b) representative from the media; c) representative from the DOJ; and d) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; and
3. They shall be conducted at the following places: a) place where the search warrant is served; or b) at the nearest police station or nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure.

Equally telling is the **marking** of the seized illegal drugs and other related items which serves as the starting point of the custodial link.[24] A member of the buy[-]bust team or the poseur-buyer writes his/her initials and places his signature on the seized item so that from the time of its confiscation up to its final disposition, the marked evidence remains isolated from the corpus of all other similar or related evidence.[25] While R.A. No. 9165 is silent on the marking requirement, the Court cannot overstress, its significance in illegal drugs cases as it erases any suspicion on the authenticity of the *corpus delicti*.

Measured against the foregoing yardstick, the prosecution miserably failed to demonstrate the apprehending officers' faithful compliance with the rule on chain of custody.

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[24] *People v. Dahil*, 750 Phil. 212, 232 (2015).

[25] *Id.*

The members of the buy[-]bust team obviously did not observe the procedural safeguards embodied in Section 21 of R.A. No. 9165 and its IRR. The marking, physical inventory and photographing of the seized illegal drugs were not immediately done at the place of seizure. The presence of a representative from the media, the DOJ, and an elected public official were not secured to witness the inventory and photographing of the confiscated dangerous drugs at the time of apprehension and seizure. The physical inventory and the photographing at the PDEA Office were not conducted in the presence of a DOJ representative who is also required to sign the inventory and to have a copy thereof. Notwithstanding the foregoing deviations from Section 21 of R.A. No. 9165, the RTC and the CA were in unison in holding that there was substantial compliance with the law and that the integrity of the illegal drugs seized from Tampan was preserved.

We do not agree.

IO1 Labajo transported a total of eight plastic sachets containing white crystalline substance suspected to be *shabu* from the place of apprehension to the PDEA Office. While in transit, the seized plastic sachets of illegal drugs did not have markings or labels as to render them readily identifiable. According to the RTC, the possibility of mix-up is remote since "the packs of *shabu*, subject of possession were all placed in one plastic pack separate from the *shabu* sold x x x."[26] But the RTC failed to show that the belated marking did not expose the seized illegal drugs to the threat of alteration, substitution, or tampering by accident or otherwise — the dangers that the marking requirement seeks to avert. Other than IO1 Labajo's claim that he himself handled the illegal drugs and transported them from the place of arrest and seizure to the place of marking and inventory at the PDEA Office, no convincing evidence was offered to prove that the items marked were in fact the plastic sachet bought from Tampan and the sachets seized from Tampan's possession. In the same vein, IO1 Labajo failed to

[26] CA *rollo*, p. 26.

ventilate the precautionary measures taken in preserving the identity of the seized items given that they were unmarked when they were transported. Clearly, the probability that the integrity and evidentiary value of the *corpus delicti* had been compromised is extant in the first link of the chain of custody.

Also, the Court cannot turn a blind eye on the absence of a representative from the media, a representative from the DOJ, and an elected public official: 1) at the time of apprehension and seizure; and 2) at or near the place of apprehension and seizure. In *People v. Adobar*,[27] the Court shed light on when the presence of a representative from the media, the DOJ, and an elected public official is required:

> In no uncertain words, Section 21 requires the apprehending team to "immediately after seizure and confiscation, physically inventory and photograph [the seized illegal drugs] in the presence of the accused x x x or his representative or counsel, a representative from the media and the Department of Justice (DOJ) and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof."
>
> The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs must be **at the place of apprehension and/or seizure**. If this is not practicable, it may be done as soon as the apprehending team reaches the nearest police station or nearest office.
>
> In all of these cases, the photographing and inventory are required to be done **in the presence of any elected public official and a representative from the media and the DOJ who shall be required to sign an inventory and given copies thereof**. By the same intent of the law behind the mandate that the initial custody requirements be done "immediately after seizure and confiscation," the aforesaid witnesses must already be physically present at the time of apprehension and seizure — a requirement that can easily be complied with by the buy bust team considering that the buy bust operation is, by its very nature, a planned activity. Simply put, the buy bust team had enough time and opportunity to bring with them these witnesses.

[27] G.R. No. 222559, June 6, 2018.

In other words, while the physical inventory and photographing is allowed to be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure," this does not dispense with the requirement of having the DOJ and media representative and the elected public official to be **physically present at the time of and at or near the place of apprehension and seizure so that they can be ready to witness the inventory and photographing of the seized drugs** "**immediately after seizure and confiscation**."

The reason is simple, it is at the time of arrest or at the time of the drugs' "seizure and confiscation" that the presence of the three (3) witnesses is most needed. **It is their presence at that point that would insulate against the police practices of planting evidence.**

In *People v. [Lim]*,[28] the Court ruled:

> x x x Without the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of the sachets of *shabu*, 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 sachets of *shabu* that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. x x x (Citations omitted; emphases and underscoring in the original).

The physical inventory and photographing of the seized items were not executed immediately at the place of apprehension and seizure. While these procedures may be conducted at the nearest police station or at the nearest office of the apprehending officer/team, substantial compliance with Section 21 of R.A. No. 9165 may be allowed if attended with good and sufficient reason, a condition that was not met in this case. In *People v. Lim*, it has been held that "immediate physical inventory and photograph of the confiscated items at the place of arrest may be excused in instances when the safety and security of the apprehending officers and the witnesses required by law or of

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

the items seized are threatened by immediate or extreme danger such as retaliatory action of those who have the resources and capability to mount a counter-assault." The apprehending officers in the present case undoubtedly did not show that the immediate physical inventory and photograph posed a threat on the safety and security of the police officers, or of the confiscated dangerous substance nor did they offer any other acceptable reason for not complying strictly with the requirement of immediate inventory and photograph at the place of arrest. Moreover, it is interesting to note that when the apprehending officers conducted the physical inventory and photographing in their office, the presence of all the required witnesses was not secured. Only a representative from the media and an elected public official were present during the physical inventory and photographing at the PDEA Office. No member of the DOJ appeared and no legitimate excuse was given to justify his/her absence. The members of the entrapment team have not made the slightest attempt to show that they exerted honest-to-goodness efforts to obtain the presence of a representative from the DOJ who will attest to the physical inventory and photographing in accordance with the mandated procedure.

The case of *People v. Ramos*[29] is explicit:

> It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In People v. Umipang, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily

[29] G.R. No. 233744, February 28, 2018.

given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable. (Citations omitted; emphases and underscoring in the original)

The prosecution was glaringly mum about the lack of a representative from the DOJ during the physical inventory and photographing of the seized items. It displayed indifference to the three-witness rule of R.A. No. 9165 and discounted the presence of one of the required witnesses on the mistaken belief that it will not adversely affect its case. This procedural lapse, albeit minor, was not acknowledged and, worse, not justified by the apprehending officers as required by the law. To the mind of the Court, the prosecution did not touch on this matter because the police officers did not really endeavor to contact and coordinate with a DOJ representative in the hope that they can readily invoke "substantial compliance with the law."

The chain of custody rule, however, admits of an exception which is found in the saving clause introduced in Section 21 (a), Article II of the IRR of R.A. No. 9165. Less than strict compliance with the guidelines stated in Section 21 does not necessarily render void and invalid the confiscation and custody over the evidence obtained. The saving clause is set in motion when these requisites are satisfied: 1) the existence of justifiable grounds; and 2) the integrity and evidentiary value of the seized items are properly preserved by the police officers.[30]

The first requirement enjoins the prosecution to identify and concede the lapses of the buy[-]bust team and thereafter give a justifiable and credible explanation therefor. Records show

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[30] *People v. Fatallo*, G.R. No. 218805, November 7, 2018.

that the only explanation given by the prosecution is the apprehending officers' departure from the rule on the marking requirement. Citing security and safety reasons, it maintained that the marking and physical inventory were done in the PDEA Office because it was already nighttime and that people already started to gather around the place of arrest. The justification does not persuade as it was never substantiated or corroborated by evidence. The excuse would have been acceptable had the apprehending officers elaborated how the time of seizure and the gathering of people challenged their safety and security. They should have at least shown the concrete steps taken to secure the presence of all three witnesses signaling their good faith and intent to comply with the law.

Anent the second requirement, the prosecution was not able to prove that the integrity and evidentiary value of the seized items remained intact from the time of confiscation, marking, submission to the laboratory for examination, and presentation in court. The marking of the seized items was conducted at the PDEA Office for security reasons which was never substantiated nor proven as a fact. The marking was not executed at the place of confiscation even if IO1 Labajo could have easily placed his initials knowing fully well that there were back-up officers to respond to the scene. The absence of the three required witnesses at the place of seizure for the immediate physical inventory and photographing and the lack of a DOJ representative during the actual physical inventory and photographing without offering a credible justification created another gap in the chain of custody. Considering the miniscule amount of the confiscated illegal drugs involved, rigid compliance with Section 21 of R.A. No. 9165 is expected from the apprehending officers. As aptly held in *People v. Plaza*,[31] "[buy bust] teams should be more meticulous in complying with Section 21 of R.A. No. 9165 to preserve the integrity of the seized *shabu* most especially where the weight of the seized item is a miniscule amount that can be easily planted and tampered with."

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[31] G.R. No. 235467, August 20, 2018.

There being no plausible reason for the apprehending officers' non-compliance with Section 21 of R.A. No. 9165, Tampan must perforce be acquitted.

WHEREFORE, premises considered, the appeal is hereby **GRANTED**. The Decision dated April 29, 2015 of the Court of Appeals-Cebu City in CA-G.R. [CEB] CR-HC No. 01768 is hereby **REVERSED** and **SET ASIDE**. Accused-appellant **EDITHA TAMPAN** is **ACQUITTED** for failure of the prosecution to prove her **RELEASED** from detention, unless she is confined for any other lawful cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, for immediate implementation. Said Director is ordered to report the action he has taken to this Court within five days from receipt of this Decision.

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Perlas-Bernabe, Caguioa*, and *Hernando*,* *JJ.*, concur.

THIRD DIVISION

[G.R. Nos. 223869-960. February 13, 2019]

NEPTALI P. SALCEDO, *petitioner, vs.* **THE HONORABLE THIRD DIVISION OF THE SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC; THE ISSUE OF THE DENIAL OF PETITIONER'S RIGHT

* Additional member per S.O. No. 2630 dated December 18, 2018.

TO BAIL HAS BEEN RENDERED MOOT BY THE RESOLUTION OF THE SANDIGANBAYAN, WHICH GRANTED BAIL TO HIM.— [R]ecord shows that the issue of the denial of Salcedo's right to bail has been rendered moot by the October 14, 2016 Resolution of the Sandiganbayan, which granted bail to him and his co-accused in accordance with the pronouncements of this Court in *People v. Valdez*. In said case, we declared that an accused charged with the complex crime of Malversation of Public Funds thru Falsification of Official/ Public Documents that involves an amount in excess of ₱22,000.00 is entitled to bail as a matter of right. x x x Verily, the question as to whether Salcedo and his co-accused are entitled to bail has already been fully and correctly resolved by the Sandiganbayan. A case becomes moot when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits. Courts will not determine a moot question in a case in which no practical relief can be granted. To indulge in academic discussion of a case presenting a moot question is unnecessary because a judgment thereon cannot have any practical legal effect or cannot be enforced.

2. ID.; CIVIL PROCEDURE; FORUM SHOPPING EXISTS IN CASE AT BAR; BY SIMULTANEOUSLY FILING A PETITION FOR *CERTIORARI* BEFORE THIS COURT AND A MOTION WITH THE SANDIGANBAYAN RAISING THE SAME ISSUE OF THE DENIAL OF HIS RIGHT TO BAIL RELYING ON THE SAME GROUND AND FOUNDED ON THE SAME FACTS, PETITIONER COMMITTED FORUM SHOPPING.— Forum shopping exists when a party repetitively avails himself of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved adversely by, some other court. It is considered an act of malpractice as it trifles with the courts and abuses their processes. Normally, petitions for *certiorari* and appeals are beyond the scope of forum shopping because of their nature and purpose which is to grant a litigant the remedy to elevate his case to a superior court for review. **This presupposes, however, that the appeal or the petition for *certiorari* is properly and regularly filed**

in the usual course of judicial proceedings, and not when the relief sought, through a petition for *certiorari* or appeal, is still pending with or has yet to be decided by the respondent court or court of origin, tribunal, or body exercising judicial or quasi-judicial authority. In the case at bench, the Sandiganbayan has yet to resolve Salcedo's Urgent Motion to Set Aside with Motion to Reinstate Bail when he filed the present petition for *certiorari* before this Court. x x x Salcedo, in obvious anticipation of an adverse ruling on his Urgent Motion to Set Aside with Motion to Reinstate Bail, filed the instant petition without waiting for the Sandiganbayan's resolution, hoping to obtain a favorable ruling from this forum. Notably, Salcedo utilized our ruling in *People v. Valdez* to support his claim for entitlement to bail in the present petition for *certiorari* as he did in his Urgent Motion to Set Aside with Motion to Reinstate Bail. He, likewise, prayed for the same relief in both of these remedies, that is, to be allowed to post bail for his provisional liberty. Clearly, the petitioner committed forum shopping by simultaneously raising the same issue of the denial of his right to bail before the Sandiganbayan and this Court, relying on the same ground and founded on the same facts.

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES, EXPLAINED AND ELABORATED; IN VIEW OF NUMEROUS CASES FILED AGAINST PETITIONER, THE COURT DEEMED IT WISE TO REVIEW THE FACTS AND CIRCUMSTANCES OF THE INSTANT CASE TO DETERMINE WHETHER HIS RIGHT HAD BEEN VIOLATED.— The Court has never set a threshold period for terminating the preliminary investigation proceedings before the Office of the Ombudsman premised on the fact that the constitutionally guaranteed right to speedy disposition of cases is a relative or flexible concept. It is consistent with delays and depends upon the circumstances of a particular case, and thus, it cannot be quantified into specified number of days or months. It is quite difficult to ascertain with definiteness and precision when said right have been denied. The Court cannot exactly say how long is too long in a system where justice is supposed to be swift but thorough and correctly considered. Due to the imprecision of this right, the length of delay that will provoke an inquiry is necessarily dependent upon the peculiar

circumstances of each case. The amorphous/unstructured characteristic of this right would sometimes lead to the remedy of dismissal of a case when the said right had been trampled upon. This certainly has a drastic and radical consequence because it would mean that an accused, who may be guilty of a grave offense, would go scot-free without being tried and held responsible for the charge. Viewed in this light, we deemed it wise to review the facts and circumstances of the case at bench to properly determine whether Salcedo's right to speedy disposition of cases had been violated considering that what is at stake here is the dismissal of the criminal cases for forty-six counts of Malversation through Falsification of Public Documents and forty-six counts of Violation of Section 3(e) of R.A. No. 3019. The right to speedy disposition of cases is enshrined in Section 16, Article III of the Constitution which declares in no uncertain terms that "All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." The constitutional pledge mandates the swift resolution or termination of a pending case or proceeding. The right to a speedy disposition of cases is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays. What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory.

4. ID.; ID.; ID.; ID.; PETITIONER'S INACTION GIVES THE IMPRESSION THAT THE SUPERVENING DELAY SEEMS TO HAVE BEEN WITHOUT HIS OBJECTION AND HIS SILENCE CONSIDERED AS A WAIVER OF HIS RIGHT.— Salcedo is deemed to have slept on his right to speedy disposition of cases. He never decried the time spent for the preliminary investigation proceedings against him before the OMB-Visayas. Nor did he, at that time, take any step whatsoever to expedite the disposition of the cases by, for instance, filing a motion for early resolution. Seemingly, Salcedo was insensitive to the implications and contingencies of the projected criminal prosecution posed against him. He merely sat and waited until the Informations were filed against him before the Sandiganbayan. x x x It bears stressing that when and how an accused asserts his right should be given strong evidentiary value in determining whether the accused is being deprived of the right. x x x Every accused in a criminal case

has the intense desire to seek an acquittal, or at least, to see the swift end of the accusation against him. To this end, it is natural for him to exert every and all efforts available and within his capacity in order to resist prosecution. Here, Salcedo's inaction gives the impression that the supervening delay seems to have been without his objection, and hence, it was implied with his acquiescence. Indeed, Salcedo's silence may be considered as a waiver of his right.

5. **ID.; ID.; ID.; ID.; AS THE PETITION DOES NOT EVINCE VEXATIOUS, CAPRICIOUS, AND OPPRESSIVE DELAY IN THE CONDUCT OF PRELIMINARY INVESTIGATION, THE RADICAL RELIEF OF DISMISSAL OF THE CASES CANNOT BE GRANTED.—** Unlike in the *Tatad, Duterte, Coscolluela* and *Angchangco, Jr*. cases where the delay were manifestly oppressive and arbitrary, the facts of the cases subject of the present petition do not evince vexatious, capricious and oppressive delay in the conduct of preliminary investigation. Accordingly, We find no compelling reason to accord in the case at bench the same radical relief of dismissal granted by the Court in those cases cited by petitioner Salcedo. To conclude, there was no arbitrary and inordinate delay contemplated under the Constitution to support Salcedo's assertion that his right to speedy disposition of cases was violated. The prolonged termination of the preliminary investigation in the subject cases should not be a cause for an unfettered abdication by the Sandiganbayan of its duty to try and determine the controversies in Criminal Cases Nos. SB-13-CRM-0001 to 0046 and Criminal Case Nos. SB-13-CRM-0047 to 0092. Let us give the Sandiganbayan the chance to ferret out the truth as to the criminal culpability of Salcedo and his co-accused or absolve them and erase any taint in their names, if innocent.

APPEARANCES OF COUNSEL

Akol & Associates Law Offices for petitioner.
Office of the Special Prosecutor for respondents.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for *certiorari* filed by petitioner Neptali P. Salcedo (*Salcedo*) seeking to reverse and set aside the January 23, 2015[1] and the February 12, 2016[2] Resolutions issued by the Special Third Division of the Sandiganbayan (*Sandiganbayan*) in Criminal Cases Nos. SB-13-CRM-0001 to 0046 and SB-13-CRM-0047 to 0092.

The antecedent facts are as follows:

Culled from the record, it appears that on October 8, 2007, then Congressman Neil C. Tupas, Jr. (*Cong. Tupas, Jr.*) of the Fifth District of Iloilo requested the Commission on Audit (*COA*) to conduct an audit examination on the implementation of the various projects of the Municipality of Sara, Iloilo. Acting on the said request, the COA created a special audit team sometime in July 2008 that later on conducted a seven (7)-day audit investigation focusing on several priority projects of the Municipality of Sara funded by the Provincial Government of Iloilo and the Office of Senator Franklin Drilon. On July 17, 2008, the COA special audit team issued several Audit Observation Memoranda and directed petitioner Salcedo, then the incumbent Municipal Mayor of the Municipality of Sara, to submit his comment thereon. On September 30, 2008, the Office of the Mayor of the Municipality of Sara submitted the required comment to the COA special audit team.

On October 14, 2008, Cong. Tupas, Jr. filed three separate complaints-affidavits charging petitioner Salcedo and other officials of the Municipality of Sara with violations of Section 3(g) of Republic Act No. 3019 (*R.A. No. 3019*), otherwise known as the *Anti-Graft and Corrupt Practices Act*, before the Office

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[1] Penned by Associate Justice Amparo M. Cabotaje-Tang, with Associate Justices Samuel R. Martires (a retired member of this Court) and Alex L. Quiroz, concurring; *rollo*, pp. 18-32.

[2] *Id.* at 62-77.

of the Ombudsman-Visayas (*OMB-Visayas*), Regional Office, Iloilo, arising from the alleged illegal releases of government funds. The complaints quoted portions of the findings of the COA audit team contained in its special audit report. These complaints were docketed as CPL-C-08-1893, CPL-C-08-1894 and CPL-C-08-1895 (*CPLS*). Subsequently, the OMB-Visayas requested from the COA the submission of the pertinent-audit report so it can properly evaluate the recommendations of the special audit team and validate the allegations of Cong. Tupas, Jr.

In January 2009, the COA submitted to the OMB-Visayas its audit report, together with a joint affidavit executed by the special audit team. The relevant findings of the COA are as follows:

> Labor payrolls amounting to a total of ₱1,834,400.00 were deemed to be of doubtful validity due to the following occurrences; (i) similarity in the signatures of the supposed laborers who worked on the projects: (ii) time roll portions were pasted over once or twice with another time roll; (iii) certain entries like name of project and period covered were written over correction fluid; and (iv) lack of signatures to signify receipt of wages by the concerned laborers.[3]

According to the COA, the irregularities in the disbursement of government funds can be readily observed from the face of the payrolls and/or the supporting documents for each project which strongly suggest that the local government officials involved should be held criminally liable.

Thereafter, the OMB-Visayas issued a Consolidated Final Evaluation, dated July 17, 2009, upgrading the CPLs to criminal and administrative cases which were docketed as OMB-V-C-09-0284-1 and OMB-V-A-09-0284-2, respectively. On October 28, 2009, the OMB-Visayas issued another Evaluation Report directing that each COA finding be docketed separately as each dealt with a set of circumstances different from the others to attain an efficient and speedy investigation. Later, the OMB-

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[3] *Id.* at 39.

Visayas upgraded anew the complaints into six (6) criminal cases. It concurred with the findings of the COA and recommended that criminal cases for Malversation of Public Funds through Falsification of Public Documents and Violation of Section 3(e) of R.A. No. 3019 be filed against the following officials of the Municipality of Sara, Iloilo, namely: (1) Municipal Mayor Salcedo, (2) Municipal Treasurer Edna A. Pacrim (*Pacrim*) and (3) Municipal Engineer Roel C. Salcedo (*Roel*). One of these criminal cases was docketed as OMB-V-C-09-0392-K which gave rise to the criminal Informations subject of the present petition.

The OMB-Visayas directed the accused to file their counter-affidavits and submit controverting evidence. Instead of filing their counter-affidavits, the three accused adopted their Comment to the Audit Observation Memorandum Ref. No. 411-001-2008, dated May 12, 2008, which they previously submitted during the COA audit. Attached to the said Comment are the joint affidavits executed by the alleged laborers who attested that they worked at the various projects, confirmed to have signed the payrolls, and received their respective wages. Also appended was the affidavit of the Municipal Engineer, who explained the alterations and superimpositions in the time books and payrolls.

After issues had been joined, the OMB-Visayas issued a Resolution dated March 11, 2011, finding probable cause against petitioner Salcedo, Pacrim and Roel, and recommended their indictment for thirty (30) counts of Malversation of Public Funds through Falsification of Public Documents and one (1) count for Violation of Section 3(e) of R.A. No. 3019. Said Resolution was approved by then Acting Ombudsman Orlando C. Casimiro on May 30, 2011.

On July 5, 2011, Salcedo and his co-respondents filed a Motion for Reconsideration dated June 29, 2011, praying for the dismissal of the complaints against them on the ground of lack of legal and factual basis and for being imperfect or premature. Before acting on the said motion for reconsideration, however, the

OMB-Visayas issued an Amended Resolution[4] dated December 8, 2011, modifying its March 11, 2011 Resolution by charging each of the accused with forty-six (46) counts of Malversation of Public Funds through Falsification of Public Documents and another forty-six (46) counts for Violation of Section 3(e) of R.A. No. 3019. The Amended Resolution was approved by then Ombudsman Conchita Carpio Morales on December 5, 2012.

Consequently, the corresponding ninety-two (92) Informations, all dated December 8, 2011, were filed before the Third Division of the Sandiganbayan on January 3, 2013, which were docketed therein as Criminal Cases Nos. SB-13-CRM-0001 to 0046 (46 counts of Violation of Sec. 3(e) of R.A. No. 3019) and Criminal Case Nos. SB-13-CRM-0047 to 0092 (46 counts of Malversation through Falsification of Public Documents). Since almost all of the Informations for Malversation of Public Funds through Falsification of Public Documents, except the Information docketed as Criminal Case No. SB-13-CRM-0063, involve the amounts higher than ₱22,000.00, a bail of Eighty Thousand Pesos (₱80,000.00) was recommended to each accused for their provisional liberty.

On February 25, 2013, petitioner Salcedo filed a Motion for Reconsideration of the March 11, 2011 Resolution, but the same was denied by the OMB-Visayas in its April 12, 2013 Order.[5] Salcedo then posted bail sometime in September 2013. Thereafter, Salcedo filed a Motion to Quash dated March 20, 2014, anchored on the ground that the allegations in all the Informations do not constitute the respective offenses charged therein. Petitioner also pointed out that the ninety-two Informations contradicted the findings of the OMB-Visayas that he allegedly falsified the time books and payrolls for thirty (30) projects. The prosecution refuted Salcedo's claim in its Opposition dated May 14, 2014. In the meantime, Roel and Pacrim filed a Motion for Reduction of Bail.

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[4] *Id.* at 38-44.

[5] *Id.* at 33-37.

On April 30, 2014, the prosecution filed a Manifestation with Omnibus Motion dated April 28, 2014, seeking for the withdrawal of the Informations for malversation through falsification docketed as Criminal Cases Nos. SB-13-CRM-0047 to 0062 and 0064 to 0092 and the admission of Amended Informations. The amendment sought in each Information was for the substitution of the phrase "*NO BAIL RECOMMENDED*" to the original "*BAIL BOND RECOMMENDED: ₱80,000.00 (each)*." In addition, the prosecution prayed for the cancellation of Salcedo's surety bond in Criminal Case Nos. SB-13-CRM-0047 to 0092, and for the denial of the Motion for Reduction of Bail filed by Roel and Pacrim.

On January 23, 2015, the Sandiganbayan issued its first assailed Resolution denying Salcedo's Motion to Quash the Informations and granted the prosecution's prayer for the admission of the Amended Informations which reflected the phrase "NO BAIL RECOMMENDED" in the malversation through falsification cases. The *fallo* of the said Resolution provides:

WHEREFORE, premises considered, the Court hereby:

1. PARTIALLY GRANTS the prosecution's Manifestation with Omnibus Motion dated April 28, 2014. Accordingly, except for Case No. SB-13-CRM-0063, the Amended Informations in Cases Nos. SB-13-CRM-0047 to 0062 and 0064 to 0092 are admitted and the surety bond posted by accused Neptali Salcedo is cancelled. Accused Neptali Salcedo, however, is allowed to post bail in the reduced amount of ₱40,000.00 in Case No. SB-13-CRM-0063;

2. PARTIALLY GRANTS accused Roel Salcedo and Edna Pacrim's Motion for Reduction of Bail dated March 20, 2014 insofar as Cases Nos. SB-13-CRM-0001 to 0046 and in Case No. SB-13-CRM-0063 are concerned. Accordingly, accused Roel Salcedo and Edna Pacrim are allowed to post bail in the reduced amount of ₱15,000.00 for each count of violation of Section 3(e) of Republic Act No. 3019 and the reduced amount of ₱20,000.00 for malversation through falsification of public document in Case No. SB-13-CRM-0063. THE SAME TO BE PAID IN CASH.

3. DENIED accused Neptali Salcedo's Motion to Quash dated March 20, 2014 for lack of merit.

Let warrants of arrest be issued against accused Neptali Salcedo, Edna Pacrim and Roel Salcedo in Cases Nos. SB-13-CRM-0047 to 0092.

SO ORDERED.[6]

According to the Sandiganbayan, all the Informations contained the requisite factual averments constituting the essential elements of the crime charge. It ruled that it is not material whether ninety-two or thirty Informations should be filed, in the determination of whether the Informations should be quashed on the ground that the allegations do not constitute an offense. Also, it held that the recommendation of no bail for Criminal Cases Nos. SB-13-CRM-0047 to 0062 and 0064 to 0092 is proper since the complex crime of Malversation through Falsification of Public Documents carries with it the penalty of *reclusion perpetua* where the amount allegedly malversed is greater than ₱22,000.00 under Article 217, paragraph 4 in relation to Article 48 of the Revised Penal Code. It, likewise, took into consideration the 2000 Bail Bond Guide of the Department of Justice where it was provided, among others, that no bail shall be recommended for the crime of malversation through falsification if the amount involved is ₱22,000.00 and higher.

In the light of the foregoing pronouncements, the Sandiganbayan ordered the cancellation of the surety bond posted by Salcedo in Criminal Cases Nos. SB-13-CRM-0047 to 0062 and 0064 to 0092, but he was allowed to post bail in the amount of ₱40,000.00 for Criminal Case No. SB-13-CRM-0063 as the amount allegedly malversed therein is only ₱20,000.00. Meanwhile, the Sandiganbayan reduced the amount of bail to be posted by Roel and Pacrim to one-half of the bail recommended in Criminal Cases Nos. SB-13-CRM-0001 to 0046, and the two were allowed to post bail fixed at ₱20,000.00 for Criminal Case No. SB-13-CRM-0063. Their motion for reduction of bail in Criminal Cases Nos. SB-13-CRM-0047 to 0062 and 0064 to 0092 was denied by the anti-graft court because the same allegedly involved a non-bailable offense.

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[6] *Id.* at 31-32.

Thereafter, Salcedo filed an Urgent Motion for Reconsideration dated February 17, 2015, questioning the admission of the Amended Informations for Criminal Cases Nos. SB-13-CRM-0047 to 0062 and 0064 to 0092 on the ground that inordinate delay attended the conduct of the preliminary investigation of his alleged crimes, in violation of his constitutional right to speedy disposition of cases. Further, he argued anew that the allegations in the Informations were insufficient to indict him of the crimes of Violation of Section 3(e) of R.A. No. 3019, as well as the complex crime of Malversation through Falsification of Public Documents. He insisted that his mere act of signing the time books and payrolls could not be considered as a prohibited act that would satisfy one of the elements of Violation of Section 3(e) of R.A. No. 3019. Also, he again contended that the Informations for malversation through falsification did not allege that falsification is a necessary means of committing the malversation. Petitioner averred that the penalty for malversation through falsification is not *reclusion perpetua* but *reclusion temporal* in its maximum period to *reclusion perpetua* and thus, he should be allowed to post bail in Criminal Cases Nos. SB-13-CRM-0047 to 0062 and 0064 to 0092.

On the other hand, Roel and Pacrim filed an Omnibus Motion insisting that they should be allowed to post bail for Criminal Case Nos. SB-13-CRM-0047 to 0092 because malversation through falsification is a bailable offense and it is not one of the heinous crimes enumerated in Republic Act No. 7659. By way of an alternative prayer, Roel and Pacrim sought for the dismissal of the cases against them on the ground of violation of their right to due process and speedy disposition of cases.

On February 12, 2016, the Sandiganbayan issued its second assailed Resolution, the dispositive portion of which states:

WHEREFORE, the Court denies the following motions for lack of merit and/or for being *pro forma*:

1. Urgent Motion for Reconsideration dated February 17, 2015 filed by accused Neptali Salcedo; and

2. Omnibus Motion dated February 23, 2015 filed by accused Roel Salcedo and Edna Pacrim.

SO ORDERED.[7]

The Sandiganbayan observed that except for the allegation of violation of their right to speedy disposition of cases, all the other disquisitions and arguments advanced by petitioner Salcedo, Roel and Pacrim in their respective motions for reconsideration were mere reiterations of those which it had already considered and passed upon through its January 23, 2015 Resolution. It held that there was no violation of the accused's right to speedy disposition of cases because on the basis of the facts and circumstances surrounding the preliminary investigation, a reasonable delay was expected of the OMB-Visayas. It pointed out that the accused did not invoke their right to speedy disposition of cases before the OMB-Visayas but only did so after the filing of the Informations. Moreover, the anti-graft court declared that there was no showing of any deliberate attempt to delay the proceedings before the OMB-Visayas. Lastly, the Sandiganbayan ruled that the specifics sought by Salcedo to be alleged in the Amended Informations are evidentiary in nature and are matters of defense which Salcedo may present during trial on the merits.

Unsatisfied, petitioner Salcedo filed an Urgent Motion to Set Aside with Motion to Reinstate Bail dated February 23, 2016, before the Sandiganbayan. Citing the ruling in *People v. Valdez*,[8] Salcedo prayed for the setting aside of the no bail recommendation in the Informations for Criminal Cases Nos. SB-13-CRM-0047 to 0062 and 0064 to 0092 and that he would be allowed to post bail. Petitioner, likewise, sought for the reinstatement of the surety bond he previously posted.

Thereafter, Salcedo filed, on April 27, 2016, the present petition for *certiorari* ascribing grave abuse of discretion on the part of the Sandiganbayan in issuing the January 23, 2015

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[7] *Id*. at 72.

[8] 774 Phil. 723 (2015).

and February 12, 2016 Resolutions. In support of his petition, Salcedo raised the following issues:

1. Whether or not the Honorable Third Division of the Sandiganbayan gravely abused its discretion in issuing the questioned Resolutions with respect to the denial of bail for the complex crime of Malversation thru Falsification, tantamount to lack or excess of its jurisdiction.

2. Whether or not the Honorable Third Division of the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of its jurisdiction when it ruled that the four years and three months that it took for the Ombudsman to file the Informations in the present cases is reasonable delay consistent with the right to speedy disposition of cases.[9]

On October 14, 2016, the Sandiganbayan, guided by the ruling in the *Valdez* case, issued a Resolution granting bail to Salcedo and his co-accused, Roel and Pacrim, in the malversation through falsification cases. The surety bond previously posted by Salcedo was reinstated.

The Court's Ruling

We deny the petition.

At the outset, record shows that the issue of the denial of Salcedo's right to bail has been rendered moot by the October 14, 2016 Resolution of the Sandiganbayan, which granted bail to him and his co-accused in accordance with the pronouncements of this Court in *People v. Valdez*. In said case, we declared that an accused charged with the complex crime of Malversation of Public Funds thru Falsification of Official/Public Documents that involves an amount in excess of ₱22,000.00 is entitled to bail as a matter of right. The Court wrote, thus:

At this point, there is no certainty that Valdez would be found guilty of Malversation of Public Funds thru Falsification of Official/ Public Documents involving an amount that exceeds ₱22,000.00.

[9] *Rollo*, p. 8.

Falsification, like an aggravating circumstance, must be alleged and proved during the trial. For purposes of bail proceedings, it would be premature to rule that the supposed crime committed is a complex crime since it is only when the trial has terminated that falsification could be appreciated as a means of committing malversation. Further, it is possible that only the elements of one of the constituent offenses, *i.e.*, either malversation or falsification, or worse, none of them, would be proven after full-blown trial.

It would be the height of absurdity to deny Valdez the right to bail and grant her the same only after trial if it turns out that there is no complex crime committed. Likewise, it is unjust for Us to give a stamp of approval in depriving the accused person's constitutional right to bail for allegedly committing a complex crime that is not even considered as inherently grievous, odious and hateful. To note, Article 48 of the RPC on complex crimes does not change the nature of the constituent offenses; it only requires the imposition of the maximum period of the penalty prescribed by law. When committed through falsification of official/public documents, the RPC does not intend to classify malversation as a capital offense. Otherwise, the complex crime of Malversation of Public Funds thru Falsification of Official/Public Documents involving an amount that exceeds ₱22,000.00 should have been expressly included in Republic Act No. 7659. If truly a non-bailable offense, the law should have already considered it as a special complex crime like robbery with rape, robbery with homicide, rape with homicide, and kidnapping with murder or homicide, which have prescribed penalty of *reclusion perpetua*.

Verily, the question as to whether Salcedo and his co-accused are entitled to bail has already been fully and correctly resolved by the Sandiganbayan. A case becomes moot when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits. Courts will not determine a moot question in a case in which no practical relief can be granted.[10] To indulge in academic discussion of a case presenting a moot question is unnecessary because a judgment thereon cannot have any practical legal effect or cannot be enforced.[11]

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[10] *Baldo, Jr. v. Commission on Elections, et al.,* 607 Phil. 281, 286 (2009).

[11] *Pagdanganan v. Court of Appeals,* G.R. No. 202678, September 5, 2018.

Nevertheless, it has not escaped this Court's attention that Salcedo engaged in forum shopping with respect to this issue of the deprivation of his right to bail for the criminal cases of Malversation through Falsification of Public Documents.

Forum shopping exists when a party repetitively avails himself of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved adversely by, some other court. It is considered an act of malpractice as it trifles with the courts and abuses their processes.[12]

Normally, petitions for *certiorari* and appeals are beyond the scope of forum shopping because of their nature and purpose which is to grant a litigant the remedy to elevate his case to a superior court for review.**This presupposes, however, that the appeal or the petition for *certiorari* is properly and regularly filed in the usual course of judicial proceedings, and not when the relief sought, through a petition for *certiorari* or appeal, is still pending with or has yet to be decided by the respondent court or court of origin, tribunal, or body exercising judicial or quasi-judicial authority.**[13]

In the case at bench, the Sandiganbayan has yet to resolve Salcedo's Urgent Motion to Set Aside with Motion to Reinstate Bail when he filed the present petition for *certiorari* before this Court. This is pristine clear from paragraph 15 of his petition which states:

> 15. Meanwhile, all the accused, including Petitioner herewith, filed a Motion for the reinstatement of the bail of Petitioner and for the set bail for Accused Roel Salcedo and Edna Pacrim pursuant to the ruling of the Supreme Court in *People vs. Valdez*. As of the time of the filing of this Petition, the said Motion remain unresolved by the Third Division of the Sandiganbayan; x x x[14]

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[12] *Fontana Development Corporation, et al. v. Vukasinovic*, 795 Phil. 913, 920 (2016).

[13] *Villamor, Jr. v. Hon. Manalastas, et al.*, 764 Phil. 456, 467 (2015). (Emphasis ours)

[14] *Rollo*, p. 8. (Citation omitted).

Salcedo, in obvious anticipation of an adverse ruling on his Urgent Motion to Set Aside with Motion to Reinstate Bail, filed the instant petition without waiting for the Sandiganbayan's resolution, hoping to obtain a favorable ruling from this forum. Notably, Salcedo utilized our ruling in *People v. Valdez* to support his claim for entitlement to bail in the present petition for *certiorari* as he did in his Urgent Motion to Set Aside with Motion to Reinstate Bail. He, likewise, prayed for the same relief in both of these remedies, that is, to be allowed to post bail for his provisional liberty. Clearly, the petitioner committed forum shopping by simultaneously raising the same issue of the denial of his right to bail before the Sandiganbayan and this Court, relying on the same ground and founded on the same facts.

Salcedo and his lawyer must be reminded that forum shopping constitutes abuse of court processes, which tends to degrade the administration of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily burdened dockets of the courts.[15] Forum shopping is considered an anathema to the orderly administration of justice. Accordingly, the instant petition must be dismissed outright as Salcedo and his counsel clearly committed the abhorrent practice of forum shopping.

Even if the Court is willing to overlook this procedural lapse, the present petition would just the same fail. The issuance by the Sandiganbayan of the assailed Resolutions were not tainted with grave abuse of discretion.

Salcedo asserts that the Sandiganbayan committed grave abuse of discretion amounting to lack of jurisdiction when it declared that there was no unreasonable delay in the resolution by the OMB-Visayas of the cases. He contends that the long delay that characterized the proceedings for the determination of probable cause has resulted in the violation of his constitutional right to speedy disposition of cases. According to him, the

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[15] *Luzon Iron Development Group Corporation v. Bridgestones Mining and Development Corporation, et al.*, 802 Phil. 839, 847-848 (2016).

proceedings have unquestionably been marred with vexatious and capricious delay meriting the dismissal of the criminal cases. He posits that the ninety-two (92) Informations should have been quashed by the Sandiganbayan considering that the Ombudsman had lost its authority to file them since his constitutional right to the speedy disposition of cases was grossly violated by the protracted conduct of the preliminary investigation for four (4) years and almost three (3) months. Petitioner invoked the Court's pronouncements in *Tatad v. Sandiganbayan*,[16] *Duterte v. Sandiganbayan*,[17] *Angchangco, Jr. v. Ombudsman*,[18] and *Coscolluela v. Sandiganbayan*[19] to advance his theory.

In its Comment dated November 21, 2016,[20] respondent People of the Philippines, through the Office of the Special Prosecutor, prays for the dismissal of the petition, arguing that the OMB-Visayas did not incur inordinate delay in the conduct of the preliminary investigation and that it had taken proper action in the ordinary course of things and in accord with its mandate. Respondent stresses that the parameters necessary to determine whether there was unreasonable delay have been clearly explained by the Sandiganbayan in the assailed February 12, 2016 Resolution. It posits that Salcedo never raised any objections regarding the purported delay in the proceedings when the cases were still pending before the OMB-Visayas, but raised the issue for the first time in his Urgent Motion for Reconsideration dated February 17, 2015 after his Motion to Quash was denied by the Sandiganbayan. It disputed the applicability of the cases cited by petitioner as their factual milieu differs with present cases. Finally, respondent alleges that the Sandiganbayan did not abuse its discretion in issuing the assailed Resolutions since they were anchored on a judicious appreciation of the facts and application of relevant laws and jurisprudence.

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[16] 242 Phil. 563 (1988).

[17] 352 Phil. 557 (1998).

[18] 335 Phil. 766 (1997).

[19] 714 Phil. 55 (2013).

[20] *Rollo*, pp. 376-389.

The Court has never set a threshold period for terminating the preliminary investigation proceedings before the Office of the Ombudsman premised on the fact that the constitutionally guaranteed right to speedy disposition of cases is a relative or flexible concept.[21] It is consistent with delays and depends upon the circumstances of a particular case, and thus, it cannot be quantified into specified number of days or months. It is quite difficult to ascertain with definiteness and precision when said right have been denied. The Court cannot exactly say how long is too long in a system where justice is supposed to be swift but thorough and correctly considered. Due to the imprecision of this right, the length of delay that will provoke an inquiry is necessarily dependent upon the peculiar circumstances of each case.

The amorphous/unstructured characteristic of this right would sometimes lead to the remedy of dismissal of a case when the said right had been trampled upon. This certainly has a drastic and radical consequence because it would mean that an accused, who may be guilty of a grave offense, would go scot-free without being tried and held responsible for the charge. Viewed in this light, we deemed it wise to review the facts and circumstances of the case at bench to properly determine whether Salcedo's right to speedy disposition of cases had been violated considering that what is at stake here is the dismissal of the criminal cases for forty-six counts of Malversation through Falsification of Public Documents and forty-six counts of Violation of Section 3(e) of R.A. No. 3019.

The right to speedy disposition of cases is enshrined in Section 16, Article III of the Constitution which declares in no uncertain terms that "All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." The constitutional pledge mandates the swift resolution or termination of a pending case or proceeding. The right to a speedy disposition of cases is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive

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[21] *Enriquez, et al. v. Office of the Ombudsman,* 569 Phil. 309, 316 (2008).

delays.[22] What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory.[23]

In *Dela Peña v. Sandiganbayan*,[24] the Court laid down certain guidelines to determine whether the right to speedy disposition of cases has been violated, to wit:

> 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.

Measured by the foregoing yardstick, and after a meticulous scrutiny of the circumstances surrounding the proceedings before the OMB-Visayas, the Court finds that Salcedo's right to speedy disposition of cases has not been transgressed.

Record discloses that three separate complaints-affidavits were filed on October 14, 2008 against petitioner Salcedo, Pacrim and Roel based on the findings of the COA that they committed irregularities in the disbursement of government funds. Thereafter, the investigatory process was set in motion before the OMB-Visayas. Upon its request, the COA submitted its special audit report to the OMB-Visayas sometime January 2009. On July 17, 2009, the OMB-Visayas issued a Consolidated Evaluation Report and upgraded the complaints to criminal and administrative cases. On October 28, 2009, the OMB-Visayas issued another Evaluation Report and, thereafter, the complaints were upgraded anew into six criminal cases against petitioner, Pacrim and Roel. When the accused were required to file their respective counter-affidavits, they instead adopted their Comment to the Audit Observation Memorandum Ref. No. 411-001-2008.

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[22] *Tello v. People*, 606 Phil. 514, 519 (2009).

[23] *Braza v. The Honorable Sandiganbayan*, 704 Phil. 476, 495 (2013).

[24] 412 Phil. 921, 929 (2001).

No clarificatory hearing or further investigation was conducted in the interim that could have added a new dimension to the cases. On March 11, 2011, the OMB-Visayas issued a Resolution finding probable cause against petitioner and his co-accused. This Resolution was modified by an Amended Resolution dated December 8, 2011 ordering that each of the accused should be charged with forty-six (46) counts of Malversation of Public Funds through Falsification of Public Documents and another forty-six (46) counts for Violation of Section 3(e) of R.A. No. 3019. The Amended Resolution was approved by Ombudsman Carpio Morales on December 5, 2012 and the ninety-two Informations were filed on January 3, 2013.

Concededly, the preliminary investigation proceedings took a protracted amount of time of four (4) years, two (2) months and twenty (20) days to complete. However, the Court observes that Salcedo failed to seasonably assert his right to speedy disposition of cases. In *Cagang v. Sandiganbayan*,[25] the Court ruled that the accused must invoke his or her constitutional right to speedy disposition of cases in a timely manner and failure to do so even when he or she has already suffered or will suffer the consequences of delay constitutes a valid waiver of that right.

Salcedo is deemed to have slept on his right to speedy disposition of cases. He never decried the time spent for the preliminary investigation proceedings against him before the OMB-Visayas. Nor did he, at that time, take any step whatsoever to expedite the disposition of the cases by, for instance, filing a motion for early resolution. Seemingly, Salcedo was insensitive to the implications and contingencies of the projected criminal prosecution posed against him. He merely sat and waited until the Informations were filed against him before the Sandiganbayan.

As aptly pointed out by the Office of the Special Prosecutor, Salcedo asserted his right to speedy disposition of cases only for the first time in his Urgent Motion for Reconsideration dated

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[25] G.R. Nos. 206438 and 206458, July 31, 2018.

February 17, 2015, after his Motion to Quash, dated March 20, 2014, was denied by the Sandiganbayan. It is noteworthy that his original position for the quashal of the Informations was the alleged insufficiency of the allegations in the Informations to constitute the offense charge, but when the same was found to be without merit by the anti-graft court, he invoked violation of his right to speedy disposition of cases by way of an additional ground – undoubtedly a mere afterthought.

It bears stressing that when and how an accused asserts his right should be given strong evidentiary value in determining whether the accused is being deprived of the fight. The Court's ruling in *The Ombudsman v. Jurado*,[26] citing the case of *Perez v. People*,[27] is instructive, to wit:

> x x x Whether and how a defendant asserts his right is closely related to the other factors we have mentioned. The strength of his efforts will be affected by the length of the delay, to some extent by the reason for the delay, and most particularly by the personal prejudice, which is not always readily identifiable, that he experiences. The more serious the deprivation, the more likely a defendant is to complain. The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.

Every accused in a criminal case has the intense desire to seek an acquittal, or at least, to see the swift end of the accusation against him. To this end, it is natural for him to exert every and all efforts available and within his capacity in order to resist prosecution. Here, Salcedo's inaction gives the impression that the supervening delay seems to have been without his objection, and hence, it was implied with his acquiescence. Indeed, Salcedo's silence may be considered as a waiver of his right.

Moreover, there is nothing on record that would demonstrate that the delay in the conclusion of the preliminary investigation

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[26] 583 Phil. 133, 148 (2008).

[27] 568 Phil. 491, 513-514 (2008).

was deliberately availed of for an impermissible purpose. There is no showing that delay in the proceedings was intentionally resorted to gain some tactical advantage over Salcedo and his co-accused or to harass or prejudice them. No impure motive can be imputed to the OMB-Visayas other than the fact that it regularly performed its duty in its apparent desire to unravel the mystery behind the alleged anomalous disbursements of public funds during the implementation of various projects in the Municipality of Sara, Iloilo.

The Court does not find it unreasonable for the graft investigating officer to embark into the detailed investigation of the cases. The record shows that the alleged illegal releases of government funds are complex and numerous. The cases pertain to thirty (30) different projects located in several barangays within the Municipality of Sara, Iloilo and each project has its own sets of payrolls and time books, which involved numerous transactions reflected in voluminous supporting documents. In addition, the complaints were filed against three (3) public officials with different accountabilities and varying modes of participation. More importantly, the responsibility of each has to be established. True, the COA's special audit report has enumerated the scope of the audit, the disbursements involved, the schemes allegedly employed by the accused and the possible basis for the filing of complaints against them. However, the prosecution is not bound by the findings of the Commission on Audit; it must rely on its own independent judgment in the determination of probable cause.[28] The graft investigator had to verify, analyze, validate and examine such audit report *vis-a-vis* the evidence submitted by the parties.

We note that the said investigation was not an easy task for the OMB-Visayas as shown in its Evaluation Report dated October 28, 2009, thus:

> Each of the findings of the COA is separate and distinct from all others: precisely they were independently enumerated in the audit report. Apparently, the only thing they share in common is the fact

[28] *Binay v. Sandiganbayan*, 374 Phil. 413, 451 (1999).

that they pertain to projects all implemented or undertaken in the Municipality of Sara, Iloilo and most likely by the same officials of said local government unit. But then again, each finding has a set of circumstance of its own; in fact, several, if not all, issues are even comprised of several distinct transactions or projects within themselves.

For an efficient and speedy investigation of the findings, it would be best that each issue/finding be separately docketed. In that way, each finding can be thoroughly looked and resolved as soon as it becomes ready for resolution. For certain, each issue calls for its own pace of investigation, depending on the circumstances involve[d]; be separating the issues, then, no issue ripe for resolution shall be stalled by the slower progress in the others.[29]

Notably, it took the OMB-Visayas a period of two (2) years, four (4) months and twenty-eight (28) days to find probable cause against Salcedo and his co-accused, from the filing of the three complaints on October 14, 2008 to the issuance of the Resolution on March 11, 2011. It appears, however, that accused were merely afforded sufficient opportunities to ventilate their respective defenses in the interest of justice, due process and fair investigation. A reasonable deferment of the proceedings may be allowed or tolerated to the end that cases may be adjudged only after full and free presentation of the evidence by all the parties. The issuance of the Amended Resolution, dated December 8, 2011, is not without an excuse. The OMB-Visayas felt the genuine need to modify its March 11, 2011 Resolution because the thirty (30) projects were actually covered by forty-six payrolls, and each allegedly falsified payroll should be treated as equivalent to one count of malversation thru falsification and one count of violation of Section 3(e) of R.A. No. 3019.

Anent the fact that the December 8, 2011 Amended Resolution was approved by Ombudsman Carpio Morales only on December 5, 2012, the Court finds the following explanation proffered by the Office of the Special Prosecutor to be acceptable:

Petitioner next points to the one-year period which it took "the Ombudsman to approve the *Amended Resolution*." Perhaps, the

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[29] *Rollo*, pp. 378-379.

petitioner lost sight of the changes in the leadership within the OMB from the time that probable cause was found under the 11 March 2011 Resolution up to the time that the *Amended Resolution* was approved on 5 December 2011. As appearing in the 11 March 2011 Resolution, it was Acting Ombudsman Orlando Casimiro who headed the OMB when the cases were resolved. Subsequently, Ombudsman Conchita Carpio Morales assumed office and the cases were subjected to a further review. These levels of review could not be avoided, given the change in leadership and the need for thoroughness. These levels of review were never intended to – and did not, in fact – vex, oppress or otherwise disadvantage petitioner and his co-accused.[30]

The government is naturally not expected to go forward with the trial and incur costs unless it is convinced and satisfied that it has an iron-clad case to make a worthwhile indictment. Thoroughness and correctness should not be compromised or sacrificed at the altar of expediency.

At this juncture, the Court takes judicial notice of the fact that the cases against Salcedo and his co-accused are not the only cases pending before the OMB-Visayas. The nature of the Office of the Ombudsman encourages individuals who clamor for efficient government service to freely file their complaints against alleged/suspected wrongdoings of government personnel which inevitably results in a steady stream of cases reaching the Ombudsman.[31] Naturally, the disposition of those cases, including these cases subject of the present petition, would take some time. Obviously, petitioner merely ventured into a mathematical computation of the period from the filing of the three complaints to the filing of the ninety-two Informations to support his thesis of violation of his right to speedy disposition of cases.

Lastly, there is no allegation, much less proof, that Salcedo was persecuted, oppressed or was made to undergo any vexatious process during the preliminary investigation. Admittedly, anxiety

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[30] *Id*. at 384.

[31] *Dansal v. Judge Fernandez, Sr.*, 383 Phil. 897, 909 (2000); *Mendoza-Ong v. Sandiganbayan*, 483 Phil. 451, 455 (2004).

typically accompanies a criminal charge. However, not an iota of evidence was adduced to show that petitioner ever suffered anxiety of such nature and degree that it became oppressive, unnecessary and notoriously disproportionate to the nature of the criminal charges, and more importantly, sufficient to justify the severe remedy of dismissing the indictments.

The Court finds that Salcedo's reliance on the doctrines in *Tatad v. Sandiganbayan, Duterte v. Sandiganbayan, Angchangco, Jr. v. Ombudsman*, and *Coscolluela v. Sandiganbayan,* is misplaced.

In *Tatad v. Sandiganbayan*, we held that the long delay of three years in the termination of the preliminary investigation by the Tanodbayan was violative of Tatad's constitutional right to due process and right to speedy disposition of cases against him because: (1) political motivation played a vital role in activating and propelling the prosecutorial process; (2) there was blatant departure from the established procedures prescribed for the conduct of a preliminary investigation; and (3) the long delay in the conclusion of the proceedings could not be justified on the basis of the records.

On the other hand, the petitioners in *Duterte v. Sandiganbayan* were denied the right to a preliminary investigation altogether. They were not served with copies of the complaint-affidavits and were merely directed to comment on a civil complaint against them and on a special audit report of the Commission on Audit. Petitioners were clueless that a preliminary investigation was being conducted against them and, thus, could not have urged the speedy resolution of their case. It was only on February 2, 1996, or four years later, that they received the resolution recommending the filing of informations against them. Also, informations were filed against petitioners in that case despite the absence of adequate ground to hold them liable for the crime charged.

Similarly in *Coscolluela v. Sandiganbayan*, the petitioners could not have urged the speedy resolution of their case because they were unaware that the investigation against them was still

on-going. They were only informed of the March 27, 2013 Resolution and Information against them only after the lapse of six long years, or when they received a copy of the latter after its filing with the Sandiganbayan on June 19, 2009. In this regard, they could have reasonably assumed that the proceedings against them have already been terminated. The foregoing serves as a plausible reason as to why they never followed-up on the case altogether.

In *Angchangco, Jr. v. Ombudsman*, the Court dismissed the criminal complaints for failure of the Office of the Ombudsman to resolve the criminal charges against petitioner for more than six years despite the fact that Angchangco, Jr. had filed several omnibus motions for early resolution. Angchanco, Jr. even filed a motion to dismiss. Sadly, however, the Office of the Ombudsman failed to act on the said motions. For the past six years, petitioner remained under a cloud, and since his retirement in September 1994, he has been deprived of the fruits of his retirement after serving the government for more than forty-two years all because of the inaction of the respondent Ombudsman.

Unlike in the *Tatad, Duterte, Coscolluela* and *Angchangco, Jr*. cases where the delay were manifestly oppressive and arbitrary, the facts of the cases subject of the present petition do not evince vexatious, capricious and oppressive delay in the conduct of preliminary investigation. Accordingly, We find no compelling reason to accord in the case at bench the same radical relief of dismissal granted by the Court in those cases cited by petitioner Salcedo.

To conclude, there was no arbitrary and inordinate delay contemplated under the Constitution to support Salcedo's assertion that his right to speedy disposition of cases was violated. The prolonged termination of the preliminary investigation in the subject cases should not be a cause for an unfettered abdication by the Sandiganbayan of its duty to try and determine the controversies in Criminal Cases Nos. SB-13-CRM-0001 to 0046 and Criminal Case Nos. SB-13-CRM-0047 to 0092. Let us give the Sandiganbayan the chance to ferret out the truth as to the

criminal culpability of Salcedo and his co-accused or absolve them and erase any taint in their names, if innocent.

WHEREFORE, the petition for *certiorari* is **DENIED**. The assailed January 23, 2015 and the February 12, 2016 Resolutions issued by the Special Third Division of the Sandiganbayan in Criminal Cases Nos. SB-13-CRM-0001 to 0046 and SB-13-CRM-0047 to 0092 are **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 224297. February 13, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDGARDO ROYOL *y* ASICO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— The elements required to sustain convictions for violation of Section 5 of the Comprehensive Dangerous Drugs Act are settled. In *People v. Morales*: In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; FOUR LINKS THAT MUST BE ESTABLISHED IN THE CHAIN OF

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

CUSTODY OF SEIZED ITEMS, REITERATED.— *People v. Nandi* specified four (4) links that must be established in a confiscated item's chain of custody: [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.

3. **ID.; ID.; ID.; ID.; WHERE NONCOMPLIANCE WITH THE CHAIN OF CUSTODY RULE TARNISHED THE CREDIBILITY OF THE *CORPUS DELICTI*, ACCUSED DESERVES AN ACQUITTAL.—** Since compliance with the chain of custody requirements under Section 21 ensures the integrity of the seized items, it follows that noncompliance with these requirements tarnishes the credibility of the *corpus delicti*, which is at the core of prosecutions under the Comprehensive Dangerous Drugs Act. Such noncompliance casts doubt on the very claim that an offense against the law was committed: x x x There is no semblance of compliance with Section 21(1). All the prosecution has to support its assertions on the integrity of the marijuana that was allegedly obtained from accused-appellant is its bare claim that it was marked at the Tarlac Provincial Police Office. x x x Neither PO2 Baquiran nor Inspector Silva testified on the conduct of a proper inventory and photographing. The prosecution's claims are sorely lacking in accounting how the marijuana was actually marked, including the safety measures undertaken by police officers. Worse, the prosecution failed to account for the presence of even just one (1) of the persons required by Section 21(1) to be present during the inventory and photographing. There was no elected public official. Neither was there a representative of the National Prosecution Service nor was there a media representative. The prosecution did not even maintain that accused-appellant himself was present. x x x Section 21(1) of the Comprehensive Dangerous Drugs Act allows for deviations from its requirements under "justifiable grounds." The prosecution, however, never bothered to account for any such justifiable ground. x x x This is but the latest in a litany of cases that demonstrate law enforcers' wanton disregard for

basic statutory guidelines. While not losing sight of the urgency of addressing the drug menace, it is this Court's bounden duty to ensure compliance with laws and uphold basic freedoms. This Court has harped on and, in this Decision, continues to impress the need to comply with the bare minimum that the Comprehensive Dangerous Drugs Act requires. As in many cases before, this Court emphasizes that law enforcers' "utter disregard for Section 21 . . . raises grave doubts not only on the integrity of the allegedly seized items, but even on their own." Self-serving assurances cannot replace reliable evidence. Failing compliance with the Comprehensive Dangerous Drugs Act, acquittal must ensue.

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.*:

Complete and utter noncompliance with the chain of custody requirements of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002 (Comprehensive Dangerous Drugs Act), inescapably leads to an accused's acquittal. Conviction cannot be sustained by a mere presumption of regularity and the approximation of compliance.

This resolves an Appeal from a conviction for violation of Section 5[1] of Republic Act No. 9165, for the illegal sale of dangerous drugs.

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[1] Rep. Act No. 9165 (2002), Sec. 5 provides:

SECTION 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver,

In an Information, accused-appellant Edgardo A. Royol (Royol), a garbage collector,[2] was charged with violating Section 5 of the Comprehensive Dangerous Drugs Act, as follows:

That on or about November 27, 2007 at around 10:05 o'clock in the morning, in the Municipality of Bamban, Province of Tarlac, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and criminally sell one half[-]sized (1/2) bricks (*sic*) of dried marijuana fruiting tops in the amount of One Thousand Pesos to poseur buyer

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give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemicals trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

[2] *Rollo*, p. 6.

PO2 Mark Anthony Baquiran PNP weighing 500.28 grams, a dangerous drug without being authorized by law.

Contrary to law.[3]

The prosecution presented two (2) witnesses: (1) the alleged poseur-buyer, then Police Officer 2 Mark Anthony Baquiran (PO2 Baquiran); and (2) the arresting officer, Police Inspector Sonny Los Banos Silva (Inspector Silva).[4]

According to the prosecution, at around 9:00 a.m. on November 27, 2007, a confidential informant went to the Tarlac Provincial Police Office in Camp Makabulos, Tarlac City and reported that Royol had been selling illegal drugs in Barangay Lourdes, Bamban, Tarlac. The informant allegedly told PO2 Baquiran that he was due to meet Royol that morning.[5]

A buy-bust team was formed with PO2 Baquiran as poseur-buyer, and Inspector Silva, Police Officer 1 Francis Capinding, and Police Officer 2 Christopher Soriano (PO2 Soriano) as arresting officers. Four (4) other members of the team were tasked as back-up. PO2 Baquiran was provided with two (2) marked ₱500.00 bills. It was also agreed that PO2 Baquiran would scratch his head to signal to the rest of the team that the sale of drugs had been consummated.[6]

The buy-bust team proceeded to the bridge in Barangay Lourdes, the informant's supposed meeting place with Royol. Royol arrived some 20 minutes after PO2 Baquiran positioned himself in the area. Upon meeting Royol, PO2 Baquiran showed him the two (2) marked ₱500.00 bills and told him that he intended to purchase half a kilogram of marijuana. Royol exchanged half a brick of marijuana with PO2 Baquiran's marked bills. PO2 Baquiran then scratched his head.[7]

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[3] *Id.* at 2-3.

[4] *Id*. at 3.

[5] *Id*. at 4 and CA *rollo*, p. 18.

[6] *Id*. at 4-5 and CA *rollo*, p. 18.

[7] *Id*. at 5.

Upon seeing PO2 Baquiran make the pre-arranged signal, the other members of the buy-bust team rushed to arrest Royol. Royol gave chase but was shortly apprehended by Inspector Silva and PO2 Soriano. He was then brought to the Tarlac Provincial Police Office, where the brick of marijuana was supposedly marked. PO2 Baquiran then personally brought the marijuana to the Tarlac Provincial Crime Laboratory Office, where, upon examination by Police Inspector Jebie C. Timario, it tested positive for marijuana.[8]

Royol testified in his defense. He recalled that in the morning of November 27, 2007, while collecting garbage, two (2) men approached him asking if he knew a certain Edgardo Saguisag (Saguisag). They left him after he said that he did not know the man. A few minutes later, the men returned with two (2) teenagers who pointed to him as Saguisag. The men then ordered him to raise his hands. He was handcuffed and made to lie face on the floor. He asked the men why they handcuffed him, but they did not reply. Instead, they searched his pockets, found ₱140.00, and took it. They then compelled him to board a red car and brought him to Makabulos. He was also shown marijuana and asked if it was his, to which he answered in the negative.[9]

In its five (5)-page Decision dated December 13, 2010,[10] the Regional Trial Court found Royol guilty as charged and rendered judgment as follows:

> WHEREFORE, the prosecution having proven the guilt of the accused beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165, the Court hereby orders the accused to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00[.]
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> SO ORDERED.[11]

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[8] *Id*. at 5-6.

[9] *Id*. at 6-7.

[10] CA *rollo*, pp. 17-21. The Decision, in Criminal Case No. 3499, was penned by Judge Alipio C. Yumul of Branch 66, Regional Trial Court, Capas, Tarlac.

[11] *Id*. at 21.

The Court of Appeals, in its assailed May 8, 2015 Decision,[12] affirmed the Regional Trial Court's ruling *in toto*.

Thus, Royol filed his Notice of Appeal.[13]

The issue for this Court's resolution is whether or not the prosecution established accused-appellant Edgardo A. Royol's guilt beyond reasonable doubt for violating Section 5 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act.

I

The elements required to sustain convictions for violation of Section 5 of the Comprehensive Dangerous Drugs Act are settled. In *People v. Morales*:[14]

> In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction of sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.[15] (Emphasis in the original)

Concerning *corpus delicti*, Section 21 of Republic Act No. 9165, as amended by Republic Act No. 10640 in 2014, makes specific stipulations on the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia. Particularly, concerning custody before filing a criminal case, Section 21, as amended, provides:

> SECTION 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/

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[12] *Rollo*, pp. 2-18. The Decision, in CA-G.R. CR-H.C. No. 04910, was penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Noel G. Tijam (now a retired Associate Justice of this Court) and Victoria Isabel A. Paredes of the Special Fifth Division, Court of Appeals, Manila.

[13] *Id*. at 19-22.

[14] 630 Phil. 215 (2010) [Per *J*. Del Castillo, Second Division].

[15] *Id*. at 228 citing *People v. Darisan, et al.*, 597 Phil. 479, 485 (2009) [Per *J*. Corona, First Division] and *People v. Partoza*, 605 Phil. 883 (2009) [Per *J*. Tinga, Second Division].

Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/ paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: Provided, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial

> laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued immediately upon completion of the said examination and certification[.] (Emphasis supplied)

Conformably, *People v. Nandi*[16] specified four (4) links that must be established in a confiscated item's chain of custody:

> [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.[17]

People v. Holgado[18] explained that compliance with the chain of custody requirements protects the integrity of the confiscated, seized, and/or surrendered drugs and/or drug paraphernalia in four (4) aspects:

> [F]irst, the nature of the substances or items seized; second, the quantity (e.g., weight) of the substances or items seized; third, the relation of the substances or items seized to the incident allegedly causing their seizure; and fourth, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them. Compliance with this requirement forecloses opportunities for planting, contaminating, or tampering of evidence in any manner.[19]

II

In *Morales*,[20] this Court categorically declared that failing to comply with Article II, Section 21(1) of Comprehensive

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[16] 639 Phil. 134 (2010) [Per J. Mendoza, Second Division].

[17] *Id*. at 144-145 citing *People v. Zaida Kamad*, 624 Phil. 289 (2010) [Per J. Brion, Second Division].

[18] 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

[19] *Id*. at 93.

[20] 630 Phil. 215 (2010) [Per J. Del Castillo, Second Division].

Dangerous Drugs Act implies "a concomitant failure on the part of the prosecution to establish the identity of the *corpus delicti*[.]"[21] It "produce[s] doubts as to the origins of the [seized paraphernalia]."[22] This is in keeping with the basic standard for establishing guilt in criminal proceedings: proof beyond reasonable doubt.

While not requiring absolute certainty, proof beyond reasonable doubt demands moral certainty. Compliance with this standard is a matter of compliance with a constitutional imperative:

> This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the right of an accused to be "presumed innocent until the contrary is proved." "Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution." Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be acquitted. As explained in *Basilio v. People of the Philippines*:
>
> We ruled in *People v. Ganguso*:
>
> > An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce absolute certainty.

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[21] *Id*. at 229 citing *People v. Orteza*, 555 Phil. 701 (2007) [Per J. Tinga, Second Division].

[22] *People v. Orteza*, 555 Phil. 701 (2007) [Per J. Tinga, Second Division] citing *People v. Laxa*, 414 Phil. 156, 170 (2001) [Per J. Mendoza, Second Division].

> Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.

Well-entrenched in jurisprudence is the rule that the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the prosecution. The burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence.[23] (Emphasis in the original)

Since compliance with the chain of custody requirements under Section 21 ensures the integrity of the seized items, it follows that noncompliance with these requirements tarnishes the credibility of the *corpus delicti*, which is at the core of prosecutions under the Comprehensive Dangerous Drugs Act. Such noncompliance casts doubt on the very claim that an offense against the law was committed:[24]

> Worse, the Prosecution failed to establish the identity of the prohibited drug that constituted the *corpus delicti* itself. The omission naturally raises grave doubt about any search being actually conducted and warrants the suspicion that the prohibited drugs were planted evidence.
>
> In every criminal prosecution for possession of illegal drugs, the Prosecution must account for the custody of the incriminating evidence from the moment of seizure and confiscation until the moment it is offered in evidence. That account goes to the weight of evidence. *It is not enough that the evidence offered has probative value on the issues, for the evidence must also be sufficiently connected to and tied with the facts in issue. The evidence is not relevant merely because it is available but that it has an* ***actual connection with the transaction involved and with the parties thereto***. This is the reason why

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[23] *Macayan, Jr. v. People*, 756 Phil. 202, 213-214 (2015) [Per *J.* Leonen, Second Division] citing Const., Art. III, Sec. 1; Const., Art. III, Sec. 14(2); *People v. Solayao*, 330 Phil. 811, 819 (1996) [Per *J.* Romero, Second Division]; and *Boac, et al. v. People*, 591 Phil. 508, 521-522 (2008) [Per *J.* Velasco, Jr., Second Division].

[24] *People v. Belocura*, 693 Phil. 476 (2012) [Per *J.* Bersamin, First Division].

authentication and laying a foundation for the introduction of evidence are important.[25] (Emphasis supplied, citations omitted)

Furthermore, noncompliance with Section 21 means that critical elements of the offense of illegal sale of dangerous drugs remain wanting. Such noncompliance justifies an accused's acquittal:

> In both illegal sale and illegal possession of prohibited drugs, *conviction cannot be sustained if there is a persistent doubt on the identity of the drug*. The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, *the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict*.[26] (Emphasis supplied)

III

Lescano v. People[27] summarized the requirements under Section 21(1):

> As regards the items seized and subjected to marking, Section 21 (1) of the Comprehensive Dangerous Drugs Act, as amended, requires the performance of two (2) actions: physical inventory and photographing. Section 21 (1) is specific as to when and where these actions must be done. As to when, it must be "immediately after seizure and confiscation." As to where, it depends on whether the seizure was supported by a search warrant. If a search warrant was served, the physical inventory and photographing must be done at the exact same place that the search warrant is served. In case of warrantless seizures, these actions must be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable."
>
> Moreover, Section 21 (1) requires at least three (3) persons to be present during the physical inventory and photographing. These persons

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[25] *Id*. at 495-496.

[26] *People v. Lorenzo*, 633 Phil. 393, 403 (2010) [Per *J*. Perez, Second Division].

[27] 778 Phil. 460 (2016) [Per *J*. Leonen, Second Division].

are: first, the accused or the person/s from whom the items were seized; second, an elected public official; and third, a representative of the National Prosecution Service. There are, however, alternatives to the first and the third. As to the first (i.e., the accused or the person/s from whom items were seized), there are two (2) alternatives: first, his or her representative; and second, his or her counsel. As to the representative of the National Prosecution Service, a representative of the media may be present in his or her place.[28]

Here, the case against accused-appellant is woefully lacking in satisfying these requirements.

There is no semblance of compliance with Section 21(1). All the prosecution has to support its assertions on the integrity of the marijuana that was allegedly obtained from accused-appellant is its bare claim that it was marked at the Tarlac Provincial Police Office.

People v. Garcia[29] is clear: the mere marking of seized items, instead of a proper physical inventory and photographing done in the presence of the persons specified under Section 21, will not justify a conviction:

> Thus, other than the markings made by PO1 Garcia and the police investigator (whose identity was not disclosed), no physical inventory was ever made, and no photograph of the seized items was taken under the circumstances required by R.A. No. 9165 and its implementing rules. We observe that while there was testimony with respect to the marking of the seized items at the police station, no mention whatsoever was made on whether the marking had been done in the presence of Ruiz or his representatives. There was likewise no mention that any representative from the media and the Department of Justice, or any elected official had been present during this inventory, or that any of these people had been required to sign the copies of the inventory.[30] (Citations omitted)

Neither PO2 Baquiran nor Inspector Silva testified on the conduct of a proper inventory and photographing. The

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[28] *Id*. at 475.

[29] 599 Phil. 416 (2009) [Per *J*. Brion, Second Division].

[30] *Id.* at 429.

prosecution's claims are sorely lacking in accounting how the marijuana was actually marked, including the safety measures undertaken by police officers.

Worse, the prosecution failed to account for the presence of even just one (1) of the persons required by Section 21(1) to be present during the inventory and photographing. There was no elected public official. Neither was there a representative of the National Prosecution Service nor was there a media representative. The prosecution did not even maintain that accused-appellant himself was present.

People v. Que[31] explained the importance of third-party witnesses:

> The presence of third-party witnesses is imperative, not only during the physical inventory and taking of pictures, but also during the actual seizure of items. The requirement of conducting the inventory and taking of photographs "immediately after seizure and confiscation" necessarily means that the required witnesses must also be present during the seizure or confiscation. This is confirmed in *People v. Mendoza*, where the presence of these witnesses was characterized as an "insulating presence [against] the evils of switching, 'planting' or contamination":
>
> > Similarly, P/Insp. Lim did not mention in his testimony, the relevant portions of which are quoted hereunder, that a representative from the media or the Department of Justice, or any elected public official was present during the seizure and marking of the sachets of shabu, as follows:
> >
> > . . . . . .
> >
> > The consequences of the failure of the arresting lawmen to comply with the requirements of Section 21 (1), supra, were dire as far as the Prosecution was concerned. Without the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the sachets of shabu, the evils of switching, "planting" or contamination of the evidence that

[31] *People v. Que*, G.R. No. 212994, January 31, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/january2018/212994.pdf> [Per *J.* Leonen, Third Division].

> 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 sachets of shabu that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.[32]

This Court is left with no objective guarantee on the integrity of the marijuana supposedly obtained from accused-appellant. The prosecution placed its faith entirely on the self-serving assurances of PO2 Baquiran and Inspector Silva. As this Court has emphasized in *Que*, this is "precisely the situation that the Comprehensive Dangerous Drugs Act seeks to prevent:"[33]

> The very process that Section 21 requires is supposed to be a plain, standardized, even run-of-the-mill, guarantee that the integrity of the seized drugs and/or drug paraphernalia is preserved. All that law enforcers have to do is follow Section 21's instructions. They do not even have to profoundly intellectualize their actions.[34]

Apart from the police officers' glaring noncompliance with Section 21(1), the prosecution is sorely lacking in guarantees on the integrity of the marijuana from the point of marking to chemical examination. Again, the prosecution completely placed its faith on PO2 Baquiran's recollection of how he personally brought the marijuana to the Tarlac Provincial Crime Laboratory Office.[35]

IV

Section 21(1) of the Comprehensive Dangerous Drugs Act allows for deviations from its requirements under "justifiable

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[32] *Id*. at 20-21 citing Rep. Act No. 9165 (2002), Sec. 21(1) and *People v. Mendoza*, 736 Phil. 749 (2014) [Per J. Bersamin, First Division].

[33] *Id*. at 17.

[34] *Id*.

[35] *Rollo*, pp. 5-6.

grounds." The prosecution, however, never bothered to account for any such justifiable ground.

In *People v. Lim*,[36] this Court definitively recognized the prosecution's burden to allege and substantiate justifiable grounds for deviating from the chain of custody requirements:

> [J]udicial notice is taken of the fact that arrests and seizures related to illegal drugs are typically made without a warrant; hence, subject to inquest proceedings. Relative thereto, Section 1 (A. 1.10) of the Chain of Custody Implementing Rules and Regulations directs:
>
> > A. 1.10. Any justification or explanation in cases of noncompliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the IRR of R.A. No. 9165 shall be presented.
>
> While the above-quoted provision has been the rule, it appears that it has not been practiced in most cases elevated before Us. Thus, in order to weed out early on from the courts' already congested docket any orchestrated or poorly built up drug-related cases, the following should henceforth be enforced as a mandatory policy:
>
> 1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, and its IRR.
> 2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.
> 3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal

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[36] G.R. No. 231989, September 4, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/september2018/231989.pdf> [Per *J.* Peralta, *En Banc*].

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.[37] (Citations omitted)

Lim's listing of requirements is consistent with *Que*, which explained that:

In order that there may be conscionable non-compliance, two (2) requisites must be satisfied: first, the prosecution must specifically allege, identify, and prove "justifiable grounds"; second, it must establish that despite non-compliance, the integrity and evidentiary value of the seized drugs and/or drug paraphernalia were properly preserved. Satisfying the second requisite demands a showing of positive steps taken to ensure such preservation. Broad justifications and sweeping guarantees will not suffice.[38]

It is understandably impracticable, even unreasonable, to retroactively insist here on compliance with the specific directives in *Lim*,[39] which merely serves to concretize Section 21(l)'s longstanding requirements. Yet, whether by *Lim*'s contemporary standard or by Section 21(1)'s bare textual articulation, the prosecution miserably failed to justify noncompliance with the chain of custody requirements under the Comprehensive Dangerous Drugs Act.

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[37] *Id.* at 15-16.

[38] *People v. Que*, G.R. No. 212994, January 31, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/january2018/212994.pdf> 22 [Per J. Leonen, Third Division].

[39] *People v. Lim*, G.R. No. 231989 (Notice), November 13, 2018. This Court clarified that, "[t]he mandatory policy laid down in Lim should not be given retroactive effect. Pertinent portion of *Lim* clearly indicates a prospective application of such policy[.]"

V

In the face of the prosecution's glaring noncompliance and utter dearth of justification, the Regional Trial Court[40] and the Court of Appeals[41] maintained that accused-appellant's guilt was nonetheless established as the police officers who apprehended him benefitted from a presumption of regularity.

This is a grave error.

Que[42] explained that, in drugs cases, the prosecution cannot benefit from a presumption of regularity. Section 21 of the Comprehensive Dangerous Drugs Act articulates a specific statutory mandate that cannot be trumped by the prosecution's self-assurance.

> As against the objective requirements imposed by statute, guarantees coming from the prosecution concerning the identity and integrity of seized items are naturally designed to advance the prosecution's own cause. These guarantees conveniently aim to knock two (2) targets with one (1) blow. First, they insist on a showing of corpus delicti divorced from statutory impositions and based on standards entirely the prosecution's own. Second, they justify non-compliance by summarily pleading their own assurance. These self-serving assertions cannot justify a conviction.

Even the customary presumption of regularity in the performance of official duties cannot suffice. *People v. Kamad* explained that the presumption of regularity applies only when officers have shown compliance with "the standard conduct of official duty required by law." It is not a justification for dispensing with such compliance:

> Given the flagrant procedural lapses the police committed in handling the seized shabu and the obvious evidentiary gaps in the chain of its custody, a presumption of regularity in the performance of duties cannot be made in this case. *A presumption*

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[40] CA *rollo*, p. 20.

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

[42] *People v. Que*, G.R. No. 212994, January 31, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/january2018/212994.pdf> [Per *J.* Leonen, Third Division].

> *of regularity in the performance of official duty is made in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise.* In light of the flagrant lapses we noted, the lower courts were obviously wrong when they relied on the presumption of regularity in the performance of official duty.
>
> We rule, too, that the discrepancy in the prosecution evidence on the identity of the seized and examined shabu and that formally offered in court cannot but lead to serious doubts regarding the origins of the shabu presented in court. This discrepancy and the gap in the chain of custody immediately affect proof of the corpus delicti without which the accused must be acquitted.
>
> From the constitutional law point of view, the prosecution's failure to establish with moral certainty all the elements of the crime and to identify the accused as the perpetrator signify that it failed to overturn the constitutional presumption of innocence that every accused enjoys in a criminal prosecution. When this happens, as in this case, the courts need not even consider the case for the defense in deciding the case; a ruling for acquittal must forthwith issue.[43] (Emphasis in the original)

Jurisprudence has been definite on the consequence of noncompliance. This Court has categorically stated that noncompliance negates whatever presumption there is on the regularity of the manner by which officers gained and maintained custody of the seized items:[44]

In *People v. Orteza*, the Court did not hesitate to strike down the conviction of the therein accused for failure of the police officers to

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[43] *Id*. at 11-12 citing *People v. Kamad*, 624 Phil. 289 (2010) [Per J. Brion, Second Division].

[44] *People v. Navarrete*, 665 Phil. 738 (2011) [Per J. Carpio Morales, Third Division]. See also *People v. Ulat*, 674 Phil. 484 (2011) [Per J. Leonardo-De Castro, First Division].

observe the procedure laid down under the Comprehensive Dangerous Drugs Law, thus:

> First, there appears nothing in the records showing that police officers complied with the proper procedure in the custody of seized drugs as specified in *People v. Lim*, i.e., any apprehending team having initial control of said drugs and/or paraphernalia should, immediately after seizure or confiscation, have the same physically inventoried and photographed in the presence of the accused, if there be any, and or his representative, who shall be required to sign the copies of the inventory and be given a copy thereof. The failure of the agents to comply with the requirement raises doubt whether what was submitted for laboratory examination and presented in court was actually recovered from appellant. *It negates the presumption that official duties have been regularly performed by the police officers.*
>
> . . . . . .
>
> IN FINE, *the unjustified failure of the police officers to show that the integrity of the object evidence-shabu was properly preserved* ***negates*** *the presumption of regularity accorded to acts undertaken by police officers* in the pursuit of their official duties.[45] (Emphasis supplied, citations omitted)

By its very nature, Section 21 demands strict compliance. Compliance cannot give way to a facsimile; otherwise, the purpose of guarding against tampering, substitution, and planting of evidence is defeated. Proof that strict compliance is imperative is how jurisprudence disapproves of the approximation of compliance:

> Even acts which approximate compliance but do not *strictly* comply with Section 21 have been considered insufficient. *People v. Magat*, for example, emphasized the inadequacy of merely marking the items supposedly seized:
>
> A review of jurisprudence, even prior to the passage of the R.A. No. 9165, shows that this Court did not hesitate to strike

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[45] *People v. Que*, G.R. No. 212994, January 31, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/january2018/212994.pdf> 12-13 [Per J. Leonen, Third Division].

down convictions for failure to follow the proper procedure for the custody of confiscated dangerous drugs. Prior to R.A. No. 9165, the Court applied the procedure required by Dangerous Drugs Board Regulation No. 3, Series of 1979 amending Board Regulation No. 7, Series of 1974.

In *People v. Laxa*, the policemen composing the buy-bust team failed to mark the confiscated marijuana immediately after the alleged apprehension of the appellant. One policeman even admitted that he marked the seized items only after seeing them for the first time in the police headquarters. The Court held that the deviation from the standard procedure in anti-narcotics operations produces doubts as to the origins of the marijuana and concluded that the prosecution failed to establish the identity of the *corpus delicti*.

Similarly, in *People v. Kimura*, the Narcom operatives failed to place markings on the alleged seized marijuana on the night the accused were arrested and to observe the procedure in the seizure and custody of the drug as embodied in the aforementioned Dangerous Drugs Board Regulation No. 3, Series of 1979. Consequently, we held that the prosecution failed to establish the identity of the *corpus delicti*.

In *Zaragga v. People*, involving a violation of R.A. No. 6425, the police failed to place markings on the alleged seized shabu immediately after the accused were apprehended. The buy-bust team also failed to prepare an inventory of the seized drugs which accused had to sign, as required by the same Dangerous Drugs Board Regulation No. 3, Series of 1979. The Court held that the prosecution failed to establish the identity of the prohibited drug which constitutes the *corpus delicti*.

In all the foregoing cited cases, the Court acquitted the appellants due to the failure of law enforcers to observe the procedures prescribed in Dangerous Drugs Board Regulation No. 3, Series of 1979, amending Board Regulation No. 7, Series of 1974, which are similar to the procedures under Section 21 of R.A. No. 9165. Marking of the seized drugs alone by the law enforcers is not enough to comply with the clear and unequivocal procedures prescribed in Section 21 of R.A. No. 9165.

> In the present case, although PO1 Santos had written his initials on the two plastic sachets submitted to the PNP Crime Laboratory Office for examination, it was not indubitably shown by the prosecution that PO1 Santos immediately marked the seized drugs in the presence of appellant after their alleged confiscation. There is doubt as to whether the substances seized from appellant were the same ones subjected to laboratory examination and presented in court.
>
> A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they have to be subjected to scientific analysis to determine their composition and nature. *Congress deemed it wise to incorporate the jurisprudential safeguards in the present law in an unequivocal language to prevent any tampering, alteration or substitution, by accident or otherwise. The Court, in upholding the right of the accused to be presumed innocent, can do no less than apply the present law which prescribes a more stringent standard in handling evidence than that applied to criminal cases involving objects which are readily identifiable.*
>
> *R.A. No. 9165 had placed upon the law enforcers the duty to establish the chain of custody of the seized drugs to ensure the integrity of the corpus delicti. Thru proper exhibit handling, storage, labeling and recording, the identity of the seized drugs is insulated from doubt from their confiscation up to their presentation in court.*[46] (Emphasis supplied, citations omitted)

This is but the latest in a litany of cases that demonstrate law enforcers' wanton disregard for basic statutory guidelines. While not losing sight of the urgency of addressing the drug menace, it is this Court's bounden duty to ensure compliance with laws and uphold basic freedoms. This Court has harped on and, in this Decision, continues to impress the need to comply with the bare minimum that the Comprehensive Dangerous Drugs Act requires. As in many cases before, this Court emphasizes that law enforcers' "utter disregard for Section 21 . . . raises grave doubts not only on the integrity of the allegedly seized items, but even on their own."[47] Self-serving assurances cannot

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

[47] *Id*. at 21.

replace reliable evidence. Failing compliance with the Comprehensive Dangerous Drugs Act, acquittal must ensue.

WHEREFORE, the Court of Appeals May 8, 2015 Decision in CA-G.R. CR-H.C. No. 04910 is **REVERSED** and **SET ASIDE**. Accused-appellant Edgardo Royol *y* Asico is **ACQUITTED** for the prosecution's failure to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections for immediate implementation. The Director of the Bureau of Corrections is directed to report the action he has taken to this Court within five (5) days from receipt of this Decision. For their information, copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drugs Enforcement Agency.

The Regional Trial Court is directed to turn over the marijuana subject of this case to the Dangerous Drugs Board for destruction in accordance with law.

SO ORDERED.

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

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

FIRST DIVISION

[G.R. No. 230723. February 13, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JUPITER VILLANUEVA *y* BAUTISTA @ "PETER,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE (RPC) IN RELATION TO ANTI-CHILD ABUSE, EXPLOITATION, AND DISCRIMINATION ACT (R.A. 7610) AND THE RULE ON VIOLENCE AGAINST WOMEN AND THEIR CHILDREN (RA 8369); FORCIBLE ABDUCTION WITH RAPE; ELEMENTS OF THE CRIMES OF FORCIBLE ABDUCTION AND RAPE, PRESENT; FORCIBLE ABDUCTION IS ABSORBED IN THE CRIME OF RAPE IN CASE AT BAR.— Forcible abduction under Article 342 of the Revised Penal Code (RPC) is committed when the following elements exist: (1) the victim is a woman, regardless of age, civil status, or reputation, (2) she is taken against her will, and (3) the abduction was done with lewd designs. The crime is considered complexed by rape under Article 266-A of the RPC when the abductor has carnal knowledge of the abducted woman and there is (1) force or intimidation; (2) the woman is deprived of reason or otherwise unconscious; or (3) she is under 12 years of age or demented. In the present case, the elements of the crimes of forcible abduction and rape existed. x x x [W]hile the elements of forcible abduction were sufficiently established in the present case, the crime for which accused-appellant must be convicted for should only be rape. Time and again, this Court has held that forcible abduction is absorbed in the crime of rape when the intent of the abductor is to have canal knowledge of the victim.

2. ID.; RPC; RAPE; ELEMENTS THEREOF, SUFFICIENTLY ESTABLISHED; WHERE THE MAIN OBJECTIVE OF THE ABDUCTOR WAS TO HAVE CARNAL KNOWLEDGE OF THE VICTIM, HE SHOULD BE CONVICTED OF RAPE.— The elements necessary to sustain

a conviction for rape are: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished (a) through the use of force or intimidation, (b) when the victim is deprived of reason or otherwise unconscious, (c) by means of fraudulent machination or grave abuse of authority, or (d) when the victim is under 12 years of age or is demented. The prosecution sufficiently established that AAA was raped while she was unconscious. Moreover, the abductors' intent to commit such horrific acts on her was made apparent when, upon arriving at the place she was detained, the assailants tried kissing her and slapped her when she resisted. She was only released the following morning after her abductors were done having their way with her. Absent any other overt act which would show otherwise, then it is clear that the main objective of her abductors was to have carnal knowledge of her, for which they should be convicted for the crime of rape.

3. ID.; ID.; ID.; PENALTY AND CIVIL LIABILITY.— With regard to the penalty imposed, the CA correctly upheld the trial court's imposition of the penalty of *reclusion perpetua* in accordance with Article 266-B of the RPC. Finally, we affirm the modifications made by the CA as to the amounts of damages awarded, such that AAA was awarded ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages, which shall earn interest at the rate of 6% *per annum* awarded from the date of the finality of this Decision until fully paid. However, it must be modified to include an award of ₱75,000.00 as exemplary damages, in consonance with this Court's ruling in *People v. Jugueta*.

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

DEL CASTILLO, *J.:*

On appeal is the Decision[1] dated August 31, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07482, which affirmed with modification, the Decision[2] dated October 9, 2014 of the Regional Trial Court (RTC), Branch 72, of Antipolo City in Criminal Case No. 06-32222, finding accused-appellant Jupiter Villanueva *y* Bautista @ "Peter" (accused-appellant) guilty beyond reasonable doubt of the crime of Forcible Abduction with Rape, in relation to Section 5(b) of Republic Act (RA) No. 7610 and Section 5(a) of RA 8369.

Antecedent Facts

On August 2, 2006, accused-appellant was charged under the following Information:[3]

That on or about the 27th day of July 2006 until 28th day of July 2006, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a bladed weapon, conspiring and confederating together with several persons whose true names, identities and present whereabouts are still unknown[,] and all of them mutually helping and aiding x x x one another, by means of force, violence and intimidation, did, then and there willfully, unlawfully and feloniously abduct and take away by means of a tricycle one [AAA],[4] a fifteen (15) year old minor,

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[1] *Rollo,* pp. 2-15; penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Romeo F. Barza and Leoncia R. Dimagiba.

[2] Records (Vol. 1), pp. 141-151; penned by Judge Ruth D. Cruz-Santos.

[3] *Id.* at 1-2.

[4] "The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, Providing Penalties for its Violation, 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;

against the latter's will and consent and bring her to a house and then and there kiss her on her neck while forcing her to drink water and at the same time slap her; that on the occasion of the said Forcible Abduction, with lewd designs and by means of force, violence and intimidation, did, then and there willfully, unlawfully and feloniously have sexual intercourse with said minor, against the latter's will and consent.

CONTRARY TO LAW.
Antipolo City, 2 August 2006.[5]

Accused-appellant, assisted by his counsel *de oficio,* pleaded not guilty during his arraignment. During the pre-trial conference, the parties stipulated on the identity of accused-appellant, as well as the jurisdiction of the trial court. Thereafter, trial on the merits ensued.[6]

The prosecution presented the testimonies of (1) AAA, (2) AAA's aunt, BBB, (3) PC/Insp. Marianne Ebdane ("PC/Insp. Ebdane"), the Medico-Legal Officer of the Philippine National Police (PNP) Crime Laboratory Office, Camp Crame, Quezon City, and (4) SPO 1 Ma. Theresa A. Bautista ("SPO 1 Bautista") of the Women's Child Protection Desk of the Antipolo Police Station.[7]

The CA adopted the summary of the Office of the Solicitor General (OSG) of the prosecution's version of the incidents in the assailed Decision, to *wit*:

On July 27, 2006 at around 4 o'clock in the afternoon, private complainant AAA went to Gate [2], San Isidro, Antipolo City to buy a gift for her mother. While she was walking, two (2) men, whose faces were covered with a black cloth and wearing a cap, approached her and poked a knife at her side. Intimidated, she was forced to

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and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and Their Children, effective November 15, 2004." *People v. Dumadag,* 667 Phil. 664, 669 (2011).

[5] Records (Vol. 1), p. 1.

[6] *Id.* at 141.

[7] *Id.* at 142-146.

walk along with them. Said men also told her not to say anything because two other men were coming behind her.

While the men who accosted her were talking, unmindful of her actions, AAA looked behind her and noticed two men who were about one and one half meters away from her. One of the men winked and smiled at her. AAA [was] able to stare at said man's face who later turned out to be accused-appellant Jupiter Villanueva.

On their way towards the tricycle, while AAA was being held by her two abductors, a lady noticed the group. AAA uttered the words *"Ate tulong,"* but one of the men covered her mouth and said that AAA was his sister.

When she was about to be boarded on the tricycle and before she was blindfolded, she saw accused-appellant on the tricycle.

Thereafter, AAA was blindfolded and forced to board the tricycle. While inside the tricycle, two of AAA's abductors pinned her arms and legs to prevent her from escaping. AAA could hear four distinct voices from the men who were with [her] on board the tricycle, which were the same voices she heard before she boarded said tricycle.

About minutes thereafter, the tricycle stopped. AAA was carried out of the vehicle and was forced to sit between her abductors. In the place where she was brought, she could still hear the same four distinct voices from her abductors. Two of the abductors tried to force themselves upon her by kissing her neck despite her resistance. When AAA felt that another person came in front of her, she kicked that person for which she was slapped on both cheeks by the person beside her. The two men beside her then restrained her arms while the two others forcibly opened her mouth and forced her to drink a bitter liquid substance. When AAA refused to drink the liquid, she was hit in the abdomen twice by one of them. Consequently, AAA felt dizzy and lost consciousness.

In the morning of the following day, AAA woke up and found [herself] inside a tricycle. Her bra was removed an[d] her whole body was aching. She also noticed that she had scratches on her chest. Disoriented, AAA tried to ask the tricycle driver where she was and if he knew the men who abducted her[,] but the tricycle driver just told her to report the incident to the barangay.

AAA was the[n] dropped off near her house. Upon arriving home, she tearfully recounted her harrowing experience to her mother. It was then that she noticed blood in her panties.

On the same day, July 28, 2006, AAA[,] assisted by her mother, went to the PNP Crime Laboratory in Camp Crame, Quezon City for a medico-legal examination.

The results of the medico-legal examination show that AAA's hymen had deep fresh laceration at [the] 6 o'clock position with contusion at the 12 o'clock position. The medico legal report further stated that the findings show clear evidence of blunt force or penetrating trauma to the hymen.

Thereafter, with the assistance of a social worker, AAA reported the incident to P02 Anna Lisa Reyes of the Women and Child Protection Desk, Antipolo City Police. On July 29, 2006, AAA was shown photographs from the PNP's Rogues Gallery. She was able to identify one of her abductors, whom the police named as Jupiter Villanueva. She was also able to point to accused-appellant in a police line-up.[8]

The defense, on the other hand, presented accused-appellant as its sole witness, whose testimony was summarized by the Public Attorney's Office in the following manner:

Accused **JUPITER BAUTISTA VILLANUEVA** vehemently denied the accusations against him. Prior to this case, he does not even know who AAA was. On [the] day of the alleged incident, he reported to the rice store at CMCV Plaza Market at around six o'clock in the morning, where he worked as a helper. At around one thirty o'clock in the afternoon, he left his work and proceeded to NGI Market in Parang, Marikina, to meet up with his girlfriend, Cathy Aquino. He arrived at the said market around three o'clock and stayed there until seven thirty o'clock in the evening. Afterwards, they went home. At around nine o'clock in the evening, he went back to his place of work in order to meet with his employer. Subsequently, he learned that the police was looking for him because of an allegation that he raped someone. He came to see P03 Liza Reyes and was asked if he really raped someone. He denied the accusation and asserted that if he did rape someone, he should have gone into hiding by now. P03

[8] *Rollo,* pp. 4-5.

Reyes informed him about who filed the complaint against him and was instructed to go to the police station. A[t] the police station, the complainant first pointed at someone before pointing at him. The first person pointed at denied the accusation and started to cry while he was startled about the fact that the said complainant pointed at him. Subsequently, he was detained and has been such since 15 August 2006.[9] (Emphasis in the original)

Ruling of the Regional Trial Court

The RTC convicted accused-appellant in its October 9, 2014 Decision, the decretal portion of which reads:

> WHEREFORE, finding the accused **GUILTY** beyond reasonable doubt [for] the crime of Forcible Abduction with Rape in relation to Sec. 5(b) of R.A. 7610 and Sec. 5(a) of R.A. 8369, accused is sentenced to suffer the penalty of Reclusion Perpetua and to pay the victim the amount of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.
>
> SO ORDERED.[10] (Emphasis in the original)

The RTC ruled that all the elements in the crime charged were present in this case. It gave credence to the victim's testimony and identification of accused-appellant as one of the malefactors who abducted and raped her. Aside from this, the trial court gave weight to BBB, the victim's aunt who testified that, when she accompanied AAA to the police station, AAA, who was very afraid, kept on shouting "*siya yun, siya yun, siya yun*" while pointing to accused-appellant, after which she lost consciousness. The RTC also found that SPO1 Bautista corroborated the testimony of BBB that AAA pointed to accused-appellant as one of the persons who abducted her. More importantly, the trial court held that AAA's rape was sufficiently established as evidenced by the findings of PC/Insp. Ebdane, the medico-legal officer who conducted the physical examination on AAA after the incident.[11]

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[9] *Id*. at 5-6.

[10] Records (Vol. l), p. 151.

[11] *Id*. at l49-150.

The trial court found accused-appellant's defense of alibi and denial to be weak and marred with inconsistencies. The RTC pointed out that accused-appellant failed to adduce evidence that it was physically impossible for him to have been at the scene of the crime at or about the same time that the abduction and rape happened, especially since he was working as a *trabahador* in a rice store just about 50 meters away from the place where the abduction took place. Despite his claim that he reported for work the day AAA was abducted as well as the day after, accused-appellant failed to present other witnesses to corroborate his defense. Instead, he submitted more alibis that he could no longer contact his employer and that his other witness had passed away due to a heart attack.[12]

The RTC also ruled that, aside from the elements of the crime charged, conspiracy existed in the present case between accused-appellant and the other unknown malefactors.[13]

Accused-appellant filed a Notice of Appeal and elevated the case to the CA.[14]

Ruling of the Court of Appeals

In the assailed Decision, the CA affirmed with modification the RTC Decision, to wit:

WHEREFORE, premises considered, the instant appeal is **DENIED.** The assailed Decision dated October 9, 2014 rendered by the Regional Trial Court, Branch 72 of Antipolo City, in Criminal Case No. 06-32222, finding Jupiter Villanueva *y* Bautista @ Peter guilty beyond reasonable doubt of Forcible Abduction with Rape and sentencing him to suffer the penalty of *reclusion perpetua,* is hereby **AFFIRMED with MODIFICATION** in that the award of civil indemnity and moral damages are both increased to ₱75,000.00.

Such award of damages shall earn interest at the rate of 6% per *annum* from the date of finality of the judgment until fully paid.

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[12] *Id*. at 150.

[13] *Id*. at 151.

[14] *Id*. at 152-153.

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

The CA upheld the trial court's finding that AAA's testimony on the circumstances surrounding the incident was credible, steadfast, and unfaltering. It also agreed with the trial court that AAA was unyielding and resolute in her identification of accused-appellant as one of the men who abducted her. On the other hand, accused-appellant only offered denial and alibi which he failed to bolster with evidence showing that it was physically impossible for him to have been at the scene of the crime when it happened. The CA ruled that the prosecution successfully proved all elements of the crime charged, holding that AAA's abduction was a necessary means to commit rape. It also affirmed the trial court's finding of conspiracy between accused-appellant and the other assailants.[16]

As for accused-appellant's assertion that the accusation against him was influenced by police officers, the CA rejected the same and held that the testimonies of the prosecution witnesses sufficiently established that AAA's identification of accused-appellant at the police station was neither influenced nor directed by the police officers.[17]

Finally, the CA affirmed the penalty of *reclusion perpetua* imposed by the trial court. However, it increased the awards of civil indemnity and moral damages from ₱50,000.00 to ₱75,000.00 each, and imposed thereon interest at the rate of 6% *per annum* from the date of finality of the judgment until its full payment,[18] in light of this Court's ruling in *People v. Jugueta*.[19]

Hence, this appeal.

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[15] *Rollo,* pp. 14-15.

[16] *Id*. at 7-11.

[17] *Id*. at 11-13.

[18] *Id*. at 13-15.

[19] 783 Phil. 806, 848 (2016).

In our Resolution[20] dated July 3, 2017, the Court required the parties to submit their respective supplemental briefs within 30 days from notice, if they so desired. The parties separately manifested that they will no longer be filing supplemental briefs.[21]

The Court's Ruling

After a careful review of the records of the case, we find the appeal to be devoid of merit.

Accused-appellant was charged and convicted for forcible abduction with rape, in relation to Section 5(b)[22] of RA 7610 and Section 5(a)[23] of RA 8369.

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[20] *Rollo,* pp. 22-23.

[21] *Id*. at 32-42.

[22] Section 5. ***Child Prostitution and Other Sexual Abuse.*** — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

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(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or [subjected] to other sexual abuse: *Provided,* That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided,* That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period[.]

[23] **Section 5. *Jurisdiction of Family Courts.*** — The Family Courts shall have exclusive original jurisdiction to hear and decide the following cases:

a) Criminal cases where one or more of the accused is below eighteen (18) years of age but not less than nine (9) years of age or where one or more of the victims is a minor at the time of the commission of the offense: *Provided,* That if the minor is found guilty, the court shall promulgate sentence and ascertain any civil liability which the accused may have incurred.

The sentence, however, shall be suspended without need of application pursuant to Presidential Decree No. 603, otherwise known as the "Child and Youth Welfare Code"[.]

Forcible abduction under Article 342 of the Revised Penal Code (RPC) is committed when the following elements exist: (1) the victim is a woman, regardless of age, civil status, or reputation, (2) she is taken against her will, and (3) the abduction was done with lewd designs.[24] The crime is considered complexed by rape under Article 266-A of the RPC when the abductor has carnal knowledge of the abducted woman and there is (1) force or intimidation; (2) the woman is deprived of reason or otherwise unconscious; or (3) she is under 12 years of age or demented.[25]

In the present case the elements of the crimes of forcible abduction and rape existed.

The trial court found that AAA was able to clearly testify on the events surrounding her abduction at around 4 o'clock in the afternoon of July 27, 2006.[26] At that time, the victim was only fifteen (15) years old, as evidenced by her Certificate of Live Birth.[27]

During her testimony, AAA narrated that on July 27, 2006, while she was walking near Gate 2, San Isidro, Antipolo City, two men whose faces were covered, accosted her and told her not to turn her back or say anything as they had two other male companions behind them. She was able to confirm that two other men were indeed following suit when she stole a look while the men who accosted her were talking. One of the men following them even winked at her as she looked behind. Thereafter, the men covered her eyes and forced her to board the side car of a tricycle where the men pinned her legs and arms down on both sides as the tricycle started to move.[28]

AAA further testified that, after around 10 minutes of travel, the tricycle stopped and the men brought her out of the tricycle. She was made to sit down in a place and was not even sure if

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[24] *People v. Amaro,* 739 Phil. 170, 175 (2014).

[25] *Id*.

[26] TSN, June 3, 2008, pp. 3-13.

[27] TSN, June 8, 2010, pp. 3-4.

[28] TSN, June 3, 2008, pp. 3-13.

it was a house. All throughout, she could hear the same voices of four men, including those of the men who abducted her. Then, two persons started forcing themselves on her and kissing her neck. She tried to avoid their advances and when she felt someone walking in front of her, she kicked the person, causing the person sitting beside her to slap her twice. Someone then forcibly opened her mouth and made her drink a bitter liquid substance. Afterwards, two persons held down her arms while two others again forced her to drink the bitter liquid. When she refused to drink, someone hit her in the abdomen twice which made her become dizzy and lose consciousness.[29]

When AAA woke up the following morning at around 5:45 a.m., she found herself inside a moving tricycle being driven by a man she later recognized during a police line-up. Her entire body, more particularly her chest, legs, and thighs, was aching and her bra had been unclasped. She also noticed that she had scratches on her chest and some of her belongings, such as her ring and earring, were missing. She asked the tricycle driver what happened to her, but he did not answer and only told her to report the incident to the barangay. He then dropped her off near her house.[30]

Upon reaching the house, AAA' s mother met her and slapped her since it was already early morning. This prompted AAA to cry and reveal what had happened to her. Initially, BBB did not believe her, but she later cried with AAA. At this time, AAA noticed that her panty had blood. She was then brought to Camp Crame, where a physical examination was conducted on her. She thereafter went to the Women's Desk of the Antipolo Police Station where she narrated her ordeal and she was made to identify her assailants in a police line-up. During the police line-up, AAA was able to recognize accused-appellant as one of the men following her when she was abducted, as well as the tricycle driver who brought her near her house the following morning.[31]

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[29] *Id*. at 14-19.

[30] *Id*. at 19-21; TSN, June 8, 2010, pp. 10-17.

[31] TSN, June 8, 2010, pp. 17-22.

Based on the foregoing, we find that the RTC and the CA were correct in declaring AAA's testimony as credible and straightforward. Although she was unable to recall the actual act of rape committed upon her, it was confirmed by the PNP Medico-Legal Officer, PC/Insp. Ebdane, during the physical examination conducted on AAA. In her report, PC/Insp. Ebdane declared that there was a deep fresh laceration at the 6:00 o'clock position and a contusion at the 12:00 o'clock position. PC/Insp. Ebdane also found that there were external physical injuries on AAA's right pectoral region, abrasions on the vertebral region and proximal 3rd of her right arm, and a contusion on her deltoid. When asked about the possible causes of the lacerations, PC/Insp. Ebdane deduced that they may have been caused by an erect penis, a finger, or any blunt object which may cause an injury.[32]

Time and again, we have held that "the trial court's evaluation and conclusion on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, especially after the CA as the intermediate reviewing tribunal has affirmed the findings, unless there is a clear showing that the findings were reached arbitrarily, or that certain facts or circumstances of weight, substance or value were overlooked, misapprehended or misappreciated that, if properly considered, would alter the result of the case."[33]

The burden to show clear and convincing reasons for this Court to reverse the unanimous determination of AAA's credibility as a witness was on accused-appellant.[34] However, he failed to overcome this burden.

During trial, accused-appellant relied on the defenses of alibi and denial. However, denial and alibi are inherently weak defenses which constitute self-serving negative evidence, especially when weighed against the clear, positive, and credible

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[32] TSN, February 4, 2013, pp. 13-19.

[33] *People v. Domingo,* G.R. No. 225743, June 7, 2017, 827 SCRA 170, 177-178.

[34] *Id*. at 178.

assertions of the victim which are entitled to greater evidentiary weight.[35]

We agree with the CA when it ruled thus:

> On the face of such allegations, [accused-appellant] can only offer denial and the alibi that he was with his girlfriend in Parang, Marikina, which is about two rides away from the place where AAA was abducted. Basic is the rule that for alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime. Physical impossibility refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places. Where there is the least chance for the accused to be present at the crime scene, the defense of alibi must fail.
>
> Since [accused-appellant] himself admitted that Parang, Marikina is just two rides away and that the store where he worked at was only about 50 meters from the bakery where AAA was abducted at Gate 2, San Isidro, Antipolo, it was thus not physically impossible for him to be at the *locus criminis* at the time of the incident. In addition, positive identification destroys the defense of alibi and renders it impotent, especially where such identification is credible and categorical.[36]

The CA also correctly rejected accused-appellant's claim that AAA's accusation was influenced by the police. The testimony of AAA, as corroborated by her aunt, BBB, reveals that she immediately recognized accused-appellant as one of the men who were following her during her abduction. Her spontaneous identification of accused-appellant, which was accompanied by hysterical crying and shouting, is a clear indication that it was not subject to any influence from the police officers present.[37] Absent any proof that the charge against the accused-appellant was impelled by any ill motive, the Court

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[35] *People v. Rupal,* G.R. No. 222497, June 27, 2018.

[36] CA *rollo,* p. 118.

[37] TSN, December 6, 2010, pp. 16-19.

cannot be swayed from giving full credence to the victim's testimony.[38]

Nevertheless, while the elements of forcible abduction were sufficiently established in the present case, the crime for which accused-appellant must be convicted for should only be rape. Time and again, this Court has held that forcible abduction is absorbed in the crime of rape when the intent of the abductor is to have carnal knowledge of the victim.[39]

The elements necessary to sustain a conviction for rape are: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished (a) through the use of force or intimidation, (b) when the victim is deprived of reason or otherwise unconscious, (c) by means of fraudulent machination or grave abuse of authority, or (d) when the victim is under 12 years of age or is demented.[40]

The prosecution sufficiently established that AAA was raped while she was unconscious. Moreover, the abductors' intent to commit such horrific acts on her was made apparent when, upon arriving at the place she was detained, the assailants tried kissing her and slapped her when she resisted. She was only released the following morning after her abductors were done having their way with her. Absent any other overt act which would show otherwise, then it is clear that the main objective of her abductors was to have carnal knowledge of her, for which they should be convicted for the crime of rape.

With regard to the penalty imposed, the CA correctly upheld the trial court's imposition of the penalty of *reclusion perpetua* in accordance with Article 266-B[41] of the RPC.

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[38] *People v. Zafra,* 712 Phil. 559, 574-575 (2013).

[39] *People v. Domingo, supra* note 33.

[40] REVISED PENAL CODE, Article 266-A, as amended by REPUBLIC ACT No. 8353 (1997).

[41] Art. 266-B. *Penalties.* — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*

Finally, we affirm the modifications made by the CA as to the amounts of damages awarded, such that AAA was awarded ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages, which shall earn interest at the rate of 6% *per annum* awarded from the date of the finality of this Decision until fully paid. However, it must be modified to include an award of ₱75,000.00 as exemplary damages, in consonance with this Court's ruling in *People v. Jugueta*.[42]

WHEREFORE, the appeal is hereby **DISMISSED**. The Decision dated August 31, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07482 is **MODIFIED** in that accused-appellant Jupiter Villanueva *y* Bautista is found **GUILTY** of rape; in addition, AAA is entitled to the amount of ₱75,000.00 as exemplary damages.

SO ORDERED.

Bersamin, C.J., *Jardeleza, Gesmundo*, and *Carandang, JJ.*, concur.

SECOND DIVISION

[G.R. No. 233339. February 13, 2019]

D.M. CONSUNJI, INC., *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES and THE HEIRS OF JULIAN CRUZ, represented by MACARIA CRUZ ESTACIO,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY; LAND REGISTRATION; THE SURVEY PLAN AND THE DENR-CENRO CERTIFICATION ARE NOT PROOF THAT THE

[42] *Supra* note 19.

PRESIDENT OR THE DENR SECRETARY HAS RECLASSIFIED AND RELEASED THE PUBLIC LAND AS ALIENABLE AND DISPOSABLE HENCE THE APPLICANT MUST PRESENT A COPY OF THE ORIGINAL CLASSIFICATION THAT THE LAND IS ALIENABLE AND DISPOSABLE.— [T]he Court in *Sps. Fortuna* ruled: **Mere notations appearing in survey plans are inadequate proof of the covered properties' alienable and disposable character.** These notations, at the very least, only establish that the land subject of the application for registration falls within the approved alienable and disposable area per verification through survey by the proper government office. **The applicant, however, must also present a copy of the original classification of the land into alienable and disposable land, as declared by the DENR Secretary or as proclaimed by the President. x x x** The survey plan and the DENR-CENRO certification are not proof that the President or the DENR Secretary has reclassified and released the public land as alienable and disposable. The offices that prepared these documents are ***not the official repositories or legal custodian*** of the issuances of the President or the DENR Secretary declaring the public land as alienable and disposable.

2. ID.; ID.; ID.; TWO DOCUMENTS WHICH MUST BE PRESENTED TO PROVE THAT THE LAND SUBJECT OF THE APPLICATION FOR REGISTRATION IS ALIENABLE AND DISPOSABLE, ENUMERATED.— In the recent case of *In Re: Application for Land Registration, Suprema T. Dumo v. Republic of the Philippines*, the Court reiterated the requirement it set in *Republic v. T.A.N. Properties, Inc.* (*T.A.N. Properties*) that there are two documents which must be presented to prove that the land subject of the application for registration is alienable and disposable. These are: (1) a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records, and (2) a certificate of land classification status issued by the CENRO or the Provincial Environment and Natural Resources Office (PENRO) based on the land classification approved by the DENR Secretary.

3. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW SHALL BE RAISED IN A PETITION FOR *CERTIORARI*; EXCEPTIONS; SINCE THE FINDINGS OF FACT OF THE

TRIAL COURT ARE AT ODDS WITH THAT OF THE COURT OF APPEALS, THE SUPREME COURT IS ALLOWED TO MAKE A FACT-CHECK; CASE AT BAR.— Under the Rules, a Rule 45 petition for review on *certiorari* shall raise only questions of law and a review is not a matter of right, but of sound judicial discretion, and will be granted only when there are special and important reasons therefor. DMCI has not directly pointed to any of the exceptions where the Court may review the findings of fact of the CA in a Rule 45 *certiorari* petition. However, based on its arguments, it appears that DMCI is invoking the MeTC's Order dated September 7, 2012 wherein it stated that the issue on the open, continuous, exclusive and notorious possession since June 12, 1945 by DMCI and its predecessors-in-interest was testified on by Hilberto Hostillero, representative of DMCI, Francisco Esteban, former tenant of its predecessor-in-interest, Eugenio Castro, adjoining owner, and San Pedro; and such proof of possession was bolstered by the Field Inspection Report of DENR Special Investigator, Antonio M. Lachica. Since the findings of fact of the trial court are at odds with those of the CA, the Court is allowed to make a fact-check.

APPEARANCES OF COUNSEL

Developers Counsel Law Firm for petitioner.
Office of the Solicitor General for public respondent.
Bayaua & Associates Law Offices for respondents heirs of Julian Cruz.

R E S O L U T I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated February 23, 2017 (Decision) of the Court of

[1] *Rollo*, pp. 3-22, excluding Annexes.

[2] *Id.* at 23 to 34-A. Penned by Associate Justice Myra V. Garcia-Fernandez, with Associate Justices Rosmari D. Carandang (now a member of this Court) and Pedro B. Corales, concurring.

Appeals[3] (CA) in CA-G.R. CV No. 99963, reversing and setting aside the Order[4] dated September 7, 2012 rendered by the Metropolitan Trial Court[5] of Taguig City, Branch 74 (MeTC) in LRC Case No. 37 that confirmed the title of petitioner D.M. Consunji, Inc. (DMCI) over Lot 5174-A with an area of 4,839 square meters situated at Barangay Bambang, Taguig City (Subject Land), and the Resolution[6] dated August 2, 2017 of the CA[7] denying the motion for reconsideration filed by DMCI.

The Facts and Antecedent Proceedings

The CA Decision narrates the factual antecedents as follows:

x x x D.M. Consunji, Inc. [(DMCI)] filed an application for registration of title over a parcel of land with the MeTC[.] The subject lot is denominated as Lot No. 5174-A, with an area of 4,935 square meters, more or less, situated at Bambang, Taguig, Metro Manila, and covered by survey plan Swo-00-001460(5174, MCad-m-590-D). In its application, [DMCI] averred that it acquired the land from Filomena D. San Pedro [(San Pedro)] by virtue of a Deed of Absolute Sale dated November 28, 1995; that the land was not tenanted and there are no buildings or improvements thereon; that the land was last assessed at ₱59,220.00 and that there is no mortgage or encumbrance of any kind affecting the land; there are no other persons having any interest on or possession of the said land; and that [DMCI]

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[3] Special Third Division.

[4] *Rollo*, pp. 50-57. Penned by Acting Presiding Judge Donna B. Pascual.

[5] Section 34 of Batas Pambansa Blg. 129, or the JUDICIARY REORGANIZATION ACT OF 1980, as amended by Republic Act No. 7691 (approved on March 25, 1994) grants Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts the delegated jurisdiction to hear and determine cadastral or land registration cases covering lots where there is no controversy or opposition, or contested lots where the value of which does not exceed ₱100,000.00, such value to be ascertained by the affidavit of the claimant or by agreement of the respective claimants if there are more than one, or from the corresponding tax declaration of the real property; and their decisions shall be appealable in the same manner as decisions of the Regional Trial Courts.

[6] *Rollo*, pp. 35-36.

[7] Former Special Third Division.

and its predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the land since June 12, 1945, or earlier.

Julian Cruz [(Cruz)], represented by Macaria C. Estacio, filed an opposition to the application claiming that he is the owner of the subject parcel of land; that his predecessors-in-interest have occupied and claimed the subject land since the 1920s as follows: 1) Pablo Cruz as shown by Tax Declaration No. 4055, and 2) Abundia Cruz (daughter of Pablo Cruz), as shown by Tax Declaration No. 10845 dated October 26, 1941; and that the latest Tax Declaration over the subject property is under the name of Abundia Cruz dated January 10, 1994. [Cruz] claims that [San Pedro], who is claimed by [DMCI] to be the former owner of the subject land, is one of the children of Dionisio Dionisio who was a previous tenant of the land; and that the tax declaration in the name of [San Pedro], all dated 1995 or 1994, cannot be considered as evidence of ownership.

[Cruz] died during trial. Upon motion of his heirs, [represented by Macaria Cruz Estacio (Cruz heirs)], the MeTC granted the motion for substitution in an [O]rder dated August 20, 2003.

After trial, the MeTC issued a [D]ecision denying the application on the ground that [DMCI] failed to prove its actual possession of the property and the possession of its predecessor-in-interest since June 12, 1945 or earlier. x x x

x x x x x x x x x

[DMCI] filed a motion for reconsideration from the [D]ecision dated July 28, 2011 claiming that 1) inconsistencies in the testimony of San Pedro with respect to minor details may be disregarded without impairing the credibility of the witness; and 2) [DMCI] has proven its open, continuous, exclusive, and notorious possession and occupation of the subject property since June 12, 1945.

[Cruz heirs] opposed the motion for reconsideration, claiming that the testimony of San Pedro is not only inconsistent but also false considering that [DMCI] failed to prove open, continuous, and notorious possession over the subject property.

x x x Republic of the Philippines [(Republic)], through the Office of the Solicitor General (OSG), also opposed the motion for reconsideration, claiming that there is no showing that the subject land forms part of the disposable and alienable lands of public domain

and the documents offered in evidence to prove this (survey plan and field inspection report) are not enough based on prevailing jurisprudence; that neither [DMCI] nor its predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the subject land in the concept of an owner since June 12, 1945 or earlier[.] x x x San Pedro's inconsistent statements, as enumerated by the MeTC, are clearly material and the documentary evidence presented by [DMCI] did not show the required possession and occupation.

On September 7, 2012, the MeTC issued the assailed [O]rder granting the motion for reconsideration and confirming the title of [DMCI] over the subject property. The said court ruled that even if [DMCI's] earlier tax declaration was only for the year 1995, such fact will not militate against the title of the former because as long as the testimony supporting possession for the required period is credible, the court will grant the petition for registration; that [DMCI] has acquired [registrable] title over the subject property anchored on its predecessors-in-interest's possession tracked down from the time before the Japanese occupation; that the subject property is within the area that was already declared as alienable and disposable, as shown by the conversion plan and field inspection report for the subject property; and that the inconsistencies in the testimony of San Pedro are minor which can be disregarded considering the other pieces of evidence presented by [DMCI].

[The dispositive portion of the MeTC Order dated September 7, 2012 states:

> **WHEREFORE**, the applicant's Motion for Reconsideration is granted. The Decision dated July 28, 2011 is hereby reconsidered and judgment is hereby rendered confirming the title of D.M. Consunji, Inc. xxx over Lot 5174-A of conversion plan Swo-00-001460 covering an area of Four Thousand Eight Hundred Thirty Nine (4,839) square meters situated at Barangay Bambang, Taguig City, Metro Manila.
>
> Upon finality of this Order and payment of the corresponding taxes due on the said lot, let an Order for the issuance of decree of registration be issued.
>
> Furnish the applicant, the oppositor, their respective counsel, all government agencies copy of this Order.

SO ORDERED.[8]

Hence, the appeal to the CA, which it found to have merit.][9]

Ruling of the CA

The CA in its Decision dated February 23, 2017 granted the appeal. The CA held that DMCI failed to prove the following requisites under Section 14(1) of Presidential Decree No. (PD) 1529 for land registration or judicial confirmation of incomplete or imperfect title: (1) the subject land forms part of the disposable and alienable lands of the public domain, and (2) the applicant has been in open, continuous, exclusive and notorious possession and occupation of the same under a *bona fide* claim of ownership since June 12, 1945, or earlier.[10]

Regarding the first requirement, the CA held that the Survey Plan for Lot No. 5174-A, where there is a notation which states that "this survey is inside the alienable and disposable land area as per project no. 27-B certified by the Bureau of Forest Development dated 03 January 1968" and the Field Inspection Report issued by the South Community Environment and Natural Resources Office (CENRO) of the Department of Environment and Natural Resources (DENR) and the verification of the CENRO officer are inadequate to prove that the Subject Land is alienable or disposable.[11]

Anent the second requirement, the evidence on record is insufficient to prove that San Pedro or her father (Dionisio Dionisio) possessed or occupied the Subject Land in the concept of an owner since June 12, 1945 or earlier as the records do not show proof of how San Pedro's father came to own the Subject Land and how she inherited the same from her father and she admitted that the Subject Land was only declared for tax purposes for the first time in 1995.[12]

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[8] *Rollo*, p. 56.

[9] *Id*. at 24-30.

[10] *Id*. at 30-34.

[11] *Id*. at 30-32.

[12] *Id*. at 32-34.

The dispositive portion of the CA Decision states:

WHEREFORE, the appeal is **GRANTED**. The order issued by the Metropolitan Trial Court of Taguig City Branch 74 dated September 7, 2012 in LRC Case No. 37 is **REVERSED** and **SET ASIDE**. The application for land registration filed by applicant-appellee D.M. Consunji, Inc. is **DENIED**.

SO ORDERED.[13]

DMCI filed a motion for reconsideration, which was denied by the CA in its Resolution[14] dated August 2, 2017.

Hence, the instant Rule 45 Petition. The Cruz heirs filed their Comment[15] dated September 26, 2017. DMCI filed a Reply[16] dated September 7, 2018.

The Issues

The Petition raises the following issues:

1. whether the CA erred in ruling that DMCI failed to sufficiently prove that the Subject Land forms part of the alienable and disposable land of the public domain.

2. whether the CA erred in ruling that DMCI failed to sufficiently prove that its predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the Subject Land under a *bona fide* claim of ownership since June 12, 1945 or earlier.

The Court's Ruling

The Petition lacks merit.

Proof of alienability and disposability

DMCI insists that the Field Inspection Report conducted by the CENRO and the Survey Plan of the Subject Land are adequate

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[13] *Id*. at 34 to 34-A.

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

[15] *Id.* at 121-140.

[16] *Id*. at 152-162.

to prove that the Subject Land is included in the disposable and alienable lands of the public domain because the said Report contains the following statements:

1. **The land is covered by Survey Plan Swo-00-001-1460** (5174 MCadm-590-D) approved by the Director of Lands and re-approved by the Bureau of Lands DENR-NCR **pursuant to Presidential Decree No. 239 dated July 9, 1975**;

x x x x x x x x x

3. **The entire area is within the alienable and disposable zone as classified under Project No. 27-B, L.C. Map No. 2623**;

x x x x x x x x x

7. **It is covered by Tax Declaration No. D-010-00691 in the name of DMCI Project Developers, Inc.**[17] (Emphasis and underscoring supplied)

DMCI invokes *Victoria v. Republic*[18] (*Victoria*) and claims that the same pieces of evidence which it adduced were presented by the applicant therein and the Court effectively recognized in *Victoria* the authority of a Forest Management Specialist to issue a certification whether certain public lands are alienable and disposable.[19]

In *Victoria*, Natividad Sta. Ana Victoria (Natividad) applied for registration of title to a 1,729-square meter lot in Bambang, City of Taguig before the MeTC of that city. To show that the subject lot is a portion of the land with an area of 17,507 square meters originally owned by her father Genaro Sta. Ana, she presented Lot 5176-D, Mcadm-590-D of the Taguig Cadastral Mapping. The Conversion/Subdivision Plan that Natividad presented in evidence showed that the land is inside the alienable and disposable area under Project 27-B as per LC Map 2623, as certified by the Bureau of Forest Development on January 3, 1968. The DENR Certification submitted by Natividad reads:

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

[18] 666 Phil. 519 (2011).

[19] *Rollo*, p. 9.

This is to certify that the tract of land as shown and described at the reverse side of this Conversion/Subdivision Plan of Lot 5176 MCadm 590-D, Taguig Cadastral Mapping, Csd-00-000648, containing an area of 17,507 square meters, situated at Bambang, Taguig City, Metro Manila, as surveyed by Geodetic Engineer Justa M. de las Alas for Marissa S. Estopalla, *et al.*, was verified to be within the Alienable or Disposable Land, under Project No. 27-B, Taguig City, Metro Manila as per LC Map 2623, approved on January 3, 1968.[20] (Emphasis omitted)

The Court[21] issued a Resolution dated July 28, 2010 requiring the OSG to verify from the DENR whether the Senior Forest Management Specialist of its National Capital Region, Office of the Regional Technical Director for Forest Management Services, who issued the aforesaid certification, was authorized to issue certifications on the status of public lands as alienable and disposable, and to submit a copy of the administrative order or proclamation that declared as alienable and disposable the area where the property involved in *Victoria* was located, if there be any. In compliance, the OSG submitted a certification from the DENR that Senior Forest Management Specialist Corazon D. Calamno, who signed Natividad's DENR Certification, was authorized to issue certifications regarding status of public land as alienable and disposable land. The OSG also submitted a certified true copy of Forestry Administrative Order 4-1141 dated January 3, 1968, signed by then Secretary of Agriculture and Natural Resources Arturo R. Tanco, Jr., which declared portions of the public domain covered by Bureau of Forestry Map LC-2623, approved on January 3, 1968, as alienable and disposable.[22]

The Court in *Victoria* observed that:

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[20] *Victoria v. Republic*, *supra* note 18, at 525.

[21] Second Division composed of Associate Justices Antonio T. Carpio, Diosdado M. Peralta, Jose P. Perez, Jose C. Mendoza and Roberto A. Abad, as *ponente*.

[22] *Victoria v. Republic*, *supra* note 18, at 525-526.

Since the OSG does not contest the authenticity of the DENR Certification, it seems too hasty for the CA to altogether disregard the same simply because it was not formally offered in evidence before the court below. More so when even the OSG failed to present any evidence in support of its opposition to the application for registration during the trial at the MeTC. The attack on [Natividad's] proof to establish the nature of the subject property was made explicit only when the case was at the appeal stage in the Republic's appellant's brief. Only then did [Natividad] find it necessary to present the DENR Certification, since she had believed that the notation in the Conversion/ Subdivision Plan of the property was sufficient.

In *Llanes v. Republic*,[23] this Court allowed a consideration of a CENRO Certification though it was only presented during appeal to the CA to avoid a patent unfairness. The rules of procedure being mere tools designed to facilitate the attainment of justice, the Court is empowered to suspend their application to a particular case when its rigid application tends to frustrate rather than promote the ends of justice.[24] Denying the application for registration now on the ground of failure to present proof of the status of the land before the trial court and allowing [Natividad] to re-file her application would merely unnecessarily duplicate the entire process, cause additional expense and add to the number of cases that courts must resolve. It would be more prudent to recognize the DENR Certification and resolve the matter now.[25]

On the other hand, the CA in its Decision cites *Sps. Fortuna v. Republic*[26] (*Sps. Fortuna*) in support of its position that either the Survey Plan or the DENR-CENRO certification is sufficient proof that the Subject Land is alienable and disposable.[27] In *Sps. Fortuna*, the CA declared that the alienable nature of the subject land therein was established by the notation in the survey plan, which states: "This survey is *inside alienable and disposable*

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[23] 592 Phil. 623 (200).

[24] *Victoria v. Republic*, *supra* note 18, at 527, citing *Llanes v. Republic*, *id*. at 633-634.

[25] *Id*. at 526-527.

[26] 728 Phil. 373 (2014).

[27] *Rollo*, p. 31.

area as per Project No. 13 L.C. Map No. 1395 certified August 7, 1940. It is outside any civil or military reservation."[28] However, the Court[29] in *Sps. Fortuna* ruled:

> **Mere notations appearing in survey plans are inadequate proof of the covered properties' alienable and disposable character.**[30] These notations, at the very least, only establish that the land subject of the application for registration falls within the approved alienable and disposable area per verification through survey by the proper government office. **The applicant, however, must also present a copy of the original classification of the land into alienable and disposable land, as declared by the DENR Secretary or as proclaimed by the President.**[31] In *Republic v. Heirs of Juan Fabio*,[32] the Court ruled that [t]he applicant for land registration must prove that *the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable,* **and** *that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO*[33] *or CENRO*. In addition, the applicant must present **a copy of the original classification of the land into alienable and disposable, as declared by the DENR Secretary, or as proclaimed by the President**.

The survey plan and the DENR-CENRO certification are not proof that the President or the DENR Secretary has reclassified and released the public land as alienable and disposable. The offices that prepared these documents are ***not the official repositories or legal custodian***

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[28] *Sps. Fortuna v. Republic*, *supra* note 26, at 384.

[29] Second Division composed of Associate Justice Antonio T. Carpio, Mariano C. Del Castillo, Jose P. Perez, Estela M. Perlas-Bernabe and Arturo D. Brion, as *ponente*.

[30] *Sps. Fortuna v. Republic*, *supra* note 26, at 384, citing *Republic v. Tri-Plus Corp.*, 534 Phil. 181, 194 (2006); and *Republic v. Medida*, 692 Phil. 454, 464 (2012).

[31] *Id.*, citing *Republic v. T.A.N. Properties, Inc.*, 578 Phil. 441, 452-453 (2008).

[32] 595 Phil. 664 (2008).

[33] Provincial Environment and Natural Resources Office.

of the issuances of the President or the DENR Secretary declaring the public land as alienable and disposable.[34]

In the recent case of *In Re: Application for Land Registration, Suprema T. Dumo v. Republic of the Philippines*,[35] the Court reiterated the requirement it set in *Republic v. T.A.N. Properties, Inc*.[36] (*T.A.N. Properties*) that there are two documents which must be presented to prove that the land subject of the application for registration is alienable and disposable. These are: (1) a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records, and (2) a certificate of land classification status issued by the CENRO or the Provincial Environment and Natural Resources Office (PENRO) based on the land classification approved by the DENR Secretary.[37] It must be noted that *Sps. Fortuna* made reference to *T.A.N. Properties.*

Victoria and *Sps. Fortuna* are not incompatible with each other. In fact, they are complementary.

To recall, the Court ordered the OSG in *Victoria* to verify from the DENR whether the Senior Forest Management Specialist, who issued the certification, was authorized to issue certifications on the status of public lands as alienable and disposable, and to submit a copy of the administrative order or proclamation that declared as alienable and disposable the area where the property therein was located. In compliance therewith, the OSG submitted a certification from the DENR that the officer, who signed the DENR Certification, was authorized to issue certifications regarding status of public land as alienable and disposable land and a certified true copy of Forestry Administrative Order 4-1141 dated January 3, 1968, signed by then Secretary of Agriculture and Natural Resources Arturo R.

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[34] *Sps. Fortuna v. Republic*, *supra* note 26, at 384-385, citing *Republic v. T.A.N. Properties, Inc., supra* note 31, at 451.

[35] G.R. No. 218269, June 6, 2018.

[36] *Supra* note 31.

[37] *Dumo*, *supra* note 35, at 16.

Tanco, Jr. (Secretary Tanco), which declared portions of the public domain covered by Bureau of Forestry Map LC-2623, approved on January 3, 1968 as alienable and disposable. It is clear that the contents of the two documents, adverted to above, that are needed to be presented to prove that the land subject of the application for registration is alienable and disposable land of the public domain have been substantially reflected in those submissions.

Unfortunately, in this case, the OSG has not been required to make the necessary verification and has not submitted the two documents that it submitted in *Victoria*. The invocation by DMCI of *Victoria* in this case is, thus, misplaced.

The stance of the Court in *Victoria* is understandable. It was convinced that: "[Natividad] has, contrary to the Solicitor General's allegation, proved that she and her predecessors-in-interest had been in possession of the subject lot continuously, uninterruptedly, openly, publicly, adversely and in the concept of owners since the early 1940s. In fact, she has submitted tax declarations covering the land way back in 1948 that appeared in her father's name."[38]

Proof of open, continuous, exclusive and notorious possession since June 12, 1945 or earlier

The Court will now proceed to the second issue, which is factual. Under the Rules, a Rule 45 petition for review on *certiorari* shall raise only questions of law[39] and a review is not a matter of right, but of sound judicial discretion, and will be granted only when there are special and important reasons therefor.[40]

DMCI has not directly pointed to any of the exceptions where the Court may review the findings of fact of the CA in a Rule

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[38] *Victoria v. Republic*, *supra* note 18, at 527-528.

[39] RULES OF COURT, Rule 45, Sec. 1.

[40] *Id*., Rule 45, Sec. 6.

45 *certiorari* petition. However, based on its arguments, it appears that DMCI is invoking the MeTC's Order dated September 7, 2012 wherein it stated that the issue on the open, continuous, exclusive and notorious possession since June 12, 1945 by DMCI and its predecessors-in-interest was testified on by Hilberto Hostillero, representative of DMCI, Francisco Esteban, former tenant of its predecessor-in-interest, Eugenio Castro, adjoining owner, and San Pedro; and such proof of possession was bolstered by the Field Inspection Report of DENR Special Investigator, Antonio M. Lachica.[41] Since the findings of fact of the trial court are at odds with those of the CA, the Court is allowed to make a fact-check.

While DMCI insists that its evidence is sufficient, DMCI has, however, failed to squarely address the CA's finding in its Decision that the records do not show proof of how San Pedro's father came to own the Subject Land and how she inherited the same from her father. These are crucial facts that DMCI needed to establish to show that its predecessor-in-interest had prior valid claim of ownership over the Subject Land. Precisely, San Pedro's claim of ownership rests on these crucial facts, and without them such claim becomes tenuous. With these facts missing, the Court wholly agrees with the CA that "evidence on record is insufficient to prove that San Pedro or her father possessed or occupied the subject land in the concept of an owner since June 12, 1945, or earlier."[42]

Also, the evidence that the Cruz heirs adduced to disprove DMCI's claim of ownership, including Tax Declaration No. 10845 dated October 26, 1941, cast serious doubt on DMCI's evidence to show its and its predecessors-in-interest's open, continuous, exclusive and notorious possession and occupation since June 12, 1945 or earlier.

Without the Court being convinced that the CA erred in its ruling with respect to the second issue, the Court cannot extend to DMCI the latitude it accorded to Natividad in *Victoria*.

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[41] *Rollo*, p. 14.

[42] *Id*. at 33-34.

WHEREFORE, the Petition is hereby **DENIED**. The Decision dated February 23, 2017 and Resolution dated August 2, 2017 of the Court of Appeals in CA-G.R. CV No. 99963 are **AFFIRMED**.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe, Reyes, J. Jr.*, and *Hernando*,* *JJ.*, concur.

SECOND DIVISION

[G.R. No. 205333. February 18, 2019]

MA. MELISSA VILLANUEVA MAGSINO, *petitioner, vs.* **ROLANDO N. MAGSINO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY OF EVIDENCE; OBJECTION TO EVIDENCE MUST BE MADE AFTER THE EVIDENCE IS FORMALLY OFFERED.— In order to exclude evidence, the objection to admissibility of evidence must be made at the proper time, and the grounds specified. Grounds for objections not raised at the proper time shall be considered waived, even if the evidence was objected to on some other ground. Thus, even on appeal, the appellate court may not consider any other ground of objection, except those that were raised at the proper time. Thus, it is basic in the rule of evidence that objection to evidence must be made after the evidence is formally offered. Thus, Section 35, Rule 132 of the 1997 Rules of Court, provides when to make an offer of evidence, x x x On the other hand, Section

* Designated additional Member per Special Order No. 2630 dated December 18, 2018.

36, Rule 132 of the same rules, provides when objection to the evidence offered shall be made, x x x. In other words, objection to oral evidence must be raised at the earliest possible time, that is after the objectionable question is asked or after the answer is given if the objectionable issue becomes apparent only after the answer was given. In case of documentary evidence, offer is made after all the witnesses of the party making the offer have testified, specifying the purpose for which the evidence is being offered. It is only at this time, and not at any other, that objection to the documentary evidence may be made. x x x Objection to documentary evidence must be made at the time it is formally offered, not earlier. Because at that time the purpose of the offer has already been disclosed and ascertained. Suffice it to say that the identification of the document before it is marked as an exhibit does not constitute the formal offer of the document as evidence for the party presenting it. Objection to the identification and marking of the document is not equivalent to objection to the document when it is formally offered in evidence. What really matters is the objection to the document at the time it is formally offered as an exhibit.

2. **ID.; ID.; ID.; TESTIMONY OF WITNESSES; ALLOWING THE TESTIMONY DOES NOT MEAN THAT COURTS ARE BOUND BY THE TESTIMONY OF THE EXPERT WITNESS.—** It bears to stress however that allowing the testimony does not mean that courts are bound by the testimony of the expert witness. It falls within the discretion of the court whether to adopt or not to adopt testimonies of expert witnesses, depending on its appreciation of the attendant facts and applicable law. As held by the Court: Although courts are not ordinarily bound by expert testimonies, they may place whatever weight they may choose upon such testimonies in accordance with the facts of the case. x x x The problem of the credibility of the expert witness and the evaluation of his testimony is left to the discretion of the trial court whose ruling thereupon is not reviewable in the absence of abuse of discretion.

3. **ID.; ID.; ID.; ADMISSIBILITY OF EVIDENCE DISTINGUISHED FROM PROBATIVE VALUE.—** [I]t must be stressed that admissibility of evidence should not be confused with its probative value. Admissibility refers to the question of whether certain pieces of evidence are to be considered at

all, while probative value refers to the question of whether the admitted evidence proves an issue. Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.

APPEARANCES OF COUNSEL

De La Cuesta and Tantuico for petitioner.
Baizas Magsino Recinto Law Offices for respondent.

D E C I S I O N

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

The case stemmed from a Petition to Fix the Rights of the Father *Pendente Lite* with Prayers for the Issuance of a Temporary Protection Order and Hold Departure Order filed by Rolando N. Magsino (respondent) against his wife Ma. Melissa V. Magsino (petitioner), docketed with the Regional Trial Court (RTC) of Quezon City, Branch 102, as Civil Case No. Q-0862984.[1]

Respondent and petitioner were married on December 6, 1997 and their union was blessed with two children — one born in 2002 and the other 2003.[2] Sometime in 2005, Melissa started suspecting that Rolando was sexually molesting his own children, then aged 3 years old and 2 years old, as she would often see them playing with their genitalia.[3] When she asked who taught them of such activity, the children would answer "Papa."[4] Thus, to protect the minors from further abuse, Melissa left the conjugal dwelling and took the children to their maternal grandparents.[5]

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[1] *Rollo*, pp. 102-116.

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

[3] *Id.* at 58.

[4] *Id.*

[5] *Id.*

In July 2008, Rolando filed the aforesaid petition.[6] Melissa filed her Answer (to the petition) with Prayer for Protection Order.[7]

During pre-trial, Rolando manifested that he would be presenting, among other witnesses, Dr. Cristina Gates (Gates), who will testify on the mental status and fitness of Rolando to exercise parental authority over the minors.

At the hearing, Gates was presented as an expert witness. She confirmed the technical qualifications and professional skill stated in her judicial affidavit and curriculum vitae. She also discussed the findings contained in Rolando's psychological evaluation report. Applying clinical hypnosis, phenomenological-existential study and historical-contextual approach, Gates opined that Rolando could not have molested the minors. As retrieved from Rolando's memory while under hypnotic trance, Gates narrated that the children have accidentally witnessed their parents in the act of sexual intercourse for several occasions and explained that this experience caused them to develop sexual hyperactivity.

Gates was then subjected to cross-examination. But before propounding any questions, Melissa's counsel, in open court, moved to strike out the direct testimony of Gates on grounds that her expertise had not been established and that any evidence derived from hypnotically-induced recollection is inadmissible.

The RTC ruled to retain the testimony as part of the record subject to a continuing objection on the qualification of the witness. Melissa's counsel thereafter proceeded with the cross-examination, grilling Gates about her qualifications and the methodology used in conducting her sessions with Rolando.

On June 5, 2010, Melissa's counsel filed a Motion to Expunge the testimony of Gates reiterating the doubts on her expertise and to suppress related evidence particularly the psychological evaluation report by reason of inadmissibility of hypnotically-induced recollection.

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[6] *Id*. at 102-116.

[7] *Id*. at 120-153.

In its Order[8] dated October 11, 2010, the RTC denied the motion to expunge the testimony on the ground of waiver of objection for failure to timely question the qualifications of the witness. On the motion to suppress psychological evaluation report, the RTC ruled that the same is premature considering that such documentary evidence has not yet been formally offered. Melissa moved to reconsider but it was denied. Hence, Melissa filed a petition for *certiorari* with the Court of Appeals (CA) ascribing grave abuse of discretion on the part of the RTC.

In the now assailed Decision[9] dated September 28, 2012, in CA-G.R. SP No. 119205, the CA dismissed the petition and ruled that the RTC committed no grave abuse of discretion in denying the motion to suppress evidence and to expunge the testimony of a witness. The CA ruled that petitioner's counsel failed to make a timely objection to the presentation of Gates' testimonial evidence. It was observed that no objection was raised during the course of Gates' direct testimony where she confirmed her qualifications as an expert witness and explained the psychological examination conducted on respondent. According to the CA, such silence at the time of the testimony, when there was an opportunity to speak, operates as an implied waiver of the objection to the admissibility of evidence. Moreover, petitioner's counsel repeatedly cross-examined Gates thereby waiving any objection to her testimony. As to the motion to suppress the psychological evaluation report, the CA ruled that an objection thereto cannot be made in advance of the offer of the evidence sought to be introduced.

Dissatisfied with the aforesaid ruling, petitioner filed the instant Petition for Review[10] with this Court, arguing as follows:

I. THE COURT *A QUO* COMMITTED REVERSIBLE ERROR IN HOLDING THAT PETITIONER WAIVED HER RIGHT TO RAISE OBJECTIONS TO THE TESTIMONY OF

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[8] *Id*. at 96-100.

[9] Penned by Associate Justice Mario V. Lopez, with Associate Justices Ricardo R. Rosario and Socorro B. Inting, concurring; *rollo*, pp. 57-63.

[10] *Id*. at 21-55.

CRISTINA GATES SIMPLY BECAUSE THE OBJECTION WAS RAISED BEFORE CROSS-EXAMINATION, NOT DURING DIRECT EXAMINATION, CONSIDERING THAT PETITIONER'S COUNSEL OBJECTED TO THE TESTIMONY AS SOON AS THE GROUNDS THEREFORE BECAME REASONABLY APPARENT.

II. THE COURT *A QUO* COMMITTED REVERSIBLE ERROR IN UPHOLDING THE DENIAL OF PETITIONER'S MOTION TO EXPUNGE TESTIMONY ON THE GROUND THAT CROSS-EXAMINATION CONSTITUTED A WAIVER OF THE RIGHT TO OBJECT CONSIDERING THAT THE OBJECTION WAS RAISED BEFORE CROSS-EXAMINATION, AND THE INADMISSIBILITY OF THE TESTIMONY WAS REINFORCED DURING CROSS-EXAMINATION.

III. THE TESTIMONY INVOLVING HYPNOTICALLY INDUCED MEMORY IN THE PRESENT CASE MAY PROPERLY BE SUPPRESSED FOR BEING INADMISSIBLE AND VIOLATIVE OF PETITIONER'S RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF LAW.

IV. THE COURT *A QUO* COMMITTED REVERSIBLE ERROR IN HOLDING THAT THE DENIAL OF THE MOTION TO SUPPRESS WAS PROPER ON THE GROUND THAT EVIDENCE MAY NOT BE OBJECTED TO BEFORE A FORMAL OFFER IS MADE CONSIDERING THAT A MOTION TO SUPPRESS IS NOT THE SAME AS AN OBJECTION TO THE OFFER OF EVIDENCE.[11]

No error can be ascribed on the part of the CA when it affirmed the RTC in denying petitioner's (a) Motion to Expunge the testimony of the expert witness for failure to timely question her qualifications and her (b) Motion to Suppress psychological report containing hypnotically-induced evidence as the said motion is premature.

In order to exclude evidence, the objection to admissibility of evidence must be made at the proper time, and the grounds

[11] *Id*. at 31-32.

specified.[12] Grounds for objections not raised at the proper time shall be considered waived, even if the evidence was objected to on some other ground.[13] Thus, even on appeal, the appellate court may not consider any other ground of objection, except those that were raised at the proper time.[14]

Thus, it is basic in the rule of evidence that objection to evidence must be made after the evidence is formally offered.[15] Thus, Section 35, Rule 132 of the 1997 Rules of Court, provides when to make an offer of evidence, thus:

> SEC. 35. *When to make offer*. — As regards the testimony of a witness, the offer must be made at the time the witness is called to testify.
>
> Documentary and object evidence shall be offered after the presentation of a party's testimonial evidence. Such offer shall be done orally unless allowed by the court to be done in writing.

On the other hand, Section 36, Rule 132 of the same rules, provides when objection to the evidence offered shall be made, thus:

> SEC. 36. *Objection*. — Objection to evidence offered orally must be made immediately after the offer is made.
>
> Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent.
>
> An offer of evidence in writing shall be objected to within three (3) days after notice of the offer unless a different period is allowed by the court.

In other words, objection to oral evidence must be raised at the earliest possible time, that is after the objectionable question is asked or after the answer is given if the objectionable issue

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[12] *Spouses Tapayan v. Martinez*, 804 Phil. 523, 534 (2017).

[13] *Id*. at 535.

[14] *Id*.

[15] *Westmont Investment Corp. v. Francia, Jr.*, 678 Phil. 180, 188 (2011).

becomes apparent only after the answer was given.[16] In case of documentary evidence, offer is made after all the witnesses of the party making the offer have testified, specifying the purpose for which the evidence is being offered.[17] It is only at this time, and not at any other, that objection to the documentary evidence may be made.[18]

As correctly found by the CA, the objections interposed by petitioner — as to both oral and documentary evidence — were not timely made.

Petitioner should have objected during the course of Gates' direct testimony on her qualifications as an expert witness and explaining the mechanics of the psychological examination which she conducted on respondent. Petitioner should not have waited in ambush after the expert witness had already finished testifying. By so doing, petitioner did not save the time of the court in hearing the testimony of the witness that after all according to her was inadmissible.[19] And thus, for her failure to make known her objection at the proper time, the procedural error or defect was waived.[20] Indeed, the reason why offer must be made at the time the witness is called to testify and the objection thereto be made, so that the court could right away rule on whether the testimony is necessary on the ground of irrelevancy, immateriality or whatever grounds that are available at the onset. Here, petitioner allowed a substantial amount of time to be wasted by not forthrightly objecting to the inadmissibility of the respondent's testimonial evidence.

It bears to stress however that allowing the testimony does not mean that courts are bound by the testimony of the expert witness. It falls within the discretion of the court whether to

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[16] *Id*.

[17] *Spouses Tapayan v. Martinez*, *supra* note 11, at 534.

[18] *Id*.

[19] *Catuira v. Court of Appeals*, 306 Phil. 424, 427 (1994).

[20] *Id*.

adopt or not to adopt testimonies of expert witnesses, depending on its appreciation of the attendant facts and applicable law. As held by the Court:

> Although courts are not ordinarily bound by expert testimonies, they may place whatever weight they may choose upon such testimonies in accordance with the facts of the case. The relative weight and sufficiency of expert testimony is peculiarly within the province of the trial court to decide, considering the ability and character of the witness, his actions upon the witness stand, the weight and process of the reasoning by which he has supported his opinion; his possible bias in favor of the side for whom he testifies, the fact that he is a paid witness, the relative opportunities for study and observation of the matters about which he testifies, and any other matters which deserve to illuminate his statements. The opinion of the expert may not be arbitrarily rejected; it is to be considered by the court in view of all the facts and circumstances in the case and when common knowledge utterly fails, the expert opinion may be given controlling effect. The problem of the credibility of the expert witness and the evaluation of his testimony is left to the discretion of the trial court whose ruling thereupon is not reviewable in the absence of abuse of discretion.[21]

Objections to documentary evidence should likewise be timely raised. True, petitioner acted prematurely when it objected to the psychological report at the time when it is still being identified. Objection to documentary evidence must be made at the time it is formally offered, not earlier.[22] Because at that time the purpose of the offer has already been disclosed and ascertained. Suffice it to say that the identification of the document before it is marked as an exhibit does not constitute the formal offer of the document as evidence for the party presenting it.[23] Objection to the identification and marking of the document is not equivalent to objection to the document when it is formally offered in evidence.[24] What really matters

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[21] *People v. Basite*, 459 Phil. 197, 206-207 (2003).

[22] *People v. Lenantud*, 405 Phil. 189, 206 (2001).

[23] *Macasiray v. People*, 353 Phil. 353, 360 (1998).

[24] *Id*.

is the objection to the document at the time it is formally offered as an exhibit.[25] However, while objection was prematurely made, this does not mean that petitioner had waived any objection to the admission of the same in evidence. Petitioner can still reiterate its former objections, this time seasonably, when the formal offer of exhibits was made.[26]

At any rate, it must be stressed that admissibility of evidence should not be confused with its probative value.[27] Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue.[28] Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.[29]

Hence, the CA is correct when it ruled that the RTC did not commit grave abuse of discretion amounting to lack or in excess of jurisdiction when it denied petitioner's Motion to Expunge the testimony of the expert witness and the Motion to Suppress the documentary evidence.

WHEREFORE, the petition is **DENIED**. The assailed September 28, 2012 Decision of the Court of Appeals in CA-G.R. SP No. 119205 is **AFFIRMED**.

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Perlas-Bernabe, Caguioa*, and *Hernando*,[*] *JJ.*, concur.

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[25] *Id*.

[26] *Interpacific Transit, Inc. v. Aviles*, 264 Phil. 753, 760 (1990).

[27] *W-Red Construction and Dev't. Corp. v. Court of Appeals*, 392 Phil. 888, 894 (2000).

[28] *Heirs of Lourdes Sabanpan v. Comorposa*, 456 Phil. 161, 172 (2003).

[29] *Id*.

[*] Additional Member per S.O. No. 2630 dated December 18, 2018.

SECOND DIVISION

[G.R. No. 212979. February 18, 2019]

MA. ANTONETTE LOZANO, *petitioner, vs.* **JOCELYN K. FERNANDEZ,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; CERTIFICATION AGAINST FORUM SHOPPING; PETITIONER'S CERTIFICATE AGAINST FORUM SHOPPING FULLY CONTAINED THE INFORMATION REQUIRED THEREIN.—** Under Section 5, Rule 7 of the Rules of Court, the following details must be stated in the certificate against forum shopping: (a) the party has not commenced any action involving the same issues in any court or tribunal, or that there is no pending case involving the same issue to the best of his knowledge; (b) a complete statement of the present status if there is such other pending action; and (c) notify the court wherein the complaint or initiatory pleading is filed, within five (5) days should the party thereafter learn that the same or similar action has been filed or is pending. Lozano's certificate against forum shopping fully contained the information required and was written in the very words used by the Rules of Court. Contrary to Fernandez's position the rules do not make use of the phrase "promptly inform" as it specifically provides that the party should notify the court within five days from discovering a similar case pending before another court.

2. **ID.; ID.; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; LIMITED ONLY TO QUESTIONS OF LAW; QUESTION OF FACT DISTINGUISHED FROM QUESTION OF LAW; WHILE PETITIONER RAISED QUESTIONS OF FACT, THE COURT OPTED TO RESOLVE THE CASE AND RELAX THE STRICT APPLICATION OF THE RULES.—** A question of fact pertains to the truth or falsity of the alleged acts or involves an examination of the probative value of the evidence presented. Meanwhile, a question of law arises when there is doubt to what the law is on certain state of facts — it can be resolved

without reviewing or evaluating the evidence. In her petition for review on *certiorari*, Lozano raises questions of fact. Her challenge on the validity of the Waiver is a question of fact as it revolves around the probative value and due execution of the said document. In addition, Lozano's claim that there was no tolerance is likewise a factual issue considering that the CA had found sufficient evidence to prove Fernandez's tolerance. x x x It is true that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised. Nevertheless, the said rule admits of exception such as when the conclusion is based on speculation or conjectures, or there is a misapprehension of facts. In addition, the Court may relax the strict application of the rules of procedure in the exercise of its equity jurisdiction when its rigid application will tend to obstruct rather than serve the broader interests of justice in light of the prevailing circumstances of the case.

3. **ID.; EVIDENCE; A NOTARIZED DOCUMENT CAN BE SET ASIDE ONLY BY CLEAR AND CONVINCING EVIDENCE.—** Lozano merely claims that she never appeared before a notary public and her true obligation with Fernandez was merely a loan with collateral. However, mere allegations, without supporting evidence, are insufficient to discredit the validity of notarized documents. This is especially true considering that uncorroborated allegations do not even meet the threshold of preponderance of evidence. Lozano errs in concluding that she had overcome the presumption of regularity because other than her unsubstantiated statements, the records are bereft of evidence to indicate any irregularity in the contents of the document or to the act of notarization itself.

4. **ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER BASED ON TOLERANCE; OVERT ACTS INDICATIVE OF TOLERANCE OR PERMISSION ON THE PART OF THE PLAINTIFF MUST BE SUFFICIENTLY PROVED; INACTION IS INSUFFICIENT TO ESTABLISH TOLERANCE AS IT INDICATES NEGLIGENCE RATHER THAN TOLERANCE.—** In an action for unlawful detainer based on tolerance, the acts of tolerance must be proved. Bare allegations of tolerance are insufficient and there must be acts indicative of tolerance. x x x [F]or there to be tolerance, complainants in an unlawful detainer must prove that they had

consented to the possession over the property through positive acts. After all, tolerance signifies permission and not merely silence or inaction as silence or inaction is negligence and not tolerance. In the present case, Fernandez's alleged tolerance was premised on the fact that she did not do anything after the Waiver was executed. However, her inaction is insufficient to establish tolerance as it indicates negligence, rather than tolerance, on her part. As above-mentioned, inaction should not be confused with tolerance as the latter transcends silence and connotes permission to possess the property subject of an unlawful detainer case. Thus, even assuming the Waiver was valid and binding, its execution and Fernandez's subsequent failure to assert her possessory rights do not warrant the conclusion that she tolerated Lozano's continued possession of the property in question, absent any other act signifying consent. x x x Fernandez cannot simply claim that she had tolerated Lozano's possession because she did not do anything after the execution of the Waiver as silence does not equate to tolerance or permission. In short, the execution of the Waiver alone is not tantamount to the tolerance contemplated in unlawful detainer cases. The absence of an overt act indicative of tolerance or permission on the part of the plaintiff is fatal for a case for unlawful detainer.

APPEARANCES OF COUNSEL

Karaan and Karaan Law Office for petitioner.
The Law Firm of Penullar & Associates for respondent.

D E C I S I O N

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

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the November 22, 2013 Decision[1] and the June 13, 2014 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No.

[1] Penned by Associate Justice Romeo F. Barza, with Associate Justices Noel G. Tijam and Ramon A. Cruz, concurring; *rollo*, pp. 155-165.

[2] *Id.* at 184-185.

125107, which affirmed the November 3, 2011 Decision[3] in Civil Case No. 38-0-2011 of the Regional Trial Court (RTC), Branch 72, Olongapo City.

The present controversy revolves around a parcel of land and its improvements in CM Subdivision, New Cabalan, Olongapo City currently declared for taxation purposes under the name of respondent Jocelyn K. Fernandez (Fernandez).

Respondent's position

On December 11, 2006, petitioner Ma. Antonette Lozano (Lozano) executed a Waiver and Transfer of Possessory Rights (Waiver)[4] over the subject property in favor of Fernandez. After the execution of the document, Fernandez continued to tolerate Lozano's possession over the property. On July 15, 2009, she sent a demand letter[5] to Lozano ordering her to vacate the premises. Because Lozano failed to leave the property, Fernandez was constrained to file an action for unlawful detainer against her before the Municipal Trial Court in Cities, Branch 2, Olongapo City (MTCC).[6]

Petitioner's position

Since 1996, Lozano had owned and possessed the subject property. She never recalled signing any Waiver in Fernandez's favor. Lozano explained that Fernandez duped her into signing a blank document, which was later converted to a Waiver. She denied having appeared before a notary public to notarize the said document. Lozano claimed that the real contract between her and Fernandez was a loan with mortgage as evidenced by the fact that she remained in possession of the property even after the execution of the said Waiver and that she had issued checks in payment of the loan. She pointed out that Fernandez was engaged in the business of lending imposing unconscionable

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[3] Penned by Presiding Judge Richard A. Paradeza; *id*. at 83-89.

[4] *Id*. at 34-36.

[5] *Id*. at 37.

[6] *Id*. at 156.

interest and was in the practice of securing collateral from the lendee.[7]

MTCC Decision

In its February 16, 2011 Decision,[8] the MTCC dismissed Fernandez's complaint for unlawful detainer. It explained that Fernandez only filed the present case for ejectment three years after she gained possessory rights over the property. The MTCC expounded that Fernandez's cause of action had prescribed as the complaint was filed after one year from the time the possession became unlawful. It added that Fernandez failed to prove that she tolerated Lozano's possession over the property. Thus, it disposed:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered in the following manner:
>
> 1. Ordering the dismissal of the complaint of the plaintiff for lack of cause of action and for want of merit; [and]
>
> 2. Ordering the Plaintiff to pay the Defendant reasonable attorney's fees in the amount of ₱20,000.00.
>
> SO [ORDERED].[9]

Aggrieved, Fernandez appealed to the RTC.

RTC Decision

In its November 3, 2011 Decision, the RTC granted Fernandez's appeal. It explained that after the execution of the Waiver on December 11, 2006, Lozano's possession over the property was merely tolerated by Fernandez. The RTC noted that after the ten-day period to vacate stated in the demand letter, Lozano's continued possession over the land became illegal. It expounded that tolerance is presumed from the fact that after the execution of the Waiver, Fernandez did not ask

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

[8] Penned by Presiding Judge Jacinto C. Gonzales; *id*. at 59-61.

[9] *Id.* at 61.

Lozano to vacate the land. Thus, the RTC concluded that it was Fernandez who was entitled to attorney's fees under Article 2208 of the Civil Code. In addition, it awarded rentals in favor of Fernandez as a consequence of her being deprived of possession over the parcel of land. The RTC disposed:

> **WHEREFORE**, premises considered, the appeal is hereby GRANTED. The Decision dated February 16, 2011 of the Municipal Trial Court in Cities, Branch 2, Olongapo City in Civil Case No. 7238 for unlawful detainer is hereby **RECONSIDERED, REVERSED AND SET ASIDE**. Accordingly, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering:
>
> 1. The defendant and all persons claiming rights under it to vacate the premises located at CNI Subdivision, New Cabalan, Olongapo City it is presently occupying;
>
> 2. The defendant to pay plaintiff the amount of five thousand (₱5,000.00) pesos per month as rentals for use of the property from July 20, 2009 up to the time it actually vacates the place;
>
> 3. The defendant to pay the plaintiff the amount of twenty thousand (₱20,000.00) pesos as attorney's fees; and
>
> 4. To pay the cost of litigation.
>
> SO ORDERED.[10]

Undeterred, Lozano appealed to the CA.

CA Decision

In its November 22, 2013 Decision, the CA affirmed the RTC Decision. The appellate court elaborated that the MTCC should have resolved the genuineness and due execution of the Waiver because its determination is necessary for a proper and complete adjudication of the issue of possession. It, however, upheld the said document as Lozano failed to present evidence to discredit a notarized document. The CA agreed that there was tolerance when after the execution of the Waiver, Fernandez allowed Lozano to continue possessing the land. Further, the appellate court upheld the grant of rentals as courts may order

[10] *Id.* at 89.

the award of an amount representing arrears of rent or reasonable compensation for the use and occupation of the premises. Also, the CA sustained the award of attorney's fees because it is allowed when claimants are compelled to litigate with third persons or incur expenses to protect their interest by reason of an unjustified act or omission on the part of the party from whom it is sought. Thus, it ruled:

WHEREFORE, the petition is **DENIED DUE COURSE** and **DISMISSED**.

SO ORDERED.[11]

Unsatisfied, Lozano moved for reconsideration but it was denied by the CA in its June 13, 2014 Resolution.

Hence, this present petition raising:

The Issues

I

[WHETHER] THE [CA] GROSSLY ERRED IN SUSTAINING THE DECISION OF THE RTC ORDERING THE EJECTMENT OF THE PETITIONER FROM THE SUBJECT PROPERTY NOTWITHSTANDING THAT THERE WAS NO TOLERANCE IN CONTEMPLATION OF THE LAW ON EJECTMENT THAT WAS PROVEN[; AND]

II

[WHETHER] THE [CA] GROSSLY ERRED IN [SUSTAINING] THE DECISION OF THE RTC ORDERING THE PAYMENT OF REASONABLE RENTALS AND ATTORNEY'S FEES IN FAVOR OF THE RESPONDENT AT THE EXPENSE OF THE PETITIONER NOTWITHSTANDING THE ABSENCE OF PROOF OF FACTUAL AND LEGAL BASIS THEREFOR.[12]

Lozano argued that the CA erred in granting probative value on the Waiver because she was able to prove that its execution was irregular considering that it was not the true agreement

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[11] *Id*. at 164.

[12] *Id*. at 12.

she had with Fernandez and that she had never appeared before a notary public. She reiterated that Fernandez took advantage of her poor understanding of legal documentation when the latter made her sign a blank document which was later converted into the Waiver. Lozano assailed that Fernandez did not present sufficient evidence to establish that the latter merely tolerated the former's possession of the property. She faulted the CA in relying only on Fernandez and her witness' affidavits as they were self-serving and lacked evidentiary value.

Lozano expounded that the complaint for unlawful detainer was also filed beyond the one-year prescriptive period. She explained that assuming the Waiver was valid, the complaint should be filed within one year therefrom as it gave Fernandez possessory rights over the property. She lamented that Fernandez filed the complaint only after three years had elapsed from the execution of the said document.

Finally, Lozano bewailed that the award of rentals and attorney's fees was improper. She averred that Fernandez had the burden of proof to prove her entitlement to rentals, which she failed to do so. On the other hand, Lozano highlighted that the award of the attorney's fees only existed in the dispositive portion of the RTC Decision and was not explained in its body. She believed that it violated the settled rule that the legal reason for the award of attorney's fees should be stated in the body of the decision.

In her Comment[13] dated February 25, 2015, Fernandez countered that Lozano's petition for review on *certiorari* should be dismissed as it raised questions of fact. In addition, she noted that the certificate against forum shopping did not contain the undertaking that "the petitioner shall promptly inform the aforesaid courts and other [tribunals]" should the petitioner learn of the filing or pendency of the same or similar action or proceeding.

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[13] *Id*. at 189-191.

In her Manifestation[14] dated March 11, 2015, Lozano stated that she opted to no longer file a Reply after reviewing the allegations of Fernandez's Comment.

The Court's Ruling

Fernandez assails that Lozano's petition for review on *certiorari* should be dismissed outright as it is procedurally infirm. She notes that Lozano's certificate of non-forum shopping did not contain the undertaking to promptly inform the court should she learn of the filing or pendency of the same or similar action.

Under Section 5, Rule 7 of the Rules of Court, the following details must be stated in the certificate against forum shopping: (a) the party has not commenced any action involving the same issues in any court or tribunal, or that there is no pending case involving the same issue to the best of his knowledge; (b) a complete statement of the present status if there is such other pending action; and (c) notify the court wherein the complaint or initiatory pleading is filed, within five (5) days should the party thereafter learn that the same or similar action has been filed or is pending. Lozano's certificate against forum shopping fully contained the information required and was written in the very words used by the Rules of Court. Contrary to Fernandez's position the rules do not make use of the phrase "promptly inform" as it specifically provides that the party should notify the court within five days from discovering a similar case pending before another court.

Fernandez also argues that Lozano's petition for review on *certiorari* should be dismissed for raising questions of fact. A question of fact pertains to the truth or falsity of the alleged acts or involves an examination of the probative value of the evidence presented.[15] Meanwhile, a question of law arises when there is doubt to what the law is on certain state of facts — it can be resolved without reviewing or evaluating the evidence.[16]

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[14] *Id*. at 193-195.

[15] *Republic v. Malabanan*, 646 Phil. 631, 637 (2010).

[16] *Id*.

In her petition for review on *certiorari*, Lozano raises questions of fact. Her challenge on the validity of the Waiver is a question of fact as it revolves around the probative value and due execution of the said document. In addition, Lozano's claim that there was no tolerance is likewise a factual issue considering that the CA had found sufficient evidence to prove Fernandez's tolerance. In particular, the CA appreciated in Fernandez's favor her affidavit and of a certain Michael Gascon (Gascon) stating that Fernandez had tolerated Lozano's possession after the execution of the Waiver. Thus, it calls for the examination or review of the probative value of evidence on record.

It is true that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised.[17] Nevertheless, the said rule admits of exception such as when the conclusion is based on speculation or conjectures, or there is a misapprehension of facts.[18] In addition, the Court may relax the strict application of the rules of procedure in the exercise of its equity jurisdiction when its rigid application will tend to obstruct rather than serve the broader interests of justice in light of the prevailing circumstances of the case.[19]

Having settled the procedural issues, the Court finds that Lozano's petition for review on *certiorari* is meritorious.

Notarized document set aside only for clear and convincing evidence

Lozano vehemently denies having executed the Waiver claiming that her true agreement with Fernandez was a loan with the subject property as collateral. She laments that Fernandez took advantage of her lack of knowledge and understanding over legal documentation when the latter made her sign a blank document, which was later converted to a Waiver.

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[17] *Abedes v. Court of Appeals*, 562 Phil. 262, 278 (2007).

[18] *Pascual v. Burgos*, 116 Phil. 167, 182 (2016).

[19] *Curammeng v. People*, 799 Phil. 575, 581 (2016).

Lozano does not contest that the Waiver was notarized. She, however, claims that she had established that she had not validly executed the said document and had overcome the presumption of regularity of notarized documents.

The act of notarization is not a hollow formality as it carries with it the legal effect of converting a private document to a public document, which is presumed regular, admissible in evidence without need for proof of its authenticity and due execution, and entitled to full faith and credit upon its face.[20] In *Heirs of Spouses Liwagon v. Heirs of Spouses Liwagon*,[21] the Court ruled that the presumption of regularity of notarized documents may be overcome by clear and convincing evidence and not by mere preponderance of evidence, to wit:

> Both the trial and appellate courts correctly ruled in favor of the due execution of the subject Deed of Sale which was duly acknowledged and recorded by Atty. Alfredo Abayon in his notarial registry. It is a rule in our jurisdiction that the act of notarization by a notary public converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. By law, a notarial document is entitled to full faith and credit upon its face. **It enjoys the presumption of regularity and is a *prima facie* evidence of the facts stated therein — which may only be overcome by evidence that is clear, convincing and more than merely preponderant. Without such evidence, the presumption must be upheld.**[22] (Citations omitted and emphasis supplied)

In the present case, Lozano merely claims that she never appeared before a notary public and her true obligation with Fernandez was merely a loan with collateral. However, mere allegations, without supporting evidence, are insufficient to discredit the validity of notarized documents. This is especially true considering that uncorroborated allegations do not even meet the threshold of preponderance of evidence. Lozano errs

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[20] *Spouses Aboitiz v. Spouses Po*, G.R. No. 208450, June 5, 2017.

[21] 748 Phil. 675 (2014).

[22] *Id*. at 686.

in concluding that she had overcome the presumption of regularity because other than her unsubstantiated statements, the records are bereft of evidence to indicate any irregularity in the contents of the document or to the act of notarization itself.

Tolerance is more than mere passivity

On the basis of the said Waiver, Fernandez claims that she had acquired possession of the said property. She adds that she tolerated Lozano's continued possession thereof after she did not exert her right after the execution of the said document.

In an action for unlawful detainer based on tolerance, the acts of tolerance must be proved.[23] Bare allegations of tolerance are insufficient and there must be acts indicative of tolerance.[24] In *Reyes v. Heirs of Deogracias Forlales*,[25] the Court had expounded on the concept of tolerance in unlawful detainer cases, to wit:

> Professor Tolentino defines and characterizes "tolerance" in the following manner:
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> [. . .] acts merely tolerated are those which by reason of neighborliness or familiarity, the owner of property *allows* his neighbor or another person to do on the property; they are generally those particular services or benefits which one's property can give to another without material injury or prejudice to the owner, who *permits* them out of friendship or courtesy. They are acts of little disturbances which a person, in the interest of neighborliness or friendly relations, *permits* others to do on his property, such as passing over the land, tying a horse therein, or getting some water from a well. And even though this is *continued* for a long time, no right will be acquired by prescription. [...]
>
> There is tacit consent of the possessor to the acts which are merely tolerated. Thus, *not every case of knowledge and silence on the part*

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[23] *Dr. Carbonilla v. Abiera*, 639 Phil. 473, 482 (2010).

[24] *The Iglesia De Jesucristo Jerusalem Nueva of Manila, Philippines, Inc. v. Dela Cruz*, G.R. No. 208284, April 23, 2018.

[25] 787 Phil. 541 (2016).

of the possessor can be considered mere tolerance. **By virtue of tolerance that is considered as an authorization, permission or license, acts of possession are realized or performed. The question reduces itself to the existence or non-existence of the permission.**[26] (Citation omitted, emphasis in the original)

In other words, for there to be tolerance, complainants in an unlawful detainer must prove that they had consented to the possession over the property through positive acts. After all, tolerance signifies permission and not merely silence or inaction as silence or inaction is negligence and not tolerance.[27]

In the present case, Fernandez's alleged tolerance was premised on the fact that she did not do anything after the Waiver was executed. However, her inaction is insufficient to establish tolerance as it indicates negligence, rather than tolerance, on her part. As above-mentioned, inaction should not be confused with tolerance as the latter transcends silence and connotes permission to possess the property subject of an unlawful detainer case. Thus, even assuming the Waiver was valid and binding, its execution and Fernandez's subsequent failure to assert her possessory rights do not warrant the conclusion that she tolerated Lozano's continued possession of the property in question, absent any other act signifying consent.

In addition, contrary to the appreciation of the CA, the affidavits[28] of Fernandez and Gascon do not prove that the former tolerated Lozano's possession of the property. A close perusal of the averments in their affidavits reveals that they merely concluded that Lozano's possession was by mere tolerance. The affidavits were bereft of any statement describing positive acts of Fernandez manifesting tolerance or permission. The CA erred in giving weight to these affidavits as they do not contain specific averments of tolerance and merely stated unfounded conclusions.

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[26] *Id*. at 554-555.

[27] *Javelosa v. Tapus*, G.R. No. 204361, July 4, 2018.

[28] *Rollo*, pp. 129-130.

Again, Fernandez cannot simply claim that she had tolerated Lozano's possession because she did not do anything after the execution of the Waiver as silence does not equate to tolerance or permission. In short, the execution of the Waiver alone is not tantamount to the tolerance contemplated in unlawful detainer cases. The absence of an overt act indicative of tolerance or permission on the part of the plaintiff is fatal for a case for unlawful detainer.[29]

WHEREFORE, the petition is **GRANTED**. The February 16, 2011 Decision in Civil Case No. 7238 of the Municipal Trial Court in Cities, Branch 2, Olongapo City is **REINSTATED**.

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Perlas-Bernabe, Caguioa*, and *Hernando*,[*] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 213502. February 18, 2019]

JERLINDA M. MIRANDA, *petitioner, vs.* **THE CIVIL SERVICE COMMISSION and THE DEPARTMENT OF HEALTH,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 43 OF THE RULES OF COURT, PROPER REMEDY IN CASE AT BAR; A SPECIAL CIVIL ACTION FOR *CERTIORARI*

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[29] *Jose v. Alfuerto*, 699 Phil. 307, 320-321 (2012).

[*] Additional Member per S.O. No. 2630 dated December 18, 2018.

UNDER RULE 65 IS NOT A SUBSTITUTE FOR A LOST APPEAL.— [I]t must be noted that we agree with the CA that Miranda availed of the wrong remedy when she filed the petition for *certiorari* (with the CA) to assail the CSC Decision instead of filing a Petition for Review under Rule 43 of the 1997 Rules of Court. Hence, the same should have been dismissed outright. This Court has repeatedly held that where the remedy of appeal is available, the remedy of *certiorari* should not have been entertained. A special civil action for *certiorari* under Rule 65 is proper only when there is neither appeal, nor plain, speedy, and adequate remedy in the ordinary course of law. The remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive such that where an appeal is available, *certiorari* will not prosper, even if the ground is grave abuse of discretion. We could hardly believe Miranda's assertion that the CSC committed grave abuse of discretion such that recourse to *certiorari* is proper. The more tenable explanation for Miranda's wrong choice of remedy is that the period to appeal simply lapsed without an appeal having been filed. Having lost her right to appeal, Miranda instituted the only remedy that she thought was still available. To reiterate, *certiorari* is not a substitute for a lost appeal. It is not allowed when a party to a case fails to appeal a judgment to the proper forum, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse.

2. **ID.; ID.; ID.; THE PRESENT PETITION FOR *CERTIORARI* TREATED AS A PETITION FOR REVIEW ON *CERTIORARI* TO SERVE THE HIGHER ENDS OF JUSTICE.—** [I]n the spirit of liberality that pervades the Rules of Court and in the interest of substantial justice, this Court has, on appropriate occasions, treated a petition for *certiorari* as a petition for review on *certiorari*, particularly when: (1) the petition for *certiorari* was filed within the reglementary period to file a petition for review on *certiorari*; (2) the petition avers errors of judgment; and (3) when there is sufficient reason to justify the relaxation of the rules. Considering that the present petition was filed within the period of extension granted by this Court and that errors of law and judgment were averred, this Court deems it proper to treat the present petition for *certiorari* as a petition for review on *certiorari* in order to serve the higher ends of justice.

3. ID.; ID.; AN OFFICER WHOSE DECISION IS UNDER REVIEW SHOULD HAVE RECUSED HIMSELF FROM PARTICIPATING IN THE APPEAL PROCEEDINGS; PETITIONER WAS DENIED DUE PROCESS WHEN THE CHAIRMAN OF THE CIVIL SERVICE COMMISSION PARTICIPATED IN RESOLVING THE MOTION FOR RECONSIDERATION OF THE CASE THE SUBJECT OF WHICH IS HIS OWN DECISION.— [T]he circumstances in this case would readily show that Duque was the very person who issued the assailed DOH Decision in his capacity as then Secretary of Health. Hence, it is just proper that he should have inhibited himself from taking part on the appeal proceedings in the CSC, as Chairman of the CSC. Having participated in the proceedings with the DOH and having ruled for the dismissal of Miranda, it was incumbent upon Duque to recuse himself from participating in the review of the same case during the appeal with the CSC. While it is true that he was not able to sign the Decision of the CSC as he was on official leave, records show that he nonetheless signed the CSC resolution denying petitioner's Motion for Reconsideration of the Decision involving the same case. This clearly shows that he still took active part in the appeal proceedings. The Court had ruled that the officer who reviews a case on appeal should not be the same person whose decision is under review. x x x A sense of proportion and consideration for the fitness of things should have deterred Duque from reviewing his own decision as the Secretary of the Department of Health. At the very start, he should have inhibited himself from the case and let the other Commissioners undertake the review. Miranda was effectively denied due process when Duque reviewed his own Decision by participating in resolving the motion for reconsideration of the case.

4. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICIAL AND EMPLOYEE; GRAVE MISCONDUCT, DEFINED AND DISTINGUISHED FROM SIMPLE MISCONDUCT.— Grave misconduct is defined as a serious transgression of some established and definite rule of action (such as unlawful behavior or gross negligence by the public officer or employee) that tends to threaten the very existence of the system of administration of justice an official or employee serves. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established

by substantial evidence. Thus, in grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule must be manifest.

5. ID.; ID.; ID.; SIMPLE MISCONDUCT, DEFINED AND EXPLAINED.— Simple misconduct is a transgression of some established rule of action, an unlawful behavior, or negligence committed by a public officer. To constitute misconduct, the act or acts must have a direct relation to, and be connected with, the performance of her official duties. As earlier mentioned, in order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former. Stated differently, if the misconduct does not involve any of the aforesaid qualifying elements, the person charged is only liable for the lesser offense of simple misconduct.

6. ID.; ID.; ID.; ID.; IN THE ABSENCE OF THE ELEMENT OF WILLFUL INTENT TO VIOLATE THE LAW OR DISREGARD OF ESTABLISHED RULES, PETITIONER IS LIABLE FOR SIMPLE MISCONDUCT ONLY; IT IS NOT VIOLATIVE OF DUE PROCESS RIGHTS SINCE GRAVE MISCONDUCT, FOR WHICH PETITIONER WAS CHARGED, NECESSARILY INCLUDES THE LESSER OFFENSE OF SIMPLE MISCONDUCT.— Under the circumstances, we cannot see the element of willful intent to violate the law or disregard of established rules on the part of Miranda, that were observed by the DOH and the CSC. As in fact, we give credence to the performance rating given to Miranda covering those periods. If the allegations on her were true, she should not have been given a very satisfactory rating by her immediate superior during those periods. Indeed, making Miranda liable to the lesser offense of simple misconduct is not violative of her due process rights as this offense is necessarily included in the charge of grave misconduct. As held by the court, "grave misconduct necessarily includes the lesser offense of simple misconduct." Thus, a person charged with grave misconduct may be held liable for simple misconduct if the misconduct does not involve any of the elements to qualify the misconduct as grave. It bears stressing that the right to substantive and procedural due process is equally applicable in administrative proceedings. A basic requirement of due process is that a person

must be duly informed of the charges against him and that (b) a person cannot be convicted of an offense with which he was not charged.

7. ID.; ID.; ID.; PETITIONER'S DELAY IN SUBMITTING FINANCIAL REPORTS CONSTITUTES CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; ABSENCE OF DELIBERATE INTENT OR WILLFUL DESIRE TO DEFY OR DISREGARD THE RULE IS NOT A DEFENSE AS TO EXONERATE PETITIONER FROM THE SAID OFFENSE.— [D]espite absence of deliberate intent or willful desire to defy or disregard the rules relative to the timely submission of the financial reports to the COA, the same is not a defense as to exonerate Miranda from the charge of conduct prejudicial to the best interest of the service. Under our civil service laws, there is no concrete description of what specific acts constitute conduct prejudicial to the best interest of the service. In the said case of *Catipon, Jr. v. Japson*, the Court cited instances where the acts or omissions have been treated as conduct prejudicial to the best interest of the service, such as among others, failure to safe-keep public records, failure to report back to work, making false entries in public documents, abandonment of office and the like. In the instant case, Miranda's delay in submitting financial reports undoubtedly constitutes conduct prejudicial to the best interest of the service. To be sure, this delay may result in prejudice to the government and the public in general as the purpose of prompt submission of financial reports to the COA is for the effective monitoring of the agency's compliance with the prescribed government accounting and auditing rules and regulations, essential in management's decision-making, planning and budgeting. It is this non-observance of the rules on deadlines which has no place in the public service and should not be countenanced. Indeed, the absence of a willful or deliberate intent to defy the rules is immaterial for conduct grossly prejudicial to the best interest of the service may or may not be characterized by corruption or a willful intent to violate the law or to disregard established rules.

8. ID.; ID.; ID.; IF AN EMPLOYEE IS FOUND GUILTY OF TWO OR MORE CHARGES, THE PENALTY FOR MOST SERIOUS CHARGE SHALL BE IMPOSED AND THE OTHER CHARGES SHALL BE CONSIDERED AS

AGGRAVATING; HAVING BEEN FOUND GUILTY OF CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE AGGRAVATED BY SIMPLE MISCONDUCT, PETITIONER SHALL BE METED THE PENALTY OF SUSPENSION FOR ONE (1) YEAR; IF SUSPENSION IS NO LONGER FEASIBLE, THE PENALTY OF FORFEITURE OF ONE YEAR SALARY SHALL BE IMPOSED.— [U]nder Section 50 of the Revised Rules on Administrative Cases in the Civil Service (Revised Rules), if the respondent is found guilty of two (2) or more charges, the penalty for the most serious charge shall be imposed and the other charges shall be considered as aggravating circumstances. In this case, considering the presence of one aggravating circumstance with no proven mitigating circumstance, then the maximum of the penalty shall be imposed in accordance with Section 49 (c) of the Revised Rules. x x x Thus, having been found guilty of conduct prejudicial to the best interest of the service aggravated by simple misconduct, Miranda shall be meted the penalty of suspension for one (1) year. In conformity with Section 52 of the Revised Rules, she shall also be meted the accessory penalty of disqualification from promotion for the entire period of the suspension. However, if the penalty of suspension is no longer feasible, then it is just proper to impose the penalty of forfeiture of one year of her salary, in lieu of the penalty of suspension for one year, to be deducted from whatever retirement benefits she may be entitled to under existing laws, in line with this Court's ruling in *Civil Service Commission v. Manzano*.

APPEARANCES OF COUNSEL

Office of the Solicitor General for respondents.

D E C I S I O N

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

Petitioner Jerlinda M. Miranda (Miranda) was an Accountant III at the Western Visayas Medical Center (WVMC).[1] She was

[1] *Rollo*, p. 54.

administratively charged with Inefficiency and Incompetence in the Performance of Her Official Duties, Grave Misconduct and Conduct Grossly Prejudicial to the Service,[2] for failure to submit with the Commission on Audit (COA) WVMC's Financial Report, particularly the trial balance, for the period from March to December 1996, 2001, 2002 and 2003.

In her Answer, Miranda denied all allegations imputed against her. She explained that the delay in the submission of financial reports was on account of her being new to the position. It was likewise brought about by the introduction of changes in the accounting system. She maintained that all charges against her are baseless. She should not have obtained a "Very Satisfactory" performance rating if the said allegations against her were true.

After the hearing, the Department of Health (DOH), through then Secretary Francisco T. Duque III, found Miranda guilty of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service, imposing upon her the penalty of dismissal from the service with accessory penalties of cancellation of civil service eligibility, forfeiture of retirement benefits and perpetual disqualification from reemployment in the government service. Miranda moved to reconsider but the motion was denied.

On appeal to the Civil Service Commission (CSC), the CSC affirmed the Decision of the DOH. Miranda's motion for reconsideration was again denied.

Miranda filed a Petition for *Certiorari* under Rule 65 with the Court of Appeals (CA).

The CA, in a Decision[3] dated July 5, 2013, in CA-G.R. SP No. 123552, dismissed the Petition on the following grounds: (1) The Petition for *Certiorari* under Rule 65 is a wrong mode of appeal, the petition for review under Rule 43 of the 1997 Rules of Court, being the only remedy from the decisions, final orders or resolution of the Civil Service Commission; and (2)

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[2] *Id.* at 55.

[3] Penned by Associate Justice Danton Q. Bueser, with Associate Justices Amelita G. Tolentino and Ramon R. Garcia, concurring; *rollo*, pp. 54-68.

Even if the CA will permit recourse under Rule 65, still there was no basis to grant the petition since the Decision rendered by the CSC failed to disclose any grave abuse of discretion, correctible by *certiorari*. First, the CA ruled that failure of Chairman Duque (Duque) to inhibit himself from resolving the appeal can hardly be said to be one that is tantamount to grave abuse of discretion. The CA explained that the CSC acts as a collegial body, whose Decision[4] and Resolution[5] were arrived at only after deliberations and consultations among the commissioners. Hence, the assailed CSC Decision and Resolution were not acts of Duque alone. Second, the CA found as sufficient the substantial evidence introduced by respondents DOH and CSC which established that indeed Miranda incurred unreasonable delays in submitting the required financial reports despite receipt of the directives from the COA.

Miranda filed a Motion for Reconsideration of the aforesaid CA Decision but the said motion was denied in a Resolution[6] dated May 27, 2014.

Dissatisfied with the ruling, Miranda filed the instant Petition for *Certiorari*[7] under Rule 65 of the 1997 Rules of Court, anchored on the following grounds:

A.

WHETHER OR NOT PUBLIC RESPONDENT CIVIL SERVICE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION WHEN CHAIRMAN FRANCISCO T. DUQUE III DID NOT INHIBIT IN THE RESOLUTION OF THE CASE.

B.

WHETHER OR NOT PUBLIC RESPONDENT COURT OF APPEALS AND THE CIVIL SERVICE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION IN HOLDING

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[4] *Id*. at 73-82.

[5] *Id*. at 84-86.

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

[7] *Id*. at 15-51.

THE DECISION OF THE DEPARTMENT OF HEALTH DISMISSING PETITIONER FROM PUBLIC SERVICE DESPITE ABSENCE OF SUBSTANTIAL EVIDENCE ON RECORD.[8]

As a preliminary matter, it must be noted that we agree with the CA that Miranda availed of the wrong remedy when she filed the petition for *certiorari* (with the CA) to assail the CSC Decision instead of filing a Petition for Review under Rule 43 of the 1997 Rules of Court. Hence, the same should have been dismissed outright.

This Court has repeatedly held that where the remedy of appeal is available, the remedy of *certiorari* should not have been entertained.[9] A special civil action for *certiorari* under Rule 65 is proper only when there is neither appeal, nor plain, speedy, and adequate remedy in the ordinary course of law.[10] The remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive such that where an appeal is available, *certiorari* will not prosper, even if the ground is grave abuse of discretion.[11]

We could hardly believe Miranda's assertion that the CSC committed grave abuse of discretion such that recourse to *certiorari* is proper. The more tenable explanation for Miranda's wrong choice of remedy is that the period to appeal simply lapsed without an appeal having been filed. Having lost her right to appeal, Miranda instituted the only remedy that she thought was still available. To reiterate, *certiorari* is not a substitute for a lost appeal.[12] It is not allowed when a party to a case fails to appeal a judgment to the proper forum, especially

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[8] *Id*. at 19.

[9] *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, 479 Phil. 768, 782 (2004).

[10] *Villalon v. Lirio*, 765 Phil. 474, 479 (2015).

[11] *Id*. at 481.

[12] *Spouses Llonillo v. People*, G.R. No. 237748 (Notice), October 1, 2018.

if one's own negligence or error in one's choice of remedy occasioned such loss or lapse.[13]

Nonetheless, since the CA permitted recourse to *certiorari* and proceeded to entertain it, the case is now before this Court for our consideration. Judging from the averments of the pleading filed, We have observed that the petition before Us is a Petition for *Certiorari* under Rule 65 because the grounds relied upon to support the petition hinge on the issue of grave abuse of discretion.

It bears to stress that a Petition for *Certiorari* is not proper to assail the final order of the CA. Here, the assailed Decision of the CA dismissing petitioner's Petition for *Certiorari* is already a disposition on the merits. And consequently, the assailed Resolution denying the motion for reconsideration is considered a final disposition of the case, which, under Section 1, Rule 45 of the Revised Rules of Court, is appealable to this Court *via* a Petition for Review on *Certiorari*, *viz*:

> 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. (Underscoring supplied)

From the foregoing, it is clear that decisions (judgments), final orders or resolutions of the CA in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to this Court by filing a petition for review, which would be but a continuation of the appellate process over the original case.[14]

However, in the spirit of liberality that pervades the Rules of Court and in the interest of substantial justice, this Court has, on appropriate occasions, treated a petition for *certiorari*

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[13] *Id*.

[14] *Tagle v. Equitable PCI Bank*, 575 Phil. 384, 397-398 (2008).

as a petition for review on *certiorari*, particularly when: (1) the petition for *certiorari* was filed within the reglementary period to file a petition for review on *certiorari*; (2) the petition avers errors of judgment; and (3) when there is sufficient reason to justify the relaxation of the rules.[15]

Considering that the present petition was filed within the period of extension granted by this Court and that errors of law and judgment were averred, this Court deems it proper to treat the present petition for *certiorari* as a petition for review on *certiorari* in order to serve the higher ends of justice.

With the procedural issue being settled, the remaining issue is whether or not the CA erred when it dismissed the petition for *certiorari*, thereby ruling that the CSC did not commit grave abuse of discretion when it found Miranda guilty of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service and imposing the penalty of dismissal from the service with the accessory penalties such as cancellation of civil service eligibility, forfeiture of retirement benefits and perpetual disqualification from reemployment in the government service.

As to the first issue, Miranda firmly believes that Duque should have *motu propio* inhibited himself from the deliberation, evaluation and review by the CSC of the DOH Decision. Miranda pointed out that Duque was the former Secretary of the DOH, which was her accuser in the instant administrative complaint. After Duque's stint with the DOH, he was appointed as the chairman of the CSC, which rendered the now assailed Decision affirming that of the DOH.

Miranda has a point. True, CSC acts as a collegial body. And as such, the chairman alone cannot issue any decisions or resolutions without consultation and deliberations with the other members of the commission. It is equally true that mere allegation of bias and partiality is not enough. There should be clear and convincing evidence to prove the charge of bias and partiality.[16]

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[15] *Navarez v. Abrogar III*, 768 Phil. 297, 305 (2015).

[16] *Negros Grace Pharmacy, Inc. v. Judge Hilario*, 461 Phil. 843, 849 (2003).

However, the circumstances in this case would readily show that Duque was the very person who issued the assailed DOH Decision[17] in his capacity as then Secretary of Health. Hence, it is just proper that he should have inhibited himself from taking part on the appeal proceedings in the CSC, as Chairman of the CSC. Having participated in the proceedings with the DOH and having ruled for the dismissal of Miranda, it was incumbent upon Duque to recuse himself from participating in the review of the same case during the appeal with the CSC. While it is true that he was not able to sign the Decision of the CSC as he was on official leave,[18] records show that he nonetheless signed the CSC resolution[19] denying petitioner's Motion for Reconsideration of the Decision involving the same case. This clearly shows that he still took active part in the appeal proceedings. The Court had ruled that the officer who reviews a case on appeal should not be the same person whose decision is under review.[20] Thus:

> In order that the review of the decision of a subordinate officer might not turn out to be a farce, the reviewing officer must perforce be other than the officer whose decision is under review; otherwise, there could be no *different view* or there would be no real review of the case. The decision of the reviewing officer would be a biased view; inevitably, it would be the *same view* since being human, he would not admit that he was mistaken in his first view of the case.[21]

A sense of proportion and consideration for the fitness of things should have deterred Duque from reviewing his own decision as the Secretary of the Department of Health.[22] At the very start, he should have inhibited himself from the case and

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[17] *Rollo*, pp. 359-369.

[18] *Id*. at 82.

[19] *Id*. at 86.

[20] *Tejano, Jr. v. Ombudsman*, 501 Phil. 243, 251 (2005).

[21] *Zambales Chromite Mining Co. v. Court of Appeals*, 182 Phil. 589, 596 (1979).

[22] *Id*.

let the other Commissioners undertake the review. Miranda was effectively denied due process when Duque reviewed his own Decision[23] by participating in resolving the motion for reconsideration of the case.

Since records show that Duque did not sign in the Decision as he was on official leave, it behooves this Court to review the said case on the merits if only to settle the controversy.

Thus, as to the second issue, Miranda maintains that there was no substantial evidence to prove the administrative charges against her. No doubt, this essentially involved question of facts. It is said time and time again that this Court is not a trier of facts.[24] It will not review factual findings of administrative agencies as they are generally respected and even accorded finality because of the special knowledge and expertise gained by these agencies from handling matters falling under their specialized jurisdiction.[25]

However, while administrative findings of fact are accorded great respect and even finality when supported by substantial evidence, nevertheless, when it can be shown that administrative bodies grossly misappreciated evidence of such nature as to compel a contrary conclusion, this Court will not hesitate to reverse their factual findings.[26] Factual findings of administrative agencies are not infallible and will be set aside when they are tainted by arbitrariness.[27]

In the instant case, Miranda was found guilty of grave misconduct and conduct prejudicial to the best interest of the service for failure to submit with the COA the required financial reports, particularly the Trial Balance for the period from March to December 1996, 2001, 2002 and 2003.

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[23] *Id*.

[24] *Reyna v. Fort Knox Security Service Corp.*, UDK-16116 (Notice), April 4, 2018.

[25] *Lim v. Commission on Audit*, 447 Phil. 122, 126 (2003).

[26] *Tin v. Pasaol*, 450 Phil. 370 (2003).

[27] *Id*.

Grave misconduct is defined as a serious transgression of some established and definite rule of action (such as unlawful behavior or gross negligence by the public officer or employee) that tends to threaten the very existence of the system of administration of justice an official or employee serves.[28] The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence.[29] Thus, in grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule must be manifest.[30]

In the instant case, Miranda vehemently denied that she failed to file the required financial report. But she readily admitted that there was only delay in the submission of the said reports, for reasons which must not be entirely attributed to her. She explained that the delay in the submission of the March to December 1996 financial reports was due to the fact that she was still working on the backlogs caused by her predecessor in office. At the time Miranda assumed office on June 14, 1995, there was already a considerable backlog in the preparation and submission of the required Trial Balance and Financial Statements. Miranda explained that she cannot just prepare the 1996 Financial Report without first working on the previous reports as all amounts and figures in the previous year will be carried over to the next — a domino effect, so to speak. The COA State Auditor Melba Cabahug (Cabahug) could attest to this:

[Q:] *So we are in agreement then that there's a [backlog] before the assumption of Mrs. Miranda. Is that correct?*

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[28] *Cabauatan v. Uvero*, A.M. No. P-15-3329, November 6, 2017, 844 SCRA 7.

[29] *Re: Administrative Charge of Misconduct Relative to the Alleged Use of Prohibited Drug of Castor*, 719 Phil. 96 (2013).

[30] *Geronca v. Magalona*, 568 Phil. 564, 570 (2008).

[A:] *Records show.*

[Q:] *Would this [backlog] a contributing factor to the delay in submission of the monthly trial balances and financial statement?*

[A:] *As what I have said, you cannot prepare a succeeding trial balance unless the previous months' trial balances are being prepared because the balance is carried over[.]*

[Q:] *So this has a domino effect on the succeeding trial balances?*

[A:] *Yes.*

[Q:] *Likewise in the financial statement?*

[A:] Yes.[31] (Italics in the original)

That Miranda finally complied with the submission of the reports for the said period of March to December 1996 was likewise established from the testimony of Cabahug, thus:

[Q:] *This period March to December 1996 monthly trial balance and financial statement. Was this submitted by Mrs. Miranda?*

[A:] *Yes that was submitted.*

[Q:] *Can you recall when?*

[A:] *I cannot recall when.*

[Q:] *But this was submitted?*

[A:] *Yes this was submitted because I think the current year or the current monthly trial balance is now being prepared by the current head of the accounting section. Therefore, previous balances has (sic) been prepared and submitted.*[32] (Italics in the original)

Hence, we can hardly conclude that there was failure to submit the Financial Reports. That she submitted the Financial Report for 2001 as early as January 9, 2002,[33] was not controverted by respondents. As for 2002, there was ample evidence to show that she also submitted the Financial reports for that year as

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[31] *Rollo*, pp. 30-31 cited from TSN, February 21, 2006, pp. 18-22.

[32] *Id*. at 32.

[33] Petitioner's argument, see CSC Decision, *rollo*, p 76.

can be gleaned from the letters[34] dated February 14, 2003, February 26, 2003 and March 11, 2003, addressed to State Auditor Elias S. Tabares (Tabares). Meanwhile, the records did not show when Miranda submitted the financial reports for 2003, neither, was there any mention that Miranda did not at all submit the financial report for the year 2003. At the very least, there was a delay in the submission, but not a failure to do so. This was even the conclusion reached by the CSC in its assailed Decision dated June 21, 2011. Thus, the CSC ruled: "In the instant case, it was sufficiently established that appellant, indeed, incurred unreasonable delays in submitting the required financial reports despite receipt of the directives issued by the Commission on Audit."[35]

At any rate, Miranda offered a justification for her delay in the submission of the financial reports. In 2002, when she was about to prepare the 2001 Report, a change in the accounting system was introduced as provided for by COA Circular No. 2001-04 dated October 30, 2001, the subject of which is "Revision and Computerization of the Government Accounting System" effective January 2002.[36] Miranda together with the agency's cashier and budget officer attended the training and seminars only on April 15-19, 2002, whereas the required submission of the computerized reports was effected January 1, 2002.[37] Miranda explained that there is no way for anyone to have promptly complied with such requirement.

The veracity of this explanation was later confirmed by Tabares who testified that the change in the accounting system caused the delay in the submission of the required financial reports, thus:

[Q:] Now considering that this is new, as a matter of fact the name, New Government Accounting System (NGAS). Now would you make

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[34] *Id*. at 272-274.

[35] *Id*. at 80.

[36] *Id*. at 38.

[37] *Id*. at 39.

any opinion or observation that this implementation of the new Government Accounting System in 2002 considering that it is new can you say that the employees or the sections, accounting, supply, management were hindered or delayed in their reporting or in their accomplishment of the provisions of the manual of the NGAS?

[A:] Since there were many changes from the Old System to New System, I believe that the personnel could not easily coup [sic] with the situation. Unless they can attend series of workshops and seminars and because of the voluminous work that is added to the system.

[Q:] Now, you said there is voluminous work added to the accounting system. For instance, lets take the accounting section of this center. What were those voluminous records in the accounting system that has to be implemented in this NGAS which could have delayed their accomplishment of any financial report because of this?

[A:] In the out set, even the [conversion] of old accounts to [n]ew accounts, it will take so much time and the additional records, subsidiary years to that. x x x So, since the transition is abrupt, I think for the first time, they can not really coup-up [sic].

[Q:] Would you say Mr. Tabares that the accounting [system] of the center [was] delayed in the submission of this financial reports [sic] of this New Government Accounting System implemented in 2002[?]

[A:] Yes, because the system has been [patterned] that it should be computerized and other personnel of the accounting section were not sent to seminars.

[Q:] x x x Would you say that this Audit Observation which was dated December 16, 2002 and receipt by the accounting office only on June 20, 2003. For almost more than six (6) months. Would you say that the management was inefficient or efficient?

[A:] I don't see any inefficiency on the part of the agency people. We are only informing management that there is a deficiency in the system. We are not saying to individual but to the agency as well.[38]

With the satisfactory explanation offered by Miranda, we can safely say that the delay in the submission of the required Financial Reports was not entirely attributed to Miranda's fault.

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[38] *Id*. at 42-44.

There was likewise no showing that the delay is one attended with corruption, willful intent to violate the law, or to disregard established rules. No substantial evidence was adduced to support the presence of these elements so as to characterize the misconduct as grave.

Of course, we cannot entirely relieve her from fault. Being new to the job, voluminous work or change in the system of procedure in work were not acceptable excuses for not promptly doing one's job and incurring delay. At the very least, she could be held liable for simple misconduct caused by her neglect in the performance of her duty as an accountant. This neglect on her part was very apparent when she disregarded the time element involved in submitting the required financial reports with the COA. Indeed, she failed to exercise the necessary prudence to ensure that deadlines for submission must be met and complied with.

Simple misconduct is a transgression of some established rule of action, an unlawful behavior, or negligence committed by a public officer.[39] To constitute misconduct, the act or acts must have a direct relation to, and be connected with, the performance of her official duties.[40] As earlier mentioned, in order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former.[41] Stated differently, if the misconduct does not involve any of the aforesaid qualifying elements, the person charged is only liable for the lesser offense of simple misconduct.[42]

Under the circumstances, we cannot see the element of willful intent to violate the law or disregard of established rules on the part of Miranda, that were observed by the DOH and the CSC. As in fact, we give credence to the performance rating

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[39] *Campos v. Campos*, 681 Phil. 247, 254 (2012).

[40] *Buenaventura v. Mabalot*, 716 Phil. 476, 493 (2013).

[41] *Corpuz v. Rivera*, 794 Phil. 40, 49 (2016).

[42] *Id.*

given to Miranda covering those periods. If the allegations on her were true, she should not have been given a very satisfactory rating by her immediate superior during those periods.

Indeed, making Miranda liable to the lesser offense of simple misconduct is not violative of her due process rights as this offense is necessarily included in the charge of grave misconduct. As held by the court, "grave misconduct necessarily includes the lesser offense of simple misconduct."[43] Thus, a person charged with grave misconduct may be held liable for simple misconduct if the misconduct does not involve any of the elements to qualify the misconduct as grave. It bears stressing that the right to substantive and procedural due process is equally applicable in administrative proceedings.[44] A basic requirement of due process is that a person must be duly informed of the charges against him and that (b) a person cannot be convicted of an offense with which he was not charged.[45]

However, despite absence of deliberate intent or willful desire to defy or disregard the rules relative to the timely submission of the financial reports to the COA, the same is not a defense as to exonerate Miranda from the charge of conduct prejudicial to the best interest of the service. Under our civil service laws, there is no concrete description of what specific acts constitute conduct prejudicial to the best interest of the service.[46] In the said case of *Catipon, Jr. v. Japson*,[47] the Court cited instances where the acts or omissions have been treated as conduct prejudicial to the best interest of the service, such as among others, failure to safe-keep public records, failure to report back to work, making false entries in public documents, abandonment of office and the like.

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[43] *Office of the Court Administrator v. Espejo*, 792 Phil. 551, 557 (2016), citing *The Office of the Ombudsman-Visayas v. Castro*, 759 Phil. 68, 78 (2015).

[44] *Civil Service Commission v. Lucas*, 361 Phil. 486, 491 (1999).

[45] *Id*.

[46] *Catipon, Jr. v. Japson*, 761 Phil. 205, 213 (2015).

[47] *Id*.

In the instant case, Miranda's delay in submitting financial reports undoubtedly constitutes conduct prejudicial to the best interest of the service. To be sure, this delay may result in prejudice to the government and the public in general as the purpose of prompt submission of financial reports to the COA is for the effective monitoring of the agency's compliance with the prescribed government accounting and auditing rules and regulations, essential in management's decision-making, planning and budgeting.[48] It is this non-observance of the rules on deadlines which has no place in the public service and should not be countenanced. Indeed, the absence of a willful or deliberate intent to defy the rules is immaterial for conduct grossly prejudicial to the best interest of the service may or may not be characterized by corruption or a willful intent to violate the law or to disregard established rules.[49]

As to the proper penalty to be imposed, we refer to the pertinent provisions of the Uniform Rules on Administrative Cases in the Civil Service (Rules).[50] Section 52, paragraph (B), No. 2, Rule IV of the Rules classify simple misconduct as a less grave offense with a corresponding penalty of suspension for one month and one day to six months for the first offense, and the penalty of dismissal for the second offense. On the other hand, Section 52, paragraph (A), No. 20, Rule IV of the same Rules categorize conduct prejudicial to the best interest of the service as a grave offense with a corresponding penalty of suspension for six months and one day to one year for the first offense, and the penalty of dismissal for the second offense.

However, under Section 50 of the Revised Rules on Administrative Cases in the Civil Service[51] (Revised Rules), if the respondent is found guilty of two (2) or more charges, the penalty for the most serious charge shall be imposed and the

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[48] *Rollo*, p. 80.

[49] *Catipon, Jr. v. Japson*, *supra* at 222.

[50] CSC Resolution No. 991936, September 14, 1999.

[51] CSC Resolution No. 1101502, November 8, 2011.

other charges shall be considered as aggravating circumstances.[52] In this case, considering the presence of one aggravating circumstance with no proven mitigating circumstance, then the maximum of the penalty shall be imposed in accordance with Section 49 (c) of the Revised Rules.

This is the same penalty imposed in the cases of *Office of the Ombudsman v. Faller*,[53] *Buenaventura v. Mabalot*[54] and *Civil Service Commission v. Manzano*,[55] where respondents therein were also found guilty of two offenses of simple misconduct and conduct prejudicial to the best interest of the service and the penalties that were imposed correspond to that of the most serious charge, with the rest considered as aggravating circumstances.

Thus, having been found guilty of conduct prejudicial to the best interest of the service aggravated by simple misconduct, Miranda shall be meted the penalty of suspension for one (1) year. In conformity with Section 52 of the Revised Rules, she shall also be meted the accessory penalty of disqualification from promotion for the entire period of the suspension. However, if the penalty of suspension is no longer feasible, then it is just proper to impose the penalty of forfeiture of one year of her salary, in lieu of the penalty of suspension for one year, to be deducted from whatever retirement benefits she may be entitled to under existing laws, in line with this Court's ruling in *Civil Service Commission v. Manzano*.[56]

WHEREFORE, the Decision dated July 5, 2013 and the Resolution dated May 27, 2014 of the Court of Appeals in CA-G.R. SP No. 123552 are hereby **MODIFIED**, such that Jerlinda M. Miranda is found **GUILTY** of simple misconduct and conduct

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[52] *Office of the Ombudsman Field Investigation Office v. Faller*, 786 Phil. 467, 483 (2016).

[53] *Id*.

[54] *Supra* note 40.

[55] 536 Phil. 849 (2006).

[56] *Id*. at 867.

prejudicial to the best interest of the service. **ACCORDINGLY**, she is ordered **SUSPENDED** for a period of one (1) year with the accessory penalty of disqualification from promotion corresponding to the one-year period of suspension. If suspension is no longer feasible, she shall be imposed a penalty of forfeiture of one year of her salary, in lieu of suspension, to be deducted from her retirement benefits.

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Perlas-Bernabe, Caguioa*, and *Hernando*,[*] *JJ.*, concur.

FIRST DIVISION

[G.R. No. 216725. February 18, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROGELIO YAGAO *y* LLABAN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; WITHOUT SHOWING THAT THERE WAS DELIVERY OF THE DANGEROUS DRUGS, GUILT OF THE ACCUSED COULD NOT BE ESTABLISHED.— The crime that the accused-appellant was charged with and tried, and for which he was found guilty of, was the crime of illegal sale of dangerous drug defined and punished under the first paragraph of Section 5 of R.A. No. 9165[.] x x x In prosecuting the charge, the State bore the burden to prove the following elements of the violation, namely: (*a*) the identities of the buyer and the seller, the object

[*] Additional Member per S.O. No. 2630 dated December 18, 2018.

of the sale, and the consideration; and (*b*) the delivery of the thing sold and its payment. The delivery to the poseur-buyer of the dangerous drug by the accused as the seller, and the receipt by the latter of the marked money consummated the illegal sale of the dangerous drug during the buy-bust transaction. Without showing that the delivery of the dangerous drug took place, the State's evidence would not amount to proof of guilt beyond reasonable doubt, for it was the delivery of the drug by the accused-appellant, coupled with the presentation in court of the confiscated drug itself, or the *corpus delicti*, that would establish to a moral certainty the commission of the violation.

2. **ID.; ID.; ID.; ID.; WHERE THE SEIZURE HAPPENED BEFORE THE ACCUSED COULD HAND THE MARIJUANA OVER TO THE POSEUR-BUYER, THERE WAS NO SALE BECAUSE THE DELIVERY OF THE DANGEROUS DRUGS HAD NOT YET TRANSPIRED.—** The x x x recollections reveal that PO2 Deloso and PO2 Yasay quickly effected the arrest of the accused-appellant just as soon as he had pulled out the marijuana from his pocket. Necessarily, the seizure happened *before* he could hand the marijuana over to PO2 Deloso as the poseur buyer. Under such circumstance, *there was no sale* because the delivery of the dangerous drug to the poseur buyer had not yet transpired. Delivery as one of the essential elements of illegal sale of dangerous drug under Section 5 of R.A. No. 9165 is defined as the act of knowingly passing a dangerous drug to another, personally or otherwise, and by any means, with or without consideration. Consequently, the finding against the accused-appellant could not be upheld. Despite the claim by the arresting officers that their arrest of the accused-appellant had resulted from the conduct of the buy-bust operation mounted against him, we ineluctably conclude that the confiscation did not take place *following* a sale. Indeed, in order to be successful, the buy-bust operation - albeit necessary to catch the offender in the campaign against the drug menace - must still involve the offender in a transaction in which the poseur buyer offered to buy the drug, and the offender accepted the offer and delivered the drug in exchange for the price agreed upon. This is precisely why the operation is aptly denominated as a "buy-bust." In this case, however, the operation was merely a "bust" in view of the absence of a sale.

3. ID.; ID.; ID.; CHAIN OF CUSTODY RULE, EXPLAINED. — [W]e have frequently held that the observance of the chain of custody was essential in the preservation of the identity of the confiscated drug. This is because the drug, being itself the *corpus delicti* of the crime of illegal sale charged, will be the factual basis for holding the accused criminally liable under Section 5 of R.A. No. 9165. x x x For sure, the chain of custody is ultimately about the proper handling of the confiscated drug. The law has characterized the chain of custody in drug enforcement as nothing less than the duly recorded authorized movements and custody of the seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment from the time of seizure/confiscation to the moment of receipt in the forensic laboratory to the safekeeping until their presentation in court as evidence, and for eventual destruction. The faithful written record of the movement and custody of the seized items — including the identities and signatures of *all* the persons who may have temporary custody thereof, the dates and times when the transfers of the custody are made *in the course of* the safekeeping, and when the articles are used in court as evidence, until their final disposition — is the requirement that actually highlights the absolute need of establishing the identity of the seized drug with the drug presented as evidence in court. The procedural safeguards of marking, inventory and picture taking are decisive in proving that the dangerous drug confiscated from the accused was the very same substance delivered to and presented in the trial court. Given the significance of the chain of custody, any deviations must not be lightly dismissed as inconsequential, but must be fully explained by the State during the trial.

4. ID.; ID.; ID.; ID.; SERIOUS AND UNJUSTIFIABLE GAPS BROKE THE CHAIN OF CUSTODY OF THE CONFISCATED MARIJUANA IN THE INSTANT CASE; THE STATE DID NOT ESTABLISH THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT, HENCE, HE IS ENTITLED TO AN ACQUITTAL.— To begin with, irreconcilable inconsistencies tainted the arresting and seizing officers' recollections about the links in the chain of custody. x x x The inconsistencies between the police officers' testimonies, because they were irreconcilable, diminished the

credibility of their supposed observance of the chain of custody. Hence, their incrimination of the accused-appellant was fully discredited and should not be allowed to stand. As a result, we should doubt the stated reason for the arrest. Secondly, the State presented no witness to testify on the circumstances surrounding the marking of the confiscated drug, and on whether or not the marking had been made in the presence of the accused-appellant. The omission further discredited the evidence of guilt. x x x And, thirdly, PO2 Deloso disclosed that no inventory or pictures had been taken during the arrest of the accused-appellant and seizure of the dangerous drug, and in the aftermath. The disclosure further severely discredited the incrimination of the accused-appellant. x x x That the arresting officers made no attempt to justify their deviation from the procedures and safeguards set by Section 21 of R.A. No. 9165 was indicative of the absence of any justification. Indeed, our review of the records leads us to find and declare that none existed. In fine, the State did not establish the guilt of the accused-appellant for the crime with which he was charged. He is, therefore, entitled to acquittal on the ground of reasonable doubt of his guilt.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BERSAMIN, *C.J.*:

The delivery of the dangerous drug to the poseur-buyer by the accused as the seller, and the receipt by the latter of the marked money during the buy-bust transaction are the acts that consummate the crime of illegal sale of the dangerous drug. Considering that there can be no sale without the delivery, the act of delivery must be proved in order to hold the accused guilty of the crime of illegal sale of the dangerous drug.

The observance of the chain of custody, being necessary to preserve the integrity of the drug presented as evidence, must be clearly established. Otherwise, the accused must be acquitted on the ground of reasonable doubt of his guilt.

The Case

This appeal seeks the reversal of the decision promulgated on September 18, 2014,[1] whereby the Court of Appeals (CA) affirmed the judgment rendered on February 11, 2011 by the Regional Trial Court (RTC), Branch 25, in Cagayan de Oro City finding the accused-appellant guilty of a violation of Section 5, Article II, of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*), and accordingly penalizing him.[2]

Antecedents

The CA narrated the following procedural and factual antecedents:

On 14 August 2006, appellant was charged in an *Information* for violating *Section 5, Article II of R.A. 9165*, as follows:

> That on August 1, 2006 at more or less 5:00 pm at Zone 4, Bugo, Cagayan de Oro City, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, without lawful authority, did then and there, wilfully, unlawfully, and feloniously sell, trade, and dispense, deliver, distribute and/or give away one (1) transparent plastic bag containing 7.40 grams of dried marijuana fruiting tops to the arresting officers, acting as poseur-buyer, in consideration of One Hundred Pesos (Php100.00) consisting of Five (5) ₱20 Pesos (*sic*) bills bearing Serial No. PR493431, PQ027408, GH421506, GB417672, and SC496802, which upon qualitative examinations conducted thereon, give positive result to the test for the presence of MARIJUANA, a dangerous drug.

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[1] *Rollo*, pp. 3-15; penned by Associate Justice Pablito A. Perez, and concurred in by Associate Justice Edgardo A. Camello and Associate Justice Henri Jean Paul B. Inting.

[2] CA *rollo*, pp. 41-54; penned by Presiding Judge Arthur L. Abundiente.

The Prosecution's evidence.

On 1 August 2006, PO2 Fred Yasay (PO2 Yasay) received a tip from their confidential informant that a certain Rogelio Yagao was selling illegal drugs in Zone 4, Bugo, Cagayan de Oro City. Upon the order of their superior SPO3 Rico Justalero, a buy-bust team was organized composed of PO2 Yasay, PO2 Joel Deloso, PO2 Edzel Nacaya, PO1 Leonard Comilang, PO2 George Tabian, Jr., PO2 Bangcola Manangcawal, PO2 Ariel Lig-Ang and PO2 Frederick Yamis.

Around 5 p.m. in the afternoon of the same day, PO2 Yasay and the buy-bust team proceeded to Zone 4, Bugo, Cagayan de Oro to conduct the buy-bust operation. It was agreed that the confidential informant, PO2 Joel Deloso (PO2 Deloso) and PO2 Yasay would act as the *poseurs-buyers*.

Upon their arrival at appellant's residence, the confidential informant called upon the former who was at the terrace of his house and asked "Kuha mi bai" (We will get).

Appellant came down from the terrace and approached the buy-bust team. The confidential informant then handed Five (5) Twenty (20) Peso bills to appellant. Upon receiving the money, appellant then got from his right front pocket a cellophane containing dried marijuana leaves.

At this juncture, PO2 Yasay and PO2 Deloso proceeded to grab appellant and told him he was under arrest. PO2 Deloso then informed appellant of his constitutional rights. Thereafter, appellant was brought to the Maharlika police station in Carmen.

PO2 Deloso corroborated PO2 Yasay's testimony and narrated that at the Maharlika police station, PO2 Sagun marked the sachet which he then signed and initialled. After the marking, appellant was brought to the PNP Crime Laboratory in Camp Alagar, Cagayan de Oro City, where the sachet and marked money were presented for laboratory examination. Appellant's hands were likewise subjected to an ultra-violet examination. The request for laboratory examination was issued by P/SINSP Efren Miole Camaro at 19:45 in the evening.

On the same evening, the following Chemistry Reports were issued by Forensic Chemist Erma Condino Salvacion, as follows:

1. *Chemistry Report No. D-173-2006* — finding the specimen contained inside the transparent sachet as positive for the presence of marijuana issued at 233OH on August 1, 2006,

2. *Chemistry Report No. DTCRIM-134-2006* — a urine test conducted on appellant yielding a NEGATIVE result for the presence of Methamphetamine Hydrochloride and THC— metabolites, issued at 2050H, August 1, 2006;

3. *Chemistry Report No. C-42-2006* — which reported the presence of bright yellow ultraviolet fluorescent powder on the dorsal and palmar portion of appellant's hand and on the marked money presented for examination, issued at 2020H in the evening, August 1, 2006.

The testimony of Forensic Chemist Erma Condino Salvacion was dispensed with following the stipulation of the parties admitting her testimony.

Evidence for the defense

Appellant for his part interposed the defense of denial and frame-up. Appellant alleged that at the time of his "illegal arrest," he was at the porch of his house talking to Brenda Villacorta (the cousin of his wife), waiting for the birthday celebration of his grandchild to start. Appellant averred that he was abruptly approached by a man who asked him if he had jumped bail for violating *R.A. 6425* before the Regional Trial Court, Branch 40. The person then allegedly asked him to go by the roadside. Appellant acceded and as he was about to get a shirt inside his house, he suddenly noticed several men rushing towards him. Appellant was then brought outside by these men and forced to board a van.

Appellant stated that he was initially brought to the Puerto Police Station and then to the Maharlika Police Station in Carmen, wherein he saw for the first time Two (2) packets of marijuana and Two (2) pieces of ₱20.00 Peso bills. He was then made to sign a piece of paper and was brought to the PNP Crime Laboratory in Camp Alagar, Cagayan de Oro City, where he was made to give a urine sample and then subjected to an ultra-violet examination.

Appellant's defense of denial and frame-up were corroborated by Brenda Yagao and Art Manticahon.[3]

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[3] *Id.* at 93-96.

Judgment of the RTC

On February 11, 2011, the RTC convicted the accused-appellant of the crime of illegal sale of dangerous drug, disposing as follows:

> **WHEREFORE**, premises considered, this Court hereby finds the accused **ROGELIO YAGAO Y LLABAN GUILTY BEYOND REASONABLE DOUBT of the offense defined and penalized under Section 5, Article II of R.A. 9165 as charged in the Information, and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT, and to pay the fine of FIVE HUNDRED THOUSAND PESOS (₱500,000.00) without subsidiary imprisonment in case of non-payment of Fine.**
>
> Let the penalty imposed on the accused be a lesson and an example to all who have the same criminal propensity and proclivity to commit the same forbidden act, that crime does not pay, and that the pecuniary gain and benefit which one can enjoy from selling or manufacturing or trading drugs, or other illegal substance, or from committing any other acts penalized under Republic Act 9165, cannot compensate for the penalty which one will suffer if ever he is prosecuted, convicted, and penalized to the full extent of the law.
>
> **SO ORDERED.**[4]

Decision of the CA

On appeal, the accused-appellant insisted that he had been framed up; and that the Prosecution did not establish the elements of illegal sale of dangerous drug, as well as the compliance with the procedure set forth in Section 21 of R.A. No. 9165 and its Implementing Rules and Regulations, thereby failing to show an unbroken chain of custody.[5]

On September 18, 2014, however, the CA affirmed the conviction of the accused-appellant, finding and ruling thusly:

> In the instant case, while an extensive review of the records reveal that PO2 Yasay and PO2 Deloso failed to mark, photograph and

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[4] *Id.* at 54.

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

inventory the seized marijuana at the crime scene, PO2 Deloso, however, offered justifiable grounds for their non-compliance due to the hostile crowd that amassed right after the buy-bust operations.

x x x x x x x x x

In this case, it readily appears that due to the exigency of the situation, the members of the buy-bust team had to leave the area immediately right after the arrest of appellant in order to avert a confrontation with the latter's family and relatives.

Therefore, the buy-bust team's failure to faithfully comply with the procedures as enshrined in *R.A. No. 9165* were more than adequately justified by PO2 Deloso's testimony.

Thus, appellant's contention that the marking of the seized marijuana should have been made in his presence at the crime scene instead of in the police station, deserves scant consideration, as the failure to do the same did not affect the evidentiary value or integrity of the seized prohibited drugs.

In fact, it is fairly apparent in Sec. 21 (a) of the Implementing Rules and Regulations of RA 9165 that in a buy-bust situation, the marking of the dangerous drug may be done in the presence of the suspect in the nearest police station or the nearest office of the apprehending team.

The buy-bust approach in the instant case should not be confused from a search and seizure conducted by virtue of a court-issued warrant. In the latter case, the *Implementing Rules of RA No. 9165* mandates that the physical inventory and marking of the drugs should be made at the place where the search warrant is served and implemented.

The element for the prosecution of illegal sale of marijuana were sufficiently established in this case

For a successful prosecution for illegal sale of dangerous drugs, the following elements must be established:

(1) The identity of the buyer and the seller, the object, and the consideration; and
(2) the delivery of the thing sold and the payment therefor.

Material in the prosecution for illegal sale of dangerous drugs is proof that the transaction or sale actually took place, coupled with

the presentation in court of the *corpus delicti* or the illicit drug in evidence. The commission of the offense of illegal sale of dangerous drugs merely requires the consummation of the selling transaction, which happens the moment the exchange of money and drugs between the buyer and the seller takes place.

In the case at bar, the prosecution, through the testimonies of PO2 Yasay and PO2 Deloso were able to prove the consummation of the sale when the confidential informant handed over the five (5) marked 20 Peso bills to appellant, who in turn gave the informant marijuana in exchange, in their presence.

Appellant's defense of denial and frame-up are self-serving and unavailing

It is a prevailing doctrine that a defense of denial or frame-up cannot prevail against the positive testimony of a prosecution witness.

A defense of denial which is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving, deserving no weight in law, and cannot be given greater evidentiary value over the convincing and straightforward testimonies of PO2 Deloso and PO2 Yasay.

x x x x x x x x x

In this case, bereft from the records is anything to suggest that there was ill-motive on the part of the buy-bust team or hat the arresting officers improperly performed their duty.

Integrity and evidentiary value of the seized marijuana were properly preserved through the chain of custody

Chain of [c]ustody is defined as "the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court." The chain of custody rule demands that the record of movements and custody of the seized item shall include the "identity and signature of the person who had temporary custody of the seized item, the date and time when such transfer of custody was made in the course of safekeeping and use in court as evidence, and the final disposition."

In this case, the prosecution clearly established the integrity and evidentiary value of the seized marijuana considering that after the same was marked by PO2 Deloso at the Police Station, the same was immediately transmitted, on the very same evening, to the PNP Crime Laboratory in Camp Alagar, Cagayan de Oro City. In fact, in a matter of less than 4 hours from the time the request for laboratory examination was made, three *Chemistry Reports* were already issued by Forensic Chemist Erma Condino Salvacion finding, among others, that the specimen recovered from appellant tested positive as marijuana.

More importantly, appellant's own testimony corroborated these chain of events as he himself testified to having been brought to Camp Alagar where he was made to give a urine sample, and subjected to an ultra-violet examination on that very same evening.

All told, this Court finds no reason to disturb the assailed decision of the RTC finding appellant guilty beyond reasonable doubt for the illegal sale of marijuana, a prohibited substance, as defined and penalized under *Section 5, Article II of RA 9165*.

WHEREFORE, premises considered, the Appeal is hereby **DENIED**.

Accordingly, the *11 February 2011 Decision* rendered by the *Regional Trial Court, Branch 25, Cagayan de Oro City*, in *Criminal Case No. [2006-484]* finding *accused-appellant Rogelio Yagao y Llaban* (appellant) guilty of violating *Section 5, Article II of Republic Act No. 9165* is hereby **AFFIRMED**.

SO ORDERED.[6]

Hence, this appeal, in which the parties have respectively manifested their desire to re-submit the arguments they had made in the CA.

Issue

In his appellant's brief, the accused-appellant has assigned the lone error that:

THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE OFFENSE CHARGED

[6] *Rollo*, p. 15.

NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[7]

The accused-appellant contended in his appellant's brief that the Prosecution did not prove the fact of his delivery of the dangerous drug considering that PO2 Deloso and PO2 Yasay did not testify on his having delivered the confiscated drug either to them or to the confidential informant;[8] and that the integrity of the confiscated drug had also been put in serious doubt not only by their non-compliance with the safeguards laid down in Section 21 of R.A. No. 9165 but also by the variance between the weight of the drugs averred in the information and the weight stated in the chemistry report.[9]

The OSG countered that the testimony of PO2 Deloso proved the consummation of the illegal sale; that the lapses of the police officers were not fatal to the Prosecution's case because the lapses, being belatedly raised, were effectively waived by the accused-appellant; that the non-compliance with the safeguards set in Section 21 of R.A. No. 9165 did not negate the fact that he had committed the offense charged; and that the Prosecution further showed that the police officers had fully preserved the integrity of the confiscated drug as evidence.[10]

Ruling of the Court

The appeal has merit.

I

The Prosecution did not establish the essential element of delivery of the dangerous drug by the accused-appellant to the poseur buyer

The crime that the accused-appellant was charged with and tried, and for which he was found guilty of, was the crime of

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[7] CA *rollo*, p. 15.

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

[9] *Rollo*, pp. 25-26.

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

illegal sale of dangerous drug defined and punished under the first paragraph of Section 5 of R.A. No. 9165, which pertinently provides:

> Sec. 5. *Sale*, *Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.
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> x x x x x x x x x

In prosecuting the charge, the State bore the burden to prove the following elements of the violation, namely: (*a*) the identities of the buyer and the seller, the object of the sale, and the consideration; and (*b*) the delivery of the thing sold and its payment. The delivery to the poseur-buyer of the dangerous drug by the accused as the seller, and the receipt by the latter of the marked money consummated the illegal sale of the dangerous drug during the buy-bust transaction.[11] Without showing that the delivery of the dangerous drug took place, the State's evidence would not amount to proof of guilt beyond reasonable doubt, for it was the delivery of the drug by the accused-appellant, coupled with the presentation in court of the confiscated drug itself, or the *corpus delicti*, that would establish to a moral certainty the commission of the violation.[12]

For purposes of this appeal, two principles should be our guides. The first is that we should still carefully review the evidence adduced at the trial despite both the trial and the appellate courts having already pronounced the accused-appellant

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[11] *People v. Reyes*, G.R. No. 199271, October 19, 2016, 806 SCRA 513, 526.

[12] See, *e.g., People v. Bautista*, G.R. No. 177320, February 22, 2012, 666 SCRA 518, 529-530.

guilty. Indeed, nothing prevents or forbids us from such factual review, for we as a reviewing tribunal remain committed to ensuring that his conviction rest on the strength of the Prosecution's evidence, not on the weakness of his defense.[13] We are wholly free to ascertain whether or not the lower courts judiciously and correctly examined the evidence against him before they concluded that the evidence supported their ultimate finding of his guilt. The second is that we may consider in this appeal any fact or circumstance in his favor although he has not assigned or raised it. For, indeed, every appeal of a criminal conviction opens the entire record to the reviewing court which should itself determine whether or not the findings adverse to the accused should be upheld against him or struck down in his favor.[14] The burden of the reviewing court is really to see to it that no man is punished unless the proof of his guilt be beyond reasonable doubt.

To accord with these guides, we proceed to carefully and thoroughly scrutinize the evidence of guilt to ascertain if the proof adduced against the accused-appellant was sufficient to engender a conviction in the neutral and reasonable mind on the moral certainty of his guilt. To be scrutinized and considered for this purpose are the following relevant recollections of the transaction given by poseur buyers PO2 Deloso and PO2 Yasay, who were also the arresting and seizing officers, thus:

PO2 Deloso

Q: And what happened when you were already on that place?

A: When we were already in the place Sir, I, together with PO2 Yasay and our confidential informant went to the house of Rogelio Yagao and our confidential informant call the attention of Rogelio Yagao.

Q: Where was Rogelio Yagao at that time?

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[13] *People v. Maraorao*, G.R. No. 174369, June 20, 2012, 674 SCRA 151, 160.

[14] *People v. Reyes*, G.R. No. 199271, October 19, 2016, 806 SCRA 513, 526.

A: At that time Rogelio Yagao was inside his house and the confidential informant called him, he went outside from his house.

Q: How did he call?

A: He approached him Sir.

Q: Where was Rogelio Yagao at that time when the confidential Informant called him?

A: In the terrace of his house, Sir.

Q: What happened after your confidential informant called Rogelio Yagao at the terrace of his house?

A; Rogelio Yagao went out from his house.

Q: Then what happened?

A: And talked with us.

Q: What happened after?

A: After a short conversation our confidential informant handed to him.

Q: What was the conversation?

A: That we want to buy marijuana, Sir.

Q: Who told Rogelio Yagao that you want to buy marijuana?

A: Our confidential informant, Sir.

Q: What was the reply of Rogelio Yagao?

A: He answered Sir, yes he has stocks of marijuana.

Q: What happened after that?

A: Our confidential informant handed him our marked money.

Q: What does that marked money consisting of?

A: It consists of five (5) pieces ₱20.00 bills.

Q: And then after the confidential informant gave the money to Rogelio Yagao, what happened?

A: Right after receiving the money given by our confidential informant, he pull[ed] ou[t] from his trouser...

Q: From what part of his trouser?

A: Right pocket.

Q: What was [sic] he pulled out?

A: He pulled out from the right pocket of his trouser a one sachet containing dried marijuana leaves inside.

Q: **What did you do to that one sachet that he pulled out from his trouser.**

A: **Upon seeing him that he pulled out from his trouser the one sachet of marijuana, immediately we took held of him. Right after he received the money he pulled out the marijuana, right after we saw the marijuana immediately we took hold of him.**

Q: Who took hold of him?

A: I and PO2 Yasay, Sir.

Q: How about you, where did you hold Yagao?

A: I just put my right arm around his neck and shoulder, Sir.

Q: And then how about your companion, what did they do?

A: PO2 Yasay helped me to hold Rogelio Yagao by the hands of Rogelio Yagao.[15]

PO2 Yasay

Q: What happened after the CI bought the marijuana worth ₱100.00?

A: The CI handed to Rogelio Yagao the money and in returned Rogelio pulled out the pack of marijuana from his right front pocket.

Q: You said your CI gave money to the accused in exchanged [sic] of the marijuana, how much and what is the denomination?

A: Five pi[e]ces for [sic] ₱20.00 bill.

Q: Then what happened after the accused gave to your CI the marijuana?

Atty. Lopena:

We object Your Honor. No basis. There is no testimony of the

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[15] TSN, February 9, 2007, pp. 5-9.

accused that the accused gave a pack of marijuana to the CI. He said, he pulled out a pack of marijuana from his right front pocket.

Pros. Borja:

Q: **What happened after the accused pulled out from his right fron[t] pocket a marijuana**?

A: **When we saw the accused pulling out the pack of marijuana, we immediately held him sir.**

Q: Who arrested the accused?

A: PO2 Deloso Sir.[16]

The foregoing recollections reveal that PO2 Deloso and PO2 Yasay quickly effected the arrest of the accused-appellant just as soon as he had pulled out the marijuana from his pocket. Necessarily, the seizure happened *before* he could hand the marijuana over to PO2 Deloso as the poseur buyer. Under such circumstance, *there was no sale* because the delivery of the dangerous drug to the poseur buyer had not yet transpired. Delivery as one of the essential elements of illegal sale of dangerous drug under Section 5 of R.A. No. 9165 is defined as the act of knowingly passing a dangerous drug to another, personally or otherwise, and by any means, with or without consideration.[17] Consequently, the finding against the accused-appellant could not be upheld.

Despite the claim by the arresting officers that their arrest of the accused-appellant had resulted from the conduct of the buy-bust operation mounted against him, we ineluctably conclude that the confiscation did not take place *following* a sale. Indeed, in order to be successful, the buy-bust operation — albeit necessary to catch the offender in the campaign against the drug menace — must still involve the offender in a transaction in which the poseur buyer offered to buy the drug, and the offender accepted the offer and delivered the drug in exchange for the price agreed upon. This is precisely why the operation

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[16] TSN, February 6, 2007, pp. 5-6.

[17] Section 3(k), R.A. No. 9165.

is aptly denominated as a "buy-bust." In this case, however, the operation was merely a "bust" in view of the absence of a sale.

II

The chain of custody of the confiscated drug, not being unbroken, raised grave doubts about the integrity of the drug as evidence of the *corpus delicti*

Despite its necessity in the success of the campaign against the drug menace, the buy-bust operation has been susceptible to abuse by mulcting law enforcers who have frequently used it as a tool for extortion through planting or substitution of evidence.[18] To eliminate or minimize the potential for abuse, Congress has engrafted in the law procedural safeguards designed to prevent or eliminate the evils that the buy-bust operation could be used for. Congress intended to thereby ensure that the agents of the State faithfully comply with the procedural safeguards in every drug-related prosecution.[19]

The procedural safeguards are now embodied in Section 21 of R.A. No. 9165, to wit:

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**

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[18] *E.g., People v. Garcia*, G.R. No. 173480, February 25, 2009, 580 SCRA 259, 266-267.

[19] *Reyes v. Court of Appeals*, G.R. No. 180177, April 18, 2012, 670 SCRA 148, 158.

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

The Implementing Rules and Regulations (IRR) of Section 21 (a), adopted to implement Section 21 of R.A. No. 9165, mirrors the procedural requirements, thus:

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

Conformably with the safeguards, we have frequently held that the observance of the chain of custody was essential in the preservation of the identity of the confiscated drug. This is because the drug, being itself the *corpus delicti* of the crime of illegal sale charged, will be the factual basis for holding the accused criminally liable under Section 5 of R.A. No. 9165.

We have frequently stated the justification for observing the chain of custody. We particularly pronounced in *People v. Reyes*:[20]

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[20] G.R. No. 199271, October 19, 2016, 806 SCRA 513.

To convict the accused for the illegal sale or the illegal possession of dangerous drugs, the chain of custody of the dangerous drugs must be clearly and competently shown because such degree of proof is what was necessary to establish the *corpus delicti*. In *People v. Alcuizar*, the Court has underscored the importance of ensuring the chain of custody in drug-related prosecutions, to wit:

> The dangerous drug itself, the shabu in this case, constitutes the very *corpus delicti* of the offense and in sustaining a conviction under Republic Act No. 9165, the identity and integrity of the *corpus delicti* must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drugs unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession under Republic Act No. 9165 fails.

The requirement for establishing the chain of custody fulfills the function of ensuring that unnecessary doubts concerning the identity of the evidence are removed. The Prosecution does not comply with the requirement of proving the *corpus delicti* not only when the dangerous drugs involved are missing but also when there are substantial gaps in the chain of custody of the seized dangerous drugs that raise doubts on the authenticity of the evidence presented in court.

x x x x x x x x x

The importance of the chain of custody cannot be understated. As we have indicated in *People v. Mendoza*:

> Based on the foregoing statutory rules, the manner and timing of the marking of the seized drugs or related items are crucial in proving the chain of custody. Certainly, the marking after seizure by the arresting officer, being the starting point in the custodial link, should be made immediately upon the seizure, or, if that is not possible, as close to the time and place of the seizure as practicable under the obtaining circumstances. This stricture is essential because the succeeding handlers of the

> contraband would use the markings as their reference to the seizure. The marking further serves to separate the marked seized drugs from all other evidence from the time of seizure from the accused until the drugs are disposed of upon the termination of the criminal proceedings. The deliberate taking of these identifying steps is statutorily aimed at obviating switching, "planting" or contamination of the evidence. Indeed, the preservation of the chain of custody vis-a-vis the contraband ensures the integrity of the evidence incriminating the accused, and relates to the element of relevancy as one of the requisites for the admissibility of the evidence.[21]

For sure, the chain of custody is ultimately about the proper handling of the confiscated drug. The law has characterized the chain of custody in drug enforcement as nothing less than the duly recorded authorized movements and custody of the seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment from the time of seizure/confiscation to the moment of receipt in the forensic laboratory to the safekeeping until their presentation in court as evidence, and for eventual destruction. The faithful written record of the movement and custody of the seized items — including the identities and signatures of *all* the persons who may have temporary custody thereof, the dates and times when the transfers of the custody are made *in the course of* the safekeeping, and when the articles are used in court as evidence, until their final disposition[22] — is the requirement that actually highlights the absolute need of establishing the identity of the seized drug with the drug presented as evidence in court. The procedural safeguards of marking, inventory and picture taking are decisive in proving that the dangerous drug confiscated from the accused was the very same substance delivered to and presented in the trial court. Given the significance of the chain of custody, any deviations must not be lightly dismissed as inconsequential, but must be fully explained by the State during the trial.

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[21] *Id*. at 531-534.

[22] Section 1(b), Dangerous Drugs Board Regulation No. 1, Series of 2002.

Contrary to the findings of the CA and the RTC, serious and unjustifiable gaps broke the chain of custody of the confiscated marijuana.

To begin with, irreconcilable inconsistencies tainted the arresting and seizing officers' recollections about the links in the chain of custody.

Although PO2 Yasay testified that PO2 Deloso had taken possession of the marijuana following the arrest,[23] the latter did not actually mark the marijuana at the place of the arrest; instead, he immediately brought the accused-appellant and the confiscated drug to the police station, justifying such move with the supposed growing hostility of the crowd that had gathered at the crime scene. What is puzzling, however, is that PO2 Deloso did not mark the marijuana even after getting to the police station. Instead, PO2 Deloso declared during his direct examination that PO2 Yasay was the one who had marked the seized drug.[24] Such a declaration soon became the source of more confusion, however, after PO2 Deloso completely reversed himself on cross-examination to state that it had been PO2 Sagun who marked the seized drug and the latter just let him sign the same.[25]

The inconsistencies between the police officers' testimonies, because they were irreconcilable, diminished the credibility of their supposed observance of the chain of custody. Hence, their incrimination of the accused-appellant was fully discredited and should not be allowed to stand. As a result, we should doubt the stated reason for the arrest.

Secondly, the State presented no witness to testify on the circumstances surrounding the marking of the confiscated drug, and on whether or not the marking had been made in the presence of the accused-appellant. The omission further discredited the evidence of guilt. Likewise, we cannot avoid observing that

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[23] TSN, November 6, 2007, pp. 8-9.

[24] TSN, February 9, 2007, p. 13.

[25] TSN, March 16, 2007, pp. 6-7.

the fact that the marking on the marijuana (Exhibit A) appeared to be too generic defeated the objective for requiring the marking, which was to segregate the seized drug from other similar substances to avoid tainting the proof or compromising the integrity of the evidence against any particular suspect. In short, all the notable weaknesses placed the integrity of the marijuana ultimately presented as evidence against the accused-appellant into serious doubt, with the effect that there remained no dependable assurance that Exhibit A was the same substance seized from him at the time of the arrest.

In this connection, we reiterate what we emphatically observed in *People v. Angngao*:[26]

> The manner and timing of the marking of the seized drugs or related items in accordance with the foregoing statutory rules are crucial in proving the chain of custody. The marking by the arresting officer of the drugs, being the starting point in the custodial link, should be made immediately upon the seizure, or, if that is not possible, as close to the time and place of the seizure as practicable under the obtaining circumstances. **This immediate marking is essential because the succeeding handlers of the drugs would use the markings as their reference to the seizure, and because it further serves to segregate the marked seized drugs from all other evidence from the time and point of seizure until the drugs are disposed of at the end of the criminal proceedings. The deliberate taking of these identifying steps is statutorily aimed at obviating switching, "planting" or contamination of the evidence.** Verily, the preservation of the chain of custody *vis-a-vis* the drugs ensures the integrity of the evidence incriminating the accused, and fulfills the element of relevancy as a requisite for the admissibility of the evidence. [Emphasis Supplied]

And, thirdly, PO2 Deloso disclosed that no inventory or pictures had been taken during the arrest of the accused-appellant and seizure of the dangerous drug,[27] and in the aftermath. The disclosure further severely discredited the incrimination of the accused-appellant. We have not lacked in stressing the importance

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[26] G.R. No. 189296, March 11, 2015, 752 SCRA 531, 543.

[27] TSN, March 16, 2007, p. 16.

of the requirements of inventory and picture-taking, which, while not indispensable, might be foregone only when there were justifiable grounds for doing so, and such grounds must be made known by the State, at the latest, during the ensuing trial. As we pointed out in *People v. Pagaduan*:[28]

> In several cases, we have emphasized the importance of compliance with the prescribed procedure in the custody and disposition of the seized drugs. **We have repeatedly declared that the deviation from the standard procedure dismally compromises the integrity of the evidence.** In *People v. Morales*, we acquitted the accused for failure of the buy-bust team to photograph and inventory the seized items, without giving any justifiable ground for the non-observance of the required procedures. *People v. Garcia* likewise resulted in an acquittal because no physical inventory was ever made, and no photograph of the seized items was taken under the circumstances required by R.A. No. 9165 and its implementing rules. In *Bondad, Jr. v. People*, we also acquitted the accused for the failure of the police to conduct an inventory and to photograph the seized items, without justifiable grounds.
>
> We had the same rulings in *People v. Gutierrez, People v. Denoman, People v. Partoza, People v. Robles*, and *People v. dela Cruz*, where we emphasized the importance of complying with the required mandatory procedures under Section 21 of R.A. No. 9165.
>
> We recognize that the strict compliance with the requirements of Section 21 of R.A. No. 9165 may not always be possible under field conditions; the police operates under varied conditions, and cannot at all times attend to all the niceties of the procedures in the handling of confiscated evidence. **For this reason, the last sentence of the implementing rules provides that "non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items**[.]" Thus, noncompliance with the strict directive of Section 21 of R.A. No. 9165 is not necessarily fatal to the prosecution's case; police procedures in the handling of confiscated evidence may still have some lapses, as in the present case. **These lapses, however, must be recognized and explained**

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[28] G.R. No. 179029, August 9, 2010, 627 SCRA 308, 320-322.

in terms of their justifiable grounds, and the integrity and evidentiary value of the evidence seized must be shown to have been preserved.

In the present case, the prosecution did not bother to offer any explanation to justify the failure of the police to conduct the required physical inventory and photograph of the seized drugs. The apprehending team failed to show why an inventory and photograph of the seized evidence had not been made either in the place of seizure and arrest or at the nearest police station (as required by the Implementing Rules in case of warrantless arrests). **We emphasize that for the saving clause to apply, it is important that the prosecution explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had been preserved. In other words, the justifiable ground for noncompliance must be proven as a fact. The court cannot presume what these grounds are or that they even exist.** [Emphasis Supplied]

That the arresting officers made no attempt to justify their deviation from the procedures and safeguards set by Section 21 of R.A. No. 9165 was indicative of the absence of any justification. Indeed, our review of the records leads us to find and declare that none existed.

In fine, the State did not establish the guilt of the accused-appellant for the crime with which he was charged. He is, therefore, entitled to acquittal on the ground of reasonable doubt of his guilt. The *Rules of Court* particularly instructs that:

In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. **Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.**[29]

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on September 18, 2014 by the Court of Appeals in CA-G.R. CR-HC No. 00899-MIN; **ACQUITS** accused-appellant **ROGELIO YAGAO *y* LLABAN** for failure

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[29] Section 2, Rule 133, *Rules of Court*.

to prove his guilt beyond reasonable doubt for the violation of Section 5, Article II, of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*); and **ORDERS** his immediate release from detention unless he is legally confined for another lawful cause.

Let a copy of this decision be forthwith transmitted to the Penal Superintendent of the Davao Prison and Penal Farm in B.E. Dujali, Davao del Norte for immediate implementation.

The Penal Superintendent of the Davao Prison and Penal Farm is directed to report to this Court the action taken within five (5) days from receipt of this decision.

SO ORDERED.

Del Castillo, Jardeleza, Gesmundo, and *Carandang, JJ.*, concur.

FIRST DIVISION

[G.R. No. 232645. February 18, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANTONIO BALDERRAMA *y* DE LEON,** *accused-appellant.*

SYLLABUS

CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; POLICE OFFICERS' NON-COMPLIANCE WITH THE CHAIN OF CUSTODY RULE, AGGRAVATED BY THEIR FAILURE TO JUSTIFY, WARRANTS THE ACQUITTAL OF THE ACCUSED.— The failure of the police officers to observe the procedure laid

down in Section 21 of RA 9165 and Section 21 of the Implementing Rules and Regulations (IRR) of the same law compels this Court to reverse the assailed rulings and acquit accused-appellant. Evaluated pursuant to the abovementioned provisions, the non-compliance with the custody rule by the apprehending officers is readily apparent considering that the witnesses required by law during the taking of inventory and photographs were not present. No representatives from the media and Department of Justice were present during the conduct of the inventory. The chain of custody rule, indeed, provides a saving clause. Section 21(a) of the IRR states "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 The non-compliance with the rule, aggravated by a failure to justify, inevitably warrants the acquittal of accused-appellant.

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[1] from the April 21, 2017 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR HC No. 08051 which affirmed the December 22, 2015 Judgment[3] of the Regional Trial Court (RTC) of Taguig City, Branch 267, in Criminal Case No. 17248-D-TG.

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[1] *Rollo*, p. 38.

[2] *Id*. at 2-37; penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Ramon A. Cruz and Pedro B. Corales.

[3] Records, pp. 133-142; penned by Judge Antonio M. Olivete.

The Facts

Accused-appellant Antonio Balderrama *y* De Leon (accused-appellant) was charged with violation of Sections 5 and 11 of Article II of Republic Act (RA) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, in two sets of Information which are successively reproduced as follows:

Criminal Case No. 17248-D-TG (Violation of Section 5, Article II, RA 9165)

That, on or about the 13th day of August 2010, in the City of Taguig, Philippines and within the jurisdiction of [the] Honorable Court, the above-named accused, without being authorized by law to sell or otherwise dispose any dangerous drug, did then and there willfully, unlawfully and knowingly sell, deliver, distribute and give away to a poseur buyer, zero point zero sixty (0.060) gram of white crystalline substance, for and in consideration of the amount of Five Hundred Pesos (Php500.00), which substance was found positive to the test for Methamphetamine Hydrochloride, commonly known as "shabu," a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[4]

Criminal Case No. 17249-D-TG (Violation of Section 11, Article II, RA 9165)

That, on or about the 13th day of August 2010, in the City of Taguig, Philippines and within the jurisdiction of [the] Honorable Court, the above- named accused, without being authorized by law to possess any dangerous drug, did then and there, willfully, unlawfully and knowingly have in [his] possession and control, zero point zero sixty (0.060) gram of white crystalline substance, which was found positive to the test for Methamphetamine Hydrochloride, commonly known as "shabu," a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[5]

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[4] *Id.* at 1.

[5] *Id.* at 19.

Arraignment pushed through and accused-appellant pleaded not guilty.[6] Pretrial was conducted after which trial ensued.[7]

Version of the Prosecution

The evidence for the prosecution included the testimonies of Police Officer 3 Antonio Reyes (PO3 Reyes)[8] and Police Officer 3 Jowel Briones (PO3 Briones).[9] Their testimonies established that, on August 13, 2010, they received information that accused-appellant was openly selling illegal drugs at his house in *Barangay* Calzada-Tipas, Taguig City. A buy-bust team was organized in which PO3 Reyes was the designated poseur-buyer. Bills amounting to ₱1,500.00[10] were marked "PC" by Police Chief Inspector (PCI) Porfirio Calagan.

At 10:30 p.m., the team proceeded to accused-appellant's house on board a private vehicle. When the team reached Estacio Street, PO3 Reyes and the informant alighted from the vehicle and proceeded on foot. When they met accused-appellant, the informant introduced PO3 Reyes as a cousin wanting to buy *shabu*. Accused-appellant asked how much they wanted to buy and PO3 Reyes replied he wanted ₱500-worth of *shabu*. Accused-appellant offered to sell two sachets of *shabu* but PO3 Reyes said he would buy only one sachet. As accused-appellant handed one sachet, PO3 Reyes gave the marked money in exchange. When the transaction was completed, PO3 Reyes scratched his head which was the predetermined signal for the team to arrest accused-appellant. PO3 Briones handcuffed accused-appellant while PO3 Reyes frisked him further and found the marked money and another sachet of *shabu*. PO3 Reyes marked the two sachets as ADR-1-130810 and ADR-2-130810.[11] Accused-

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[6] *Id*. at 23 (Order dated September 15, 2010) and 25-26 (Certificates of Arraignment dated September 15, 2010).

[7] *Id*. at 36-37 (Order dated November 10, 2010).

[8] TSN, March 23, 2011, pp. 1-63.

[9] TSN, August 3, 2011, pp. 1-18 and TSN, November 28, 2011, pp. 1-9.

[10] Records, p. 87.

[11] *Id*. at 96.

appellant was brought to the police station. Three *barangay* officials – Napoleon Sulit, Virgilio Maglipon, and Francisco Estacio – were invited to witness the taking of inventory.

The white substance was subjected to a laboratory examination and yielded a positive result for the presence of methamphetamine hydrochloride.[12]

Version of the Defense

Accused-appellant testified in open court and denied the allegation.[13] He claimed, on August 13, 2010 at 10:00 p.m., while lying in bed inside his house at 13 Estacio St., Ibayo, Calzada-Tipas, Taguig City, three men in civilian attire barged in, held him by the wrist, and searched his house for 10-15 minutes without a warrant. Thereafter, the men ordered him to board a maroon vehicle and brought him to the police station where he was detained and photographed with two sachets of *shabu* and ₱500-bill.

Ruling of the Regional Trial Court

In its December 22, 2015 Judgment, the trial court found accused- appellant guilty of violating Section 5 of RA 9165, the dispositive portion of which reads:

> WHEREFORE, based on the foregoing dissertation of the court, the court finds the accused ANTONIO BALDERRAMA Y DE LEON who was charged in Criminal Case No. 17248-D-TG for Violation of Section 5 of RA 9165 GUILTY beyond reasonable doubt and Judgment is hereby pronounced that he should suffer the penalty of LIFE IMPRISONMENT and to pay FINE in the amount of FIVE HUNDRED THOUSAND PESOS (₱500,000.00).
>
> With regard to the charge in Criminal Case No. 17249-D-TG for Violation of Section 11 of RA 9165, accused ANTONIO BALDERRAMA *y* DE LEON is hereby ACQUITTED of the same on the basis of reasonable doubt.

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[12] *Id*. at 97 (Physical Science Report No. D-288-105 signed by Forensic Chemist Anamelisa S. Bacani).

[13] TSN, November 7, 2013, pp. 1-11; TSN, February 6, 2014, pp. 1-13; and TSN, April 23, 2014, pp. 1-7.

SO ORDERED.[14]

Accused-appellant filed his appeal assailing his conviction for sale of illegal drugs in Criminal Case No. 17248-D-TG.[15] In his Brief,[16] he asserted that the police officers did not comply with the chain-of-custody rule; the testimonies of the police officers were replete with inconsistencies; PO3 Reyes had ₱1,500.00 but only bought a sachet for ₱500.00; and the buy-bust operation was a sham.

The Office of the Solicitor General (OSG), representing the People, filed a Brief[17] and argued that the evidence for the prosecution supported the conviction; the procedural requirements were complied with by the police officers; the seized items were marked at the scene of the crime; and the testimonies of the police officers who did not have any ill motive to falsely testify against accused-appellant must prevail over the self-serving and uncorroborated claim of the latter.

Ruling of the Court of Appeals

The appellate court affirmed the ruling of the trial court.[18] It held that the prosecution was able to prove beyond reasonable doubt accused-appellant's violation of Section 5 of RA 9165 in Criminal Case No. 17248-D-TG.[19]

Hence, the present appeal.[20]

After being required to file supplemental briefs if they so desired,[21] the parties instead submitted Manifestations[22] in which

[14] Records, p. 142.

[15] CA *rollo*, p. 9.

[16] *Id.* at 20-37.

[17] *Id*. at 59-82.

[18] *Id*. at 135.

[19] *Id*. at 134.

[20] *Id*. at 137.

[21] *Rollo*, pp. 43-44 (Resolution dated October 11, 2017).

[22] *Id*. at 49-51 (Manifestation filed by Plaintiff-Appellee dated January

they stated that they were adopting their Briefs[23] submitted earlier before the appellate court and were dispensing with the filing of Supplemental Briefs.[24]

Our Ruling

There is merit in the appeal.

The failure of the police officers to observe the procedure laid down in Section 21[25] of RA 9165 and Section 21[26] of the Implementing Rules and Regulations (IRR) of the same law compels this Court to reverse the assailed rulings and acquit accused-appellant.

25, 2018); *id*. at 45-46 (Manifestation filed by Accused-Appellant dated January 26, 2018).

[23] CA *rollo*, pp. 59-82 (Brief for the Appellee); *id*. at 20-37 (Brief for the Accused-Appellant).

[24] *Rollo*, pp. 45 and 49.

[25] SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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

[26] 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:

Evaluated pursuant to the abovementioned provisions, the non-compliance with the custody rule by the apprehending officers is readily apparent considering that the witnesses required by law during the taking of inventory and photographs were not present. No representatives from the media and Department of Justice were present during the conduct of the inventory.

The chain of custody rule, indeed, provides a saving clause. Section 21(a) of the IRR states "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."

PO3 Reyes explained that the buy-bust operation happened so fast; hence, they were unable to summon the required witnesses.[27] The justification, however, fails to persuade. The allegation that the operation happened quickly was belied by the testimony of PO3 Reyes himself, as follows:

COURT: What time did your informant [come] to your Office?
A: More or less 2:00p.m.

COURT: Not 9:00 in the morning?
A: No, Your Honor.

(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[.]

[27] TSN, March 23, 2011, p. 57.

COURT: It [was] around 2:00p.m. What time was the jump off?
A: More or less 10:00 p.m.[,] Your Honor.

COURT: 10:00 p.m.?
A: Yes, Your Honor.[28]

Clearly, the police officers had ample time, or eight hours to be exact, to summon the attendance of the required witnesses but they failed to do so. The explanation provided fails to justify the lapse.

The pronouncement of this Court in *People v. Ramos*[29] bears reiterating.

> It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time - beginning from the moment they have received the information about the activities of the accused until the time of his arrest - to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non- compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.[30] [Citations omitted].

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

[29] G.R. No. 233744, February 28, 2018.

[30] *Id*.

The non-compliance with the rule, aggravated by a failure to justify, inevitably warrants the acquittal of accused-appellant.

WHEREFORE, premises considered, the appeal is **GRANTED**. The April 21, 2017 Decision of the Court of Appeals in CA-G.R. CR HC No. 08051 which affirmed the December 22, 2015 Judgment of the Regional Trial Court of Taguig City, Branch 267, in Criminal Case No. 17248-D-TG is hereby **REVERSED and SET ASIDE**.

Accused-appellant Antonio Balderrama *y* De Leon is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this Decision be furnished to the Director General of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director General of the Bureau of Corrections is directed to report to this Court within five (5) days from receipt of this Decision on the action he has taken. Copies shall also be furnished to the Director General of Philippine National Police and the Director General of Philippine Drugs Enforcement Agency for their information.

SO ORDERED.

Bersamin, C.J., Jardeleza, Gesmundo, and *Carandang, JJ*., concur.

SECOND DIVISION

[G.R. No. 233999. February 18, 2019]

TELEPHILIPPINES, INC.,[*] *petitioner, vs.* **FERRANDO H. JACOLBE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION OF THE COURT OF APPEALS' RULING IN A LABOR CASE VIA A RULE 65 PETITION, NATURE OF; STANDARDS TO DETERMINE WHETHER GRAVE ABUSE OF DISCRETION MAY BE ASCRIBED TO THE NATIONAL LABOR RELATIONS COMMISSION.— [T]he Court stresses that the review in this Rule 45 petition of the CA's ruling in a labor case via a Rule 65 petition carries a distinct approach. In a Rule 45 review, the Court examines the correctness of the CA's decision in contrast with the review of jurisdictional errors under Rule 65. Further, Rule 45 limits the review to questions of law. In ruling for legal correctness, the Court views the CA decision in the same context that the petition for *certiorari* was presented to the CA. Hence, the Court has to examine the CA Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC Decision. Grave abuse of discretion, amounting to lack or excess of jurisdiction, has been defined as the capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law. In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and accordingly, dismiss the petition.

[*] Referred to as "Teleperformance Phils." in some parts of the records.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; SUBSTANTIVE AND PROCEDURAL DUE PROCESS REQUIREMENTS FOR A VALID DISMISSAL OF AN EMPLOYEE.— A valid dismissal necessitates compliance with both substantive and procedural due process requirements. Substantive due process mandates that an employee may be dismissed based only on just or authorized causes under Articles 297, 298, and 299 (formerly Articles 282, 283, and 284) of the Labor Code, as amended. On the other hand, procedural due process requires the employer to comply with the requirements of notice and hearing before effecting the dismissal. In all cases involving termination of employment, the burden of proving the existence of the above valid causes rests upon the employer. The quantum of proof required in these cases is substantial evidence as discussed above.

3. ID.; ID.; ID.; EMPLOYEE'S REPEATED AND CONSISTENT FAILURE TO MEET THE ESTABLISHED WORK PERFORMANCE EVALUATION METRIC WITHIN THE BUSINESS PROCESS OUTSOURCING INDUSTRY IS ANALOGOUS TO GROSS AND HABITUAL NEGLECT OF DUTY AND A VALID GROUND FOR DISMISSAL.— In this case, records reveal that Jacolbe's AHT scores for 62 consecutive weeks, or from January 2012 up to his dismissal in March 2013, were well above the 7 minutes or lower AHT mark. As he had been having difficulty meeting the same, TP allowed him to continue in its employ and even enrolled him in its SMART Action and Performance Improvement Plans twice – in July to August 2012 and again in January 2013 – to help him improve his AHT scores. This notwithstanding, Jacolbe's AHT scores remained well above the 7-minute AHT mark. Undoubtedly, Jacolbe's repeated and consistent failure to meet the prescribed AHT mark over a prolonged period of time falls squarely under the concept of gross inefficiency and is analogous to gross and habitual neglect of duty under Article 297 of the Labor Code which justified his dismissal. Moreover, the Court observes that the 7-minute AHT metric is not unique to Jacolbe as it is in fact a key performance metric, which measures the effectivity and efficiency of a CSR in handling customer's concerns in each call. It applies to all employees assigned to the Priceline account who, save for a few including Jacolbe,

have all been able to meet the same. Along with the other key performance metrics, it was employed by TP to properly and reasonably assess the overall work performance of its employees. Notably, the AHT metric *per se* is also used by TP for all employees in its other accounts, and is in fact considered an established work performance evaluation metric within the business process outsourcing industry where TP belongs. Jacolbe's insistence that his Top Agent award for December 2012 contradicts the charge of inefficiency and poor performance does not deserve consideration. As records show, the Top Agent award is not a sufficient measure of an employee's overall work performance since it proceeded solely from a single customer's feedback in one call on one given day. All told, the 7-minute AHT metric does not appear to be arbitrary and unreasonable. On the contrary, the Court finds it necessary and relevant to the achievement of TP's objectives and a reasonable work standard imposed by TP in the exercise of its management prerogative.

4. ID.; ID.; ID.; PROCEDURAL DUE PROCESS REQUIREMENT, COMPLIED WITH IN CASE AT BAR.— [T]he Court finds that TP sufficiently observed the standards of procedural due process in effecting Jacolbe's dismissal. *First*, TP issued Jacolbe a Notice to Explain specifying the ground for his possible dismissal, *i.e.*, that his "*work performance for the last 6 months is unsatisfactory due to [his] consistent failure to meet the [AHT] Goal in spite of being enrolled in [its PIP],*" which, if proven true, would constitute as an offense against its code of conduct warranting the termination of his employment. The Notice also directed Jacolbe to explain, in writing, why he should not be subjected to appropriate corrective action. *Second*, Jacolbe was able to submit letters explaining his side, albeit he did not fully address the charge of consistently failing to meet the AHT metric. *Third*, a disciplinary conference was held on February 26, 2013 which provided Jacolbe another opportunity to explain his side. And *fourth*, TP served a written Notice of Termination after verifying the violation committed under Section V.B.4 of its Code of Conduct and Zero Tolerance Policy, *i.e.*, failure to meet account specific performance metrics or certification requirements.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
The Law Office of Baribar Jalando-on Placido Hipe & Magbanua 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 September 8, 2016 and the Resolution[3] dated August 7, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 08600 which set aside the Decision[4] dated March 31, 2014 and the Resolution[5] dated May 20, 2014 of the National Labor Relations Commission (NLRC) in NLRC Case No. VAC-02-000080-2014 and accordingly, reinstated the Decision[6] dated November 25, 2013 of the Labor Arbiter (LA) finding respondent Ferrando H. Jacolbe (Jacolbe) to have been illegally dismissed by petitioner Telephilippines, Inc. (TP).

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[1] *Rollo* (Vol. II), pp. 419-456.

[2] *Id*. at 466-485. Penned by Associate Justice Geraldine C. Fiel-Macaraig with Associate Justices Edgardo L. Delos Santos and Edward B. Contreras, concurring.

[3] *Id*. at 487-490.

[4] *Id*. at 659-673. Penned by Presiding Commissioner Violeta Ortiz-Bantug with Commissioner Julie C. Rendoque, concurring. Commissioner Jose G. Gutierrez dissented, stating that: "[Ferrando H. Jacolbe's] failure to disconnect telephone queries of a customer after 7 minutes were not designed to violate [Average Handle Time (AHT)] policy but to adhere to [Telephilippines, Inc.'s] aim to meet customer satisfaction. This could even be the reason he was awarded as Top Agent for priceline account in December 2012" (see *id*. at 672).

[5] See *id*. at 719-720.

[6] *Id*. at 493-502. In NLRC RAB Case No. VI-04-10223-13, penned by Labor Arbiter Jessie G. Sullano.

The Facts

TP[7] is a corporation engaged in the business of providing contact center services to its various offshore corporate clients through its customer service representatives (CSRs).[8] On June 18,2007, TP hired Jacolbe as a CSR tasked to resolve customer's questions and issues promptly and efficiently, among others, in accordance with set performance standards and protocol.[9]

Sometime in May 2009, TP assigned Jacolbe to its Priceline account. For TP to properly assess his work performance, Jacolbe was required to meet the key performance metric targets[10] of, among others, an Average Handle Time (AHT) of 7.0 minutes or below.[11] The AHT refers to the average time spent by a CSR with the customer on the phone; it is computed using the formula: (*Average Talk Time* + *Hold Time*) / *Number of Calls* = *AHT*, and is recorded on a daily and weekly basis.[12]

On January 22, 2013, Jacolbe's supervisor, Mr. Philip Charles Go, issued an Incident Report[13] for failure of Jacolbe to hit the 7-minute AHT goal agreed upon for the 3rd week of January while he was under TP's Performance Improvement Plan (PIP).[14]

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[7] Then known as "Teleperformance Philippines, Inc." (see *id*. at 467 and 487).

[8] *Id*. at 661-662.

[9] See *id*. at 663. See also copy of Jacolbe's Employment Contract; *rollo* (Vol. I), pp. 106-113.

[10] The other two (2) specific metric targets are 28% and above Sales Conversion Rate and 90% Quality Assurance (see *rollo* [Vol. II], pp. 467-468 and 664).

[11] See *id*.

[12] See *id*. at 468 and 664.

[13] See *id*. at 553.

[14] See *id*. at 662-663. An employee who consistently fails to meet the targets for any of the key metrics is enrolled in TP's SMART Action Plan where he/she is generally given a week to improve his/her performance with the help of his/her supervisor. Here, the company sets up targets, also known as 'step goals' which the employee must reach during the program.

Records show that Jacolbe was placed under the PIP after he failed to meet the 7-minute AHT target in two (2) previous instances, *i.e.*, January 5 and 12, 2013.[15]

Subsequently, TP's Human Resources Department (HRD) sent Jacolbe a letter[16] dated February 13, 2013 (Notice to Explain) informing him of its receipt of the Incident Report, and further stating that his "*work performance for the last 6 months is unsatisfactory due to [his] consistent failure to meet the [AHT] Goal in spite of being enrolled in [its PIP]*"[17] which, if proven true, would constitute as an offense against its code of conduct warranting the termination of his employment. The Notice also directed him to explain, in writing, why he should not be subjected to appropriate corrective action.

In compliance with the directive, Jacolbe submitted letters[18] dated February 19 and 25, 2013, explaining that since he was hired in 2007, he had never intentionally disconnected a call to meet the prescribed AHT mark. Unsatisfied with his

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These step goals considerately fall below the required metrics so the employee may easily hit the targets. Gradually, these step goals are increased to reach the actual key metrics required of the employee. Should the employee continue to fail to meet the required metrics despite his/her enrolment in the SMART Action Plan, he/she is automatically enrolled in the PIP where he/she is given approximately thirty (30) days to meet the target. Failure in the SMART Action Plan warrants Verbal Warning, after which, the employee undergoes a 3-week observation period corresponding to the PIP period. If the employee continues to fail to meet the target metrics for the 1st week of the PIP, he/she shall be given a Written Warning. Failure to meet again the targets during the 2nd week warrants a Final Warning. Finally, failure to meet the targets during the last week of the PIP warrants corrective action equivalent to the penalty of termination from employment. See also Priceline Performance Improvement Plan (August 2011, version 1.0); *rollo* [Vol. I], pp. 114-116).

[15] *Rollo* (Vol. II), p. 553.

[16] See *id*. at 554.

[17] Italics supplied.

[18] *Rollo* (Vol. II), pp. 555-556.

explanations, TP issued Jacolbe a Letter[19] dated March 18, 2013 (Notice of Termination) dismissing him from work for failure to meet account specific performance metrics or certification requirements under Section V.B.4 of its Code of Conduct and Zero Tolerance Policy.

Aggrieved, Jacolbe filed a complaint[20] for illegal dismissal and monetary claims[21] against TP, pointing out that while the Incident Report noted his failure to hit the 7-minute AHT mark in two (2) instances, TP dismissed him allegedly for unsatisfactory work performance for the last six (6) months based on the HRD's Notice to Explain. He argued that if indeed he committed the said infractions, the same did not constitute serious misconduct warranting his dismissal, citing his award as Top Agent for December 2012,[22] which negated the alleged unsatisfactory work performance for the last six (6) months.[23]

In its defense, TP argued that Jacolbe's actual AHT scores[24] from January 2012 up to his dismissal in March 2013 were consistently beyond the 7-minute AHT mark, despite his enrollment in its PIP and SMART Action Plan programs.[25] TP explained that the PIP and SMART Action Plan programs are the company's tools designed to help "poor performing" CSRs improve their work performance.[26] Under these programs, the enrolled CSRs are given "step goals" or targets that are considerably lower (or higher, as the case may be) than the prescribed metrics which are then gradually increased (or decreased) until they meet the same. Thus, under these

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[19] *Id*. at 557.

[21] Not attached to the *rollos*.

[21] See *rollo* (Vol. II), p. 667.

[22] See *id*. at 494-495.

[23] See *id*. at 660-661.

[24] *Rollo* (Vol. I), pp. 118-119. See also *id*. at 120-131.

[25] *Rollo* (Vol. II), pp. 495-496 and 664-666.

[26] See *id*. at 425-426 and 662. See also *rollo* (Vol. I), pp. 114-116.

circumstances, TP argued that Jacolbe's consistent failure to meet the 7-minute AHT mark over a prolonged period of time undoubtedly showed inefficient and poor call handling justifying his dismissal under its code of conduct.[27]

The LA Ruling

In a Decision[28] dated November 25,2013, the LA found Jacolbe to have been illegally dismissed and ordered TP to pay the latter ₱319,089.09, representing his backwages, separation pay in lieu of reinstatement, moral and exemplary damages, as well as attorney's fees.[29]

The LA held that Jacolbe's failure to meet the 7-minute AHT mark in two (2) instances could hardly be considered as habitual and gross neglect of duties that would warrant his dismissal, especially since Jacolbe was awarded as Top Agent in December 2012.[30] Moreover, the LA found that TP failed to fully apprise Jacolbe of the specific violation of company rules he had committed, explaining that while the Incident Report cited only two (2) instances that he failed to meet the AHT target, the Notice to Explain, on the other hand, pointed to a six (6)-month unsatisfactory work performance. Finally, it observed that Jacolbe had been working for TP as a CSR for over five (5) years without any record of infractions.[31] Accordingly, it held that Jacolbe's failure to meet the AHT target in the two (2) cited instances cannot be construed to have been done habitually and grossly so as to warrant the imposition of the penalty of dismissal.[32]

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[27] See *rollo* (Vol. II), pp. 495-496 and 664-667.

[28] *Id*. at 493-502. Records show that during the mandatory conciliation proceedings, Jacolbe signed a Quitclaim and Release, without prejudice to the illegal dismissal claim (see *id*. at 656).

[29] See *id*. at 502.

[30] See *id*. at 498-499.

[31] See *id*. at 497-498.

[32] See *id*. at 499.

Dissatisfied, TP appealed[33] to the NLRC.

The NLRC Ruling

In a Decision[34] dated March 31, 2014, the NLRC reversed and set aside the LA ruling and held Jacolbe's dismissal valid. Contrary to the LA's findings, the NLRC found that Jacolbe had, in fact, consistently failed to meet the 7-minute AHT mark, starting from January 2012 up to his dismissal in March 2013, in violation of company-prescribed work standards. The NLRC noted that under TP's classification of offenses, such violation is considered gross negligence punishable by termination of employment on the fourth offense.[35] Notwithstanding this company rule, the NLRC pointed out that TP had in fact afforded Jacolbe with some measures of leniency by continuing his employment and even enrolling him in its coaching and performance improvement programs, under the PIP and SMART Action Plan during the 3rd quarter of 2012 and again in January of 2013, to help him improve his AHT scores.[36] Despite TP's assistance and leniency, however, Jacolbe still failed to meet the prescribed AHT mark. Thus, the NLRC held that Jacolbe's consistent failure to meet the reasonable work standards set by TP for a prolonged period of time exhibited incompetence, inefficiency, and inability to proficiently resolve customer's problems that justified his dismissal.[37]

Aggrieved, Jacolbe sought reconsideration[38] which the NLRC denied in a Resolution[39] dated May 20, 2014. Thus, he filed a petition for *certiorari*[40] before the CA.

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[33] See Notice of Appeal (with Memorandum on Appeal Attached) dated January 16, 2014; *rollo* (Vol. I) pp. 272-300.

[34] *Rollo* (Vol. II), pp. 659-673.

[35] See *id*. at 669.

[36] See *id*. at 669-670.

[37] See *id.* at 670.

[38] See motion for reconsideration dated April 25, 2014; *rollo* (Vol. I), pp. 311-314.

[39] *Rollo* (Vol. II), pp. 719-720.

[40] Dated July 18, 2014. *Id*. at 721-730.

The CA Ruling

In a Decision[41] dated September 8, 2016, the CA set aside the NLRC ruling, and accordingly, ordered TP to reinstate Jacolbe or pay him separation pay in lieu thereof, as well as full backwages, inclusive of allowances, 13th month pay, salary differentials, holiday and rest day premium pays, as well as service incentive leaves. It also remanded the case to the LA for the computation of the monetary awards.[42]

According to the CA, meeting the prescribed AHT metric is only one of the determining factors in evaluating a CSR's performance and, in fact, Jacolbe was awarded as Top Agent in December 2012 which thus contradicts the charge of poor performance. In any case, assuming that his failure to meet the 7-minute AHT mark from January 2012 to March 2013 showed inefficiency, the CA held that the same does not appear to be gross and habitual so as to warrant dismissal from employment.[43]

Determined, TP sought reconsideration[44] which the CA denied in a Resolution[45] dated August 7, 2017; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA correctly set aside the NLRC ruling, and accordingly, held that Jacolbe was illegally dismissed.

The Court's Ruling

The petition is meritorious.

At the outset, the Court stresses that the review in this Rule 45 petition of the CA's ruling in a labor case via a Rule 65

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[41] *Id*. at 466-485.

[42] See *id*. at 485.

[43] See *id*. at 481-484.

[44] See motion for reconsideration dated October 19, 2016; *rollo* (Vol. I), pp. 400-416.

[45] *Rollo* (Vol. II), pp. 487-490.

petition carries a distinct approach. In a Rule 45 review, the Court examines the correctness of the CA's decision in contrast with the review of jurisdictional errors under Rule 65.[46] Further, Rule 45 limits the review to questions of law.[47] In ruling for legal correctness, the Court views the CA decision in the same context that the petition for *certiorari* was presented to the CA.[48] Hence, the Court has to examine the CA Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC Decision.[49]

Grave abuse of discretion, amounting to lack or excess of jurisdiction, has been defined as the capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[50]

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.[51] Thus, if the NLRC's ruling has basis in

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[46] See *Montoya v. Transmed Manila Corporation*, 613 Phil. 696, 706-707 (2009); *Sutherland Global Services, Inc. v. Labrador*, 730 Phil. 295, 304 (2014); and *Aluag v. BIR Multi-Purpose Cooperative*, G.R. No. 228449, December 6, 2017.

[47] See *Sutherland Global Services, Inc. v. Labrador*, *id*.; and *Aluag v. BIR Multi-Purpose Cooperative*, *id*.

[48] *Sutherland Global Services, Inc. v. Labrador*, *id*.; *Aluag v. BIR Multi-Purpose Cooperative*, *id*.

[49] See *Montoya v. Transmed Manila Corporation*, *supra* note 46, at 707; *Sutherland Global Services, Inc. v. Labrador*, *id*.; *Aluag v. BIR Multi-Purpose Cooperative*, *id*.

[50] *Bani Rural Bank, Inc. v. De Guzman*, 721 Phil. 84, 99 (2013). See also *Philippine Pizza, Inc. v. Cayetano*, G.R. No. 230030, August 29, 2018.

[51] See *Philippine Pizza, Inc. v. Cayetano*, *id*.; citing *Quebral v. Angbus Construction, Inc*., G.R. No. 221897, November 7, 2016, 807 SCRA 176,

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.[52]

With these standards in mind, the Court finds that the NLRC Decision in this case was supported by substantial evidence and is consistent with law and jurisprudence as to the issues raised in the petition. Hence, the CA erroneously ascribed grave abuse of discretion on the part of the NLRC in declaring that Jacolbe was validly dismissed. Accordingly, the NLRC's ruling must be reinstated.

In its petition, TP maintains that the CA erred in declaring Jacolbe's dismissal invalid, ratiocinating that the latter had consistently failed to meet the reasonable company-imposed performance targets, specifically the 7-minute AHT mark, for sixty-two (62) consecutive weeks despite the opportunities and assistance extended to him to improve his performance. It argues that Jacolbe's continued and persistent failure to meet the key performance metrics clearly illustrated gross inefficiency which is analogous to gross and habitual neglect of duties justifying his dismissal.[53] Moreover, it stresses that Jacolbe's isolated Top Agent award which is completely unrelated to his AHT scores – as it merely recognized him as having achieved a satisfactory score based on a survey feedback from one customer in one day and during one call only – could not negate nor override his repeated poor work performance for the 62 consecutive weeks that led to his dismissal.[54] For his part, Jacolbe simply maintains that there was no valid ground for his dismissal.[55]

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184. See also *Aluag v. BIR Multi-Purpose Cooperative*, *supra* note 46, citing *University of Santo Tomas (UST) v. Samahang Manggagawa ng UST*, G.R. No. 184262, April 24, 2017, 824 SCRA 52, 61.

[52] *Philippine Pizza, Inc. v. Cayetano*, *id*., citations omitted; and *Aluag v. BIR Multi-Purpose Cooperative*, *id*., citations omitted.

[53] See *rollo* (Vol. II), pp. 437-449.

[54] See *id*. at 449-450.

[55] See *id*. at 823-827.

A valid dismissal necessitates compliance with both substantive and procedural due process requirements. Substantive due process mandates that an employee may be dismissed based only on just or authorized causes under Articles 297, 298, and 299 (formerly Articles 282, 283, and 284) of the Labor Code, as amended.[56] On the other hand, procedural due process requires the employer to comply with the requirements of notice and hearing before effecting the dismissal. In all cases involving termination of employment, the burden of proving the existence of the above valid causes rests upon the employer.[57] The quantum of proof required in these cases is substantial evidence as discussed above.

In this relation, jurisprudence[58] instructs that gross inefficiency is analogous to gross and habitual neglect of duty[59] under Article 297 (e) in relation to Article 297 (b) of the Labor Code, as amended,[60] for both involve specific acts of omission on the part of the employee resulting in damage to the employer or to his business, and constituting, therefore, just cause to dismiss an employee, thus:

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[56] Department Advisory No. 1, Series of 2015, entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED" dated July 21, 2015.

[57] See *Aluag v. BIR Multi-Purpose Cooperative*, *supra* note 46.

[58] See *Puncia v. Toyota Shaw/Pasig, Inc.*,788 Phil. 464,478-479 (2016). See also *Alilling v. Feliciano*, 686 Phil. 889, 910-911 (2012), citing *Lim v. NLRC*, 328 Phil. 843, 857-858 (1996).

[59] "*Gross negligence* implies a want or absence of or a failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. *Habitual neglect*, on the other hand, implies repeated failure to perform one's duties for a period of time, depending upon the circumstances." (See *Casco v. NLRC*, G.R. No. 200571, February 19, 2018; citing *School of the Holy Spirit of Quezon City v. Taguiam*, 580 Phil. 203, 209 [2008]; italics supplied. See also *Estacio v. Pampanga I Electric Cooperative, Inc.*, 613 Phil. 160, 180 [2009]).

[60] These provisions read:

Article 297. [282] Termination by Employer. — An employer may terminate an employment for any of the following just causes:

"[G]ross inefficiency" falls within the purview of "other causes analogous to the foregoing," [and] constitutes, therefore, just cause to terminate an employee under Article 282 [now under Article 297] of the Labor Code[, as amended]. One is analogous to another if it is susceptible of comparison with the latter either in general or in some specific detail; or has a close relationship with the latter. **"Gross inefficiency" is closely related to "gross neglect," for both involve specific acts of omission on the part of the employee resulting in damage to the employer or to his business.**[61] (Emphasis supplied)

In *Buiser v. Leogardo, Jr.*,[62] the Court explained that such inefficiency is understood to mean *failure to attain work goals* or work quotas, either by failing to complete the same within the allotted reasonable period, or by producing unsatisfactory results.[63] Further, in *San Miguel Corporation v. NLRC*,[64] the Court held that an employer is entitled to prescribe reasonable work standards, rules, and regulations necessary for the conduct of its business, to provide certain disciplinary measures in order to implement them, and to assure that the same would be complied with.[65] This management prerogative of requiring standards may be availed of so long as they are exercised in good faith for the advancement of the employer's interest.[66]

In this case, records reveal that Jacolbe's AHT scores for 62 consecutive weeks, or from January 2012 up to his dismissal

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x x x x x x x x x

(b) Gross and habitual neglect by the employee of his duties;

x x x x x x x x x

(e) Other causes analogous to the foregoing.

[61] *Aliling v. Feliciano*, *supra* note 58, at 910; citing *Lim v. NLRC*, *supra* note 58, at 858.

[62] 216 Phil. 144 (1984).

[63] See *id*. at 152. See also *Lim v. NLRC*, *supra* note 58, at 858; and *Leonardo v. NLRC*, 389 Phil. 118 (2000).

[64] 574 Phil. 556 (2008).

[65] *Id*. at 569-570.

[66] See *Buiser v. Leogardo*, *supra* note 62, at 152. See also *Leonardo v. NLRC*, *supra* note 63, at 127.

in March 2013, were well above the 7 minutes or lower AHT mark.[67] As he had been having difficulty meeting the same, TP allowed him to continue in its employ and even enrolled him in its SMART Action and Performance Improvement Plans[68] twice – in July to August 2012 and again in January 2013 – to help him improve his AHT scores.[69] This notwithstanding, Jacolbe's AHT scores remained well above the 7-minute AHT mark.[70] Undoubtedly, Jacolbe's repeated and consistent failure to meet the prescribed AHT mark over a prolonged period of time falls squarely under the concept of gross inefficiency and is analogous to gross and habitual neglect of duty under Article 297 of the Labor Code which justified his dismissal.

Moreover, the Court observes that the 7-minute AHT metric is not unique to Jacolbe as it is in fact a key performance metric, which measures the effectivity and efficiency of a CSR in handling customer's concerns in each call. It applies to all employees assigned to the Priceline account who, save for a few including Jacolbe, have all been able to meet the same.[71] Along with the other key performance metrics, it was employed by TP to properly and reasonably assess the overall work performance of its employees. Notably, the AHT metric *per se* is also used by TP for all employees in its other accounts,[72] and is in fact considered an established work performance evaluation metric within the business process outsourcing industry where TP belongs. Jacolbe's insistence that his Top Agent award for December 2012 contradicts the charge of inefficiency and poor performance does not deserve consideration. As records show, the Top Agent award is not a sufficient measure of an employee's overall work performance

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[67] *Rollo* (Vol. I), pp. 118-119. See also *id*. at 120-131.

[68] See *id.* at 114-116. See also *rollo* (Vol. II), pp. 425-426.

[69] See *rollo* (Vol. II), pp. 495-496 and 664-666.

[70] See *rollo* (Vol. I), pp. 134-136.

[71] See *id.* at 132-133.

[72] See *id*. at 158.

since it proceeded solely from a single customer's feedback in one call on one given day. All told, the 7-minute AHT metric does not appear to be arbitrary and unreasonable. On the contrary, the Court finds it necessary and relevant to the achievement of TP's objectives and a reasonable work standard imposed by TP in the exercise of its management prerogative.

Anent the matter of procedural due process, Section 2 (1), Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code,[73] as well as jurisprudence,[74] requires the employer to give the employee two (2) written notices and a hearing or opportunity to be heard. The notices must consist of the following: *first*, a notice specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side; and *second*, a notice of termination indicating that upon due consideration of all the circumstances, grounds have been established to justify his dismissal.

Applying the above parameters to this case, the Court finds that TP sufficiently observed the standards of procedural due

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[73] As amended by DOLE Department Order No. 009-97 entitled "AMENDING THE RULES IMPLEMENTING BOOK V OF THE LABOR CODE AS AMENDED," approved on May 1, 1997.

Section 2. Security of Tenure. — x x x (d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

I. For termination of employment based on just causes as defined in Article 282 of the Labor Code:

(i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.

(ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him.

(iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

[74] See *Aluag v. BIR Multi-Purpose Cooperative*, *supra* note 46, citing *Puncia v. Toyota Shaw/Pasig, Inc.*, *supra* note 58, at 479-482.

process in effecting Jacolbe's dismissal. *First*, TP issued Jacolbe a Notice to Explain specifying the ground for his possible dismissal, *i.e.*, that his "*work performance for the last 6 months is unsatisfactory due to [his] consistent failure to meet the [AHT] Goal in spite of being enrolled in [its PIP],*" which, if proven true, would constitute as an offense against its code of conduct warranting the termination of his employment. The Notice also directed Jacolbe to explain, in writing, why he should not be subjected to appropriate corrective action. *Second*, Jacolbe was able to submit letters[75] explaining his side, albeit he did not fully address the charge of consistently failing to meet the AHT metric. *Third*, a disciplinary conference was held on February 26, 2013 which provided Jacolbe another opportunity to explain his side.[76] And *fourth*, TP served a written Notice of Termination after verifying the violation committed under Section V.B.4 of its Code of Conduct and Zero Tolerance Policy, *i.e.*, failure to meet account specific performance metrics or certification requirements.

In fine, the Court finds ample evidence to support the findings of the NLRC that Jacolbe's dismissal was valid. Accordingly, the CA committed reversible error in substituting its own judgment with that of the NLRC. While security of tenure is indeed constitutionally guaranteed, this should not be indiscriminately invoked to deprive an employer of its management prerogatives and right to shield itself from incompetence, inefficiency, and disobedience displayed by its employees,[77] as the Court finds in this case.

WHEREFORE, the petition is **GRANTED**. The Decision dated September 8, 2016 and the Resolution dated August 7, 2017 of the Court of Appeals in CA-G.R. SP No. 08600 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Decision dated March 31, 2014 and the Resolution dated May

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[75] Referring to letters dated February 19 and 25, 2013.

[76] See *rollo* (Vol. I), p. 162 and *rollo* (Vol. II), p. 667.

[77] *Realda v. New Age Graphics, Inc.*, 686 Phil. 1110, 1119-1120 (2012).

20, 2014 of the National Labor Relations Commission in NLRC Case No. VAC-02-000080-2014 are **REINSTATED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 239957. February 18, 2019]

JESUS TRINIDAD *y* BERSAMIN, *petitioner, vs.* **THE PEOPLE OF PHILIPPINES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; REQUIREMENTS OF A VALID SEARCH AND SEIZURE; FOR A VALID SEARCH INCIDENTAL TO A LAWFUL ARREST, THERE MUST FIRST BE A LAWFUL ARREST BEFORE A SEARCH CAN BE MADE.— "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 becomes '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

[**] Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018.

unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree." "One of the recognized exceptions to the need for a warrant before a search may be affected is a search incidental to a lawful arrest. **In this instance, the law requires that there first be a lawful arrest before a search can be made – the process cannot be reversed**."

2. **REMEDIAL LAW; CRIMINAL PROCEDURE; A WARRANTLESS ARREST MAY BE DONE WHEN THE ACCUSED IS CAUGHT *IN FLAGRANTE DELICTO*; EFFECTS WHERE THE VALIDITY OF THE *IN FLAGRANTE DELICTO* WARRANTLESS ARREST WAS NOT ESTABLISHED.—** A lawful arrest may be affected with or without a warrant. With respect to the latter, a warrantless arrest may be done when, *inter alia*, the accused is caught *in flagrante delicto*, such as in buy-bust operations in drugs cases. However, if the existence of a valid buy-bust operation cannot be proven, and thus, the validity of the *in flagrante delicto* warrantless arrest cannot be established, the arrest becomes illegal and the consequent search incidental thereto becomes unreasonable. Resultantly, all the evidence seized by reason of the unlawful arrest is inadmissible in evidence for any purpose in any proceeding.

3. **ID.; ID.; ID.; FAILURE TO PROVE THE VALIDITY OF THE BUY-BUST OPERATION RENDERS PETITIONER'S *IN FLAGRANTE DELICTO* WARRANTLESS ARREST ILLEGAL AND THE SUBSEQUENT SEARCH ON HIM UNREASONABLE.—** [A] more circumspect review of the decision absolving Trinidad of criminal liability in the drugs cases reveals that he was acquitted therein not only due to unjustified deviations from the chain of custody rule, but also on the ground that **the prosecution failed to prove the existence of a valid buy-bust operation, thereby rendering Trinidad's *in flagrante delicto* warrantless arrest illegal and the subsequent search on him unreasonable**. Thus, contrary to the courts *a quo*'s opinions, Trinidad's acquittal in the drugs cases, more particularly on the latter ground, is material to this case because the subject firearms and ammunition were simultaneously recovered from him when he was searched subsequent to his arrest on account of the buy-bust operation.

4. ID.; EVIDENCE; JUDICIAL NOTICE; THE COURT TAKES JUDICIAL NOTICE OF THE CIRCUMSTANCES TO THE BUY-BUST OPERATION AS FOUND BY THE TRIAL COURT WHICH INVOLVE THE DRUGS CASES INVOLVING HEREIN PETITIONER; THE SUBJECT FIREARMS AND AMMUNITION HAVING BEEN RECOVERED FROM THE SAME UNREASONABLE SEARCH AND SEIZURE ARE INADMISSIBLE IN EVIDENCE, HENCE, PETITIONER'S ACQUITTAL IS IN ORDER.— [A]n examination of the ruling in the drugs cases (which Trinidad offered as evidence and the RTC admitted as part of his testimony) confirms that the drugs cases and this case are so interwoven and interdependent of each other since, as mentioned, the drugs, as well as the subject firearms and ammunition, were illegally seized in a singular instance, *i.e.*, the buy-bust operation. Hence, the Court may take judicial notice of the circumstances attendant to the buy-bust operation as found by the court which resolved the drugs cases. To recall, in the drugs cases, the finding of unreasonableness of search and seizure of the drugs was mainly based on the failure of PO1 Sanoy's testimony to establish the legitimacy of the buy-bust operation against Trinidad as said testimony was found to be highly doubtful and incredible. This circumstance similarly obtains here as in fact, the testimonies of both PO1 Nidoy and PO1 Sanoy in this case essentially just mirror on all material points the latter's implausible narration in the drugs cases. In view of the foregoing, the Court concludes that the subject firearms and ammunition are also inadmissible in evidence for being recovered from the same unreasonable search and seizure as in the drugs cases. Since the confiscated firearms and ammunition are the very *corpus delicti* of the crime charged in this case, Trinidad's acquittal is in order.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] filed by petitioner Jesus Trinidad *y* Bersamin (Trinidad) assailing the Decision[2] dated January 25, 2018 and the Resolution[3] dated May 31, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 39598, which affirmed the Decision[4] dated November 7, 2016 of the Regional Trial Court of Pasig City, Branch 67 (RTC) in Crim. Case Nos. 155678 and 155679 finding him guilty beyond reasonable doubt of the crime of Illegal Possession of Firearms and Ammunition under Section 28 (a) in relation to Section 28 (e) (1), Article V of Republic Act No. (RA) 10591.[5]

The Facts

On December 12, 2014, an Information[6] was filed before the RTC charging Trinidad with violation of RA 10591, the pertinent portion of which reads:

> On or about November 14, 2014, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, being then a private person, without any lawful authority, did then and there willfully, unlawfully and feloniously have in [his] possession and under [his] custody and control one (1) unit [c]aliber .38 revolver marked Smith

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[1] *Rollo*, pp. 12-31.

[2] *Id*. at 35-47. Penned by Associate Justice Jhosep Y. Lopez with Associate Justices Celia C. Librea-Leagogo and Maria Elisa Sempio Diy, concurring.

[3] *Id*. at 49-51.

[4] *Id*. at 87-97. Penned by Acting Presiding Judge Maria Paz R. Reyes-Yson.

[5] Entitled "AN ACT PROVIDING FOR A COMPREHENSIVE LAW ON FIREARMS AND AMMUNITION AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF," otherwise known as the "COMPREHENSIVE FIREARMS AND AMMUNITION REGULATION ACT," approved on May 29, 2013.

[6] Dated December 12, 2014; *rollo*, pp. 59-61.

& Wesson with serial number 833268 with markings "RJN", a small arm, loaded with six (6) pieces live ammunitions of caliber .38 with markings "1RN, 2RN, 3RN, 4RN, 5RN and 6RN", without first securing the necessary license or permit from the Firearms and Explosives Office of the Philippine National Police, in violation of the above-entitled law.

Contrary to law.[7]

The prosecution alleged that at around 8:30 in the evening of November 14, 2014, members from the Philippine National Police (PNP)-Pasig Police Station conducted a buy-bust operation, with Police Officer (PO) 1 Randy S. Sanoy (PO1 Sanoy) as the poseur buyer and PO1 Rodrigo J. Nidoy, Jr. (PO1 Nidoy) as the back-up arresting officer, to apprehend a certain "Jessie" who, purportedly, was involved in illegal drug activities at Aurelia St., Barangay Bagong Ilog, Pasig City.[8] After the alleged sale had been consummated, PO1 Nidoy arrested Trinidad, frisked him, and recovered from the latter a 0.38 caliber revolver loaded with six (6) live ammunitions tucked at his back, as well as a 0.22 caliber rifle loaded with seven (7) live ammunitions and two (2) magazines (subject firearms and ammunition) which were found beside the gate of his house.[9] When asked if he has any documentation for the same, Trinidad claimed that they were merely pawned to him. After marking the seized items, they proceeded to the nearby barangay hall and conducted inventory and photography thereof, and then went to the police station where the request for ballistic examination was made.[10] Finally, the seized items were brought to the crime laboratory, where, after examination, it was revealed that "the firearms are serviceable and the ammunitions are live and serviceable."[11] During trial, Trinidad's counsel agreed to

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

[8] See *id*. at 36-37.

[9] See *id*. at 37-38.

[10] See *id*. at 38.

[11] *Id*.

the stipulation that Trinidad has no license to possess or carry firearms of any caliber at the time of his arrest.[12]

For his part, Trinidad denied the accusations against him, claiming, among others, that aside from the present case, he was also charged with the crime of Illegal Sale and Possession of Dangerous Drugs, which arose from the same incident, but was, however, acquitted[13] therein for, *inter alia*, **failure of the prosecution to prove that Trinidad was validly arrested thru a legitimate buy-bust operation**. He then formally offered in evidence the said acquittal ruling, which was objected by the public prosecutor for being immaterial and irrelevant to the present case.[14] The RTC admitted said evidence only as part of Trinidad's testimony.[15]

The RTC Ruling

In a Decision[16] dated November 7, 2016, the RTC found Trinidad guilty beyond reasonable doubt of two (2) counts of violation of RA 10591, and accordingly, sentenced him to suffer the penalty of imprisonment for an indeterminate period of ten (10) years, eight (8) months, and one (1) day, as minimum, to eleven (11) years and four (4) months of *prision mayor*, as maximum, for each count.[17]

The RTC found that the prosecution was able to prove all the elements of the crime of Illegal Possession of Firearms and Ammunition, considering that: (*a*) PO1 Nidoy positively identified the firearms presented before the court as the same firearms seized and recovered from Trinidad's possession; and

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[12] See *id*.

[13] See Joint Decision dated March 1, 2016 of the Regional Trial Court of Pasig City, Branch 154 in Criminal Case Nos. 19814-D-PSG and 19815-D-PSG penned by Presiding Judge Achilles A. A.C. Bulauitan; *id*. at 200-210.

[14] See *id.* at 39.

[15] See *id*. at 92.

[16] *Id*. at 87-97.

[17] *Id*. at 96.

(*b*) Trinidad admitted that he is not a holder of any license or permit from the PNP Firearms and Explosives Unit. It gave credence to the positive, clear, and categorical testimonies of the prosecution's witnesses rather than Trinidad's defenses of denial and alibi.[18] It likewise held that Trinidad's acquittal in the drugs charges is immaterial to this case, opining that the ground for his acquittal is neither unlawful arrest nor unlawful search and seizure, but the procedural flaw in the chain of custody of the dangerous drugs.[19]

Aggrieved, Trinidad appealed[20] to the CA.

The CA Ruling

In a Decision[21] dated January 25, 2018, the CA affirmed Trinidad's conviction with modification, sentencing him to suffer the penalty of imprisonment for an indeterminate period of eight (8) years and one (1) day of *prision mayor*, as minimum, to ten (10) years, eight (8) months, and one (1) day of *prision mayor*, as maximum, for each count.[22] The CA ruled that the evidence for the prosecution convincingly established all the elements of the crime charged as Trinidad: (*a*) was caught in possession and control of two (2) firearms, consisting of one (1) .38 caliber[23] revolver loaded with six (6) live ammunitions and one (1) .22 caliber rifle loaded with seven (7) live ammunitions, as well as two (2) magazines during the conduct of the buy-bust operation; and (*b*) failed to show any permit or license to possess the same, simply claiming that the said firearms were pawned to him.[24]

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[18] See *id*. at 94.

[19] See *id*. at 95.

[20] See Brief for the Accused-Appellant dated July 24, 2017; *id*. at 66-85.

[21] *Id*. at 35-47.

[22] See *id*. at 47.

[23] Erroneously indicated as ".22 caliber revolver" in the CA Decision; *id*. at 42.

[24] See *id*.

It likewise noted that Trinidad's counsel agreed to the stipulation that Trinidad has no license to possess or carry the subject firearms at the time of his arrest.[25] Finally, it agreed with the RTC's opinion that Trinidad's acquittal in the drugs charges was due to the prosecution's failure to prove the chain of custody of the seized dangerous drugs, and not due to his supposed questionable arrest.[26]

Dissatisfied, Trinidad moved for reconsideration,[27] but was denied in a Resolution[28] dated May 31, 2018; hence, this petition.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA correctly upheld Trinidad's conviction for the crime charged.

The Court's Ruling

The petition 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."[29]

"Section 2,[30] Article III of the 1987 Constitution mandates that **a search and seizure must be carried out through or on**

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[25] See *id*. at 43-44.

[26] See *id*. at 44-45.

[27] See motion for reconsideration dated February 20, 2018; *id*. at 52-58.

[28] *Id*. at 49-51.

[29] *People v. Comboy*, 782 Phil. 187, 196 (2016), citing *Manansala v. People*, 775 Phil. 514, 520 (2015).

[30] Section 2, Article III of the 1987 CONSTITUTION reads:

the strength of a judicial warrant predicated upon the existence of probable cause, absent which, such search and seizure becomes 'unreasonable' within the meaning of said constitutional provision. To protect the people from unreasonable searches and seizures, Section 3 (2),[31] 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."[32]

"One of the recognized exceptions to the need for a warrant before a search may be affected is a search incidental to a lawful arrest. **In this instance, the law requires that there first be a lawful arrest before a search can be made – the process cannot be reversed**."[33]

A lawful arrest may be affected with or without a warrant. With respect to the latter, a warrantless arrest may be done when, *inter alia*, the accused is caught *in flagrante delicto*,[34]

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.

[31] Section 3 (2), Article III of the 1987 CONSTITUTION reads:

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.

[32] *Sindac v. People,* 794 Phil. 421, 428 (2016).

[33] See *id.*

[34] Section 5 (a), Rule 113 of the REVISED RULES OF CRIMINAL PROCEDURE provides:

Section 5. *Arrest without warrant; when lawful*. — x x x.

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense[.]

such as in buy-bust operations in drugs cases.[35] However, if the existence of a valid buy-bust operation cannot be proven, and thus, the validity of the *in flagrante delicto* warrantless arrest cannot be established, the arrest becomes illegal and the consequent search incidental thereto becomes unreasonable.[36] Resultantly, all the evidence seized by reason of the unlawful arrest is inadmissible in evidence for any purpose in any proceeding.[37]

In this case, Trinidad essentially anchors his defense on the following contentions: (*a*) his arrest stemmed from a purported buy-bust operation where the illegal drugs and the subject firearms and ammunition were allegedly recovered from him; (*b*) this resulted in the filing of three (3) Informations against him, two (2) of which are for violations of RA 9165[38] (which were tried jointly), while the other pertains to the instant case; and (*c*) his acquittal[39] in the drugs cases should necessarily result in his acquittal in this case as well. In finding these contentions untenable, the courts *a quo* opined that the resolution in the drugs cases is immaterial in this case as they involve different crimes[40] and that "the ground for the acquittal x x x is neither unlawful arrest nor unlawful search or seizure, but the procedural flaw in the chain of custody of the dangerous drugs."[41]

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[35] See *People v. Amin*, G.R. No. 215942, January 18, 2017, 814 SCRA 639, 646. See also *People v. Rivera*, 790 Phil. 770, 779-780 (2016).

[36] See *People v. Lim*, 435 Phil. 640, 664 (2002).

[37] See *id*.

[38] 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.

[39] See *rollo*, pp. 200-210.

[40] See *id*. at 45.

[41] See *id*. at 95.

However, a more circumspect review of the decision absolving Trinidad of criminal liability in the drugs cases reveals that he was acquitted therein not only due to unjustified deviations from the chain of custody rule,[42] but also on the ground that **the prosecution failed to prove the existence of a valid buy-bust operation, thereby rendering Trinidad's *in flagrante delicto* warrantless arrest illegal and the subsequent search on him unreasonable**.[43] Thus, contrary to the courts *a quo*'s opinions, Trinidad's acquittal in the drugs cases, more particularly on the latter ground, is material to this case because the subject firearms and ammunition were simultaneously recovered from him when he was searched subsequent to his arrest on account of the buy-bust operation.

The Court is aware that the findings on the illegality of Trinidad's warrantless arrest were made in the drugs cases, which are separate and distinct from the present illegal possession of firearms and ammunition case. Nevertheless, the Court is not precluded from taking judicial notice of such findings as evidence, and apply them altogether for the judicious resolution of the same issue which was duly raised herein. To be sure, the general rule is that the courts are not authorized to take judicial notice of the contents of the records of other cases. However, this rule admits of exceptions, such as when the other case has a close connection with the matter in controversy in the case at hand.[44] In *Bongato v. Spouses Malvar*,[45] the Court held:

[A]s a general rule, courts do not take judicial notice of the evidence presented in other proceedings, even if these have been tried or are

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[42] See *id.* at 207-209. See also *People v. Paming*, G.R. No. 241091, January 14, 2019; *People v. Bambico*, G.R. No. 238617, November 14, 2018; *People v. Mama*, G.R. No. 237204, October 1, 2018.

[43] See *rollo*, pp. 205-207. See also *Sindac v. People*, *supra* note 32; *People v. Manago*, 793 Phil. 505 (2016); *Comerciante v. People*, 764 Phil. 627 (2015).

[44] See *Degayo v. Magbanua-Dinglasan*, 757 Phil. 376, 390 (2015), citing *Tiburcio v. People's Homesite & Housing Corporation*, 106 Phil. 477, 483-484 (1959).

[45] 436 Phil. 109 (2002).

pending in the same court or before the same judge. There are exceptions to this rule. Ordinarily, an appellate court cannot refer to the record in another case to ascertain a fact not shown in the record of the case before it, yet, it has been held that it may consult decisions in other proceedings, in order to look for the law that is determinative of or applicable to the case under review. **In some instances, courts have also taken judicial notice of proceedings in other cases that are closely connected to the matter in controversy. These cases "may be so closely interwoven, or so clearly interdependent, as to invoke a rule of judicial notice**."[46] (Emphasis and underscoring supplied)

Here, an examination of the ruling[47] in the drugs cases (which Trinidad offered as evidence and the RTC admitted as part of his testimony[48]) confirms that the drugs cases and this case are so interwoven and interdependent of each other since, as mentioned, the drugs, as well as the subject firearms and ammunition, were illegally seized in a singular instance, *i.e.*, the buy-bust operation. Hence, the Court may take judicial notice of the circumstances attendant to the buy-bust operation as found by the court which resolved the drugs cases. To recall, in the drugs cases, the finding of unreasonableness of search and seizure of the drugs was mainly based on the failure of PO1 Sanoy's testimony to establish the legitimacy of the buy-bust operation against Trinidad as said testimony was found to be highly doubtful and incredible.[49] This circumstance similarly obtains here as in fact, the testimonies of both PO1 Nidoy[50] and PO1

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[46] *Id*. at 117-118; citations omitted.

[47] See *rollo*, pp. 200-210.

[48] In *T'Boli Agro-Industrial Development, Inc. v. Solilapsi*, (442 Phil. 499, 513 [2002]), the Court held:

> Courts may be required to take judicial notice of the decisions of the appellate courts but not of the decisions of the coordinate trial courts, or even of a decision or the facts involved in another case tried by the same court itself, **unless the parties introduce the same in evidence** or the court, as a matter of convenience, decides to do so. (Emphasis and underscoring supplied)

[49] See *rollo*, pp. 206-207.

[50] TSN, August 17, 2015, pp. 3-22 and TSN, May 16, 2016, pp. 16-46.

Sanoy[51] in this case essentially just mirror on all material points the latter's implausible narration in the drugs cases. In view of the foregoing, the Court concludes that the subject firearms and ammunition are also inadmissible in evidence for being recovered from the same unreasonable search and seizure as in the drugs cases. Since the confiscated firearms and ammunition are the very *corpus delicti* of the crime charged in this case, Trinidad's acquittal is in order.

WHEREFORE, the Petition is **GRANTED**. The Decision dated January 25, 2018 and the Resolution dated May 31, 2018 of the Court of Appeals in CA-G.R. CR No. 39598 are hereby **REVERSED and SET ASIDE**. Petitioner Jesus Trinidad *y* Bersamin is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

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

EN BANC

[G.R. No. 243522. February 19, 2019]

REPRESENTATIVES EDCEL C. LAGMAN, TOMASITO S. VILLARIN, TEDDY BRAWNER BAGUILAT, JR., EDGAR R. ERICE, GARY C. ALEJANO, JOSE CHRISTOPHER Y. BELMONTE and ARLENE

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[51] TSN, June 13, 2016, pp. 1-9.

[*] Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018.

"KAKA" J. BAG-AO, *petitioners, vs.* **HON. SALVADOR C. MEDIALDEA, EXECUTIVE SECRETARY, HON. DELFIN N. LORENZANA, SECRETARY OF THE DEPARTMENT OF NATIONAL DEFENSE AND MARTIAL LAW ADMINISTRATOR; GEN. BENJAMIN MADRIGAL, JR., CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES AND MARTIAL LAW IMPLEMENTOR; and HON. BENJAMIN E. DIOKNO, SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT; and THE HOUSE OF REPRESENTATIVES and THE SENATE OF THE PHILIPPINES as COMPONENT HOUSES OF THE CONGRESS OF THE PHILIPPINES, respectively represented by HON. SPEAKER GLORIA MACAPAGAL-ARROYO and HON. SENATE PRESIDENT VICENTE C. SOTTO III,** *respondents.*

[G.R. No. 243677. February 19, 2019]

BAYAN MUNA PARTYLIST REPRESENTATIVE CARLOS ISAGANI T. ZARATE, GABRIELA WOMEN'S PARTY REPRESENTATIVES, EMERENCIANA A. DE JESUS, and ARLENE D. BROSAS, ANAKPAWIS REPRESENTATIVE ARIEL B. CASILAO, ACT TEACHERS REPRESENTATIVES ANTONIO L. TINO and FRANCE L. CASTRO, and KABATAAN PARTYLIST REPRESENTATIVE SARAH JANE I. ELAGO, *petitioners, vs.* **PRESIDENT RODRIGO DUTERTE, CONGRESS OF THE PHILIPPINES, represented by SENATE PRESIDENT VICENTE C. SOTTO III and HOUSE SPEAKER GLORIA MACAPAGAL-ARROYO, EXECUTIVE SECRETARY SALVADOR MEDIALDEA, DEFENSE SECRETARY DELFIN LORENZANA, ARMED FORCES OF THE PHILIPPINES CHIEF-OF-STAFF LIEUTENANT GENERAL BENJAMIN MADRIGAL, JR., PHILIPPINE NATIONAL POLICE DIRECTOR-**

GENERAL OSCAR DAVID ALBAYALDE, *respondents.*

[G.R. No. 243745. February 19, 2019]

CHRISTIAN S. MONSOD, RAY PAOLO J. SANTIAGO, NOLASCO RITZ LEE B. SANTOS III, MARIE HAZEL E. LAVITORIA, DOMINIC AMON R. LADEZA, and XAMANTHA XOFIA A. SANTOS, *petitioners, vs.* **SENATE OF THE PHILIPPINES (represented by SENATE PRESIDENT VICENTE C. SOTTO III), HOUSE OF REPRESENTATIVES (represented by GLORIA MACAPAGAL-ARROYO), EXECUTIVE SECRETARY SALVADOR C. MEDIALDEA, DEPARTMENT OF NATIONAL DEFENSE (DND) SECRETARY DELFIN N. LORENZANA, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT (DILG) SECRETARY EDUARDO M. AÑO, ARMED FORCES OF THE PHILIPPINES (AFP) CHIEF OF STAFF GENERAL BENJAMIN R. MADRIGAL, JR., PHILIPPINE NATIONAL POLICE (PNP) DIRECTOR GENERAL OSCAR D. ALBAYALDE, NATIONAL SECURITY ADVISER HERMOGENES C. ESPERON, JR.,** *respondents.*

[G.R. No. 243797. February 19, 2019]

RIUS VALLE, JHOSA MAE PALOMO, JEANY ROSE HAYAHAY and RORELYN MANDACAWAN, *petitioners, vs.* **THE SENATE OF THE PHILIPPINES represented by THE SENATE PRESIDENT VICENTE C. SOTTO III, THE HOUSE OF REPRESENTATIVES, represented by THE HOUSE SPEAKER GLORIA MACAPAGAL-ARROYO, THE EXECUTIVE SECRETARY, THE SECRETARY OF NATIONAL DEFENSE, THE SECRETARY OF THE INTERIOR AND LOCAL GOVERNMENT, THE CHIEF OF**

STAFF, ARMED FORCES OF THE PHILIPPINES, THE DIRECTOR GENERAL, PHILIPPINE NATIONAL POLICE, AND ALL PERSONS ACTING UNDER THEIR CONTROL, DIRECTION, INSTRUCTION, and/or SUPERVISION, *respondents.*

SYLLABUS

1. POLITICAL LAW; EXECUTIVE DEPARTMENT; COMMANDER-IN-CHIEF POWERS OF THE PRESIDENT; DECLARATION OF MARTIAL LAW; SUFFICIENCY OF FACTUAL BASIS; IN DETERMINING THE SUFFICIENCY OF THE FACTUAL BASIS FOR THE EXTENSION OF MARTIAL LAW, THE COURT NEEDS ONLY TO ASSESS AND EVALUATE THE WRITTEN REPORTS OF THE GOVERNMENT AGENCIES TASKED IN ENFORCING AND IMPLEMENTING THE MARTIAL LAW; CASE AT BAR.— The sufficiency of the factual basis for the extension of martial law in Mindanao must be determined from the facts and information contained in the President's request, supported by reports submitted by his alter egos to Congress. These are the bases upon which Congress granted the extension. The Court cannot expect exactitude and preciseness of the facts and information stated in these reports, as the Court's review is confined to the sufficiency and reasonableness thereof. While there may be inadequacies in some of the facts, *i.e.*, facts which are not fully explained in the reports, these are not reasons enough for the Court to invalidate the extension as long as there are other related and relevant circumstances that support the finding that rebellion persists and public safety requires it. Contrary to *Monsod, et al.*, the Court need not make an independent determination of the factual basis for the proclamation or extension of martial law and the suspension of the privilege of the writ of *habeas corpus*. The Court is not a fact-finding body required to make a determination of the correctness of the factual basis for the declaration or extension of martial law and suspension of the writ of *habeas corpus*. It would be impossible for the Court to go on the ground to conduct an independent investigation or factual inquiry, since it is not equipped with resources comparable to that of the Commander-

in-Chief to ably and properly assess the ground conditions. Thus, in determining the sufficiency of the factual basis for the extension of martial law, the Court needs only to assess and evaluate the written reports of the government agencies tasked in enforcing and implementing martial law in Mindanao.

2. **ID.; ID.; ID.; ID.; ID.; THE THRESHOLD OF SUFFICIENCY IS AN EXECUTIVE CALL AND THE QUANTUM OF PROOF APPLIED BY THE PRESIDENT IN DETERMINING THE EXISTENCE OF REBELLION IS PROBABLE CAUSE.—** The quantum of proof applied by the President in his determination of the existence of rebellion is probable cause. The Court in *Lagman v. Medialdea* held that "in determining the existence of rebellion, the President only needs to convince himself that there is probable cause or evidence showing that more likely than not a rebellion was committed or is being committed. To require him to satisfy a higher standard of proof would restrict the exercise of his emergency powers." The Court need not delve into the accuracy of the reports upon which the President's decision is based, or the correctness of his decision to declare martial law or suspend the writ, for this is an executive function. The threshold or level (degree) of sufficiency is, after all, an executive call. The President, who is running the government and to whom the executive power is vested, is the one tasked or mandated to assess and make the judgment call which was not exercised arbitrarily.

3. **ID.; ID.; ID.; ID.; ID.; THE TEST OF SUFFICIENCY IS NOT ACCURACY NOR PRECISENESS BUT REASONABLENESS OF THE FACTUAL BASIS ADOPTED BY THE EXECUTIVE IN ASCERTAINING THE EXISTENCE OF REBELLION AND THE NECESSITY TO QUELL IT.—** The factual basis for the extension of martial law is the continuing rebellion being waged in Mindanao by Local Terrorist Rebel Groups (LTRG) — identified as the ASG, BIFF, DI, and other groups that have established affiliation with ISIS/DAESH, and by the Communist Terrorist Rebel Groups (CTRG) — the components of which are the Communist Party of the Philippines (CPP), New People's Army (NPA), and the National Democratic Front (NDF). The Department of National Defense's (DND's) "Reference Material, Joint Session on the Extension of Martial Law in Mindanao," which was presented during the Joint Session of Congress, and

offered in evidence as Slides during this Court's Oral Arguments on January 29, 2019, shows the x x x violent incidents from January 1 to November 30, 2018 as part of the continuing rebellion being waged by the LTRGs x x x. The cited events demonstrate the spate of violence of rebel groups in Mindanao in pursuit of the singular objective to seize power over parts of Mindanao or deprive the President or Congress of their power and prerogatives over these areas. The absence of motives indicated in several reports does not mean that these violent acts and hostile activities committed are not related to rebellion which absorbs other common crimes. In addition, these violent incidents should not be viewed as isolated events but in their totality, showing a consistent pattern of rebellion in Mindanao. x x x The test of sufficiency is not accuracy nor preciseness but reasonableness of the factual basis adopted by the Executive in ascertaining the existence of rebellion and the necessity to quell it.

4. ID.; ID.; ID.; DECLARATION OF MARTIAL LAW AND SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*; ESSENTIAL THERETO IS THE EXISTENCE OF REBELLION AS DEFINED UNDER ARTICLE 134 OF THE REVISED PENAL CODE.— Essential to the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* is rebellion defined under Article 134 of the Revised Penal Code, as applied in the cases of *Lagman v. Medialdea* and *Lagman v. Pimentel III* x x x. [F]or rebellion to exist, the following elements must be present, to wit: "(1) there is a (a) public uprising and (b) taking arms against the Government; and (2) the purpose of the uprising or movement is either (a) to remove from the allegiance to the Government or its laws: (i) the territory of the Philippines or any part thereof; or (ii) any body of land, naval, or other armed forces; or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives."

5. ID.; ID.; ID.; ID.; ID.; REBELLION IS NOT RESTRICTED AS TO THE TIME AND LOCALITY OF ACTUAL WAR NOR DOES IT END WHEN ACTUAL FIGHTING HAS ENDED.— Rebellion, within the context of the situation in Mindanao, encompasses no definite time nor particular locality of actual war and continues even when actual fighting has ceased. Therefore, it is not restricted as to the time and locality of actual

war nor does it end when actual fighting has ended. The state of rebellion results from the commission of a series or combination of acts and events, past, present and future, primarily motivated by ethnic, religious, political or class divisions which incites violence, disturbs peace and order, and poses serious threat to the security of the nation. The ultimate objective of the malefactors is to seize power from the government, and specifically "*for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof, of any body of land, naval or other armed forces, depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives*." x x x Recognizing the political realities in the country, the geography of Mindanao, the increasing number of local and foreign sympathizers who provide financial support, and the advances in technology that have emboldened and reinforced the terrorists' and extremists' capabilities to disturb peace and order, the declaration of martial law cannot be restricted only to areas where actual fighting continue to occur. As a result, rebels have become more cunning and instigating rebellion from a distance is now more attainable, perpetrating acts of violence clandestinely in several areas of Mindanao.

6. ID.; ID.; ID.; EXTENSION OF MARTIAL LAW AND SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*; CONGRESSIONAL AUTHORITY TO EXTEND THE PROCLAMATION OR SUSPENSION; LIMITATIONS.— This Court in the case of *Lagman v. Medialdea* explained the only limitations to the exercise of congressional authority to extend such proclamation or suspension: a) the extension should be upon the President's initiative; b) it should be grounded on the persistence of the invasion or rebellion and the demands of public safety; and c) it is subject to the Court's review of the sufficiency of its factual basis upon the petition of any citizen. x x x The Constitutional limits/checks set by the Constitution to guard against the whimsical or arbitrary use of the extra ordinary powers of the Chief Executive under Section 18, Article VII are well in place and are working. At the initial declaration of the martial law, the President observed the 60-day limit and the requirement to report to Congress. In this initial declaration as well as in the extensions, the President's decision was based on the reports

prepared by the different specialized agencies of the Executive branch charged with external and internal security of the whole country. These were the same reports submitted to Congress which were deliberated on, no matter how brief the time allotment was for each of the law makers' interpellations. Yet the evidence or basis to support the extension of martial law passed through the scrutiny of the Chief Executive and through several more of the House of Representatives and the Senate.

7. ID.; ID.; ID.; EXTENSION OF MARTIAL LAW; SUFFICIENCY OF FACTUAL BASIS; THERE IS SUFFICIENT FACTUAL BASIS TO EXTEND MARTIAL LAW WHEN REBELLION PERSISTS AND PUBLIC SAFETY REQUIRES IT; CASE AT BAR.— While Proclamation No. 216 specifically cited the attack of the Maute group in Marawi City as basis for the declaration of martial law, rebellion was not necessarily ended by the cessation of the Marawi siege. Rebellion in Mindanao still continues, as shown by the violent incidents stated in reports to the President, and was made basis by the Congress in approving the third extension of martial law. These violent incidents continuously pose a serious threat to security and the peace and order situation in Mindanao. Martial law in Mindanao should not be confined to the Marawi siege. Despite the death of Hapilon and the Maute brothers, the remnants of their groups have continued to rebuild their organization through the recruitment and training of new members and fighters to carry on the rebellion. Clashes between rebels and government forces continue to take place in other parts of Mindanao. Kidnapping, arson, robbery, bombings, murder — crimes which are absorbed in rebellion — continue to take place therein. These crimes are part and parcel of the continuing rebellion in Mindanao. The report of the military shows that the reported IED incidents, ambuscade, murder, kidnapping, shooting and harassment in 2018 were initiated by ASG members and the BIFF. Be it noted that rebellion is a continuing crime. It does not necessarily follow that with the liberation of Marawi, rebellion no longer exists. It will be a tenuous proposition to confine rebellion simply to a resounding clash of arms with government forces. x x x In sum, Proclamation No. 216 did not become *functus officio* with the cessation of the Marawi siege. Considering that rebellion persists and that the public safety requires it, there is sufficient factual basis to extend martial law in Mindanao for the third time.

8. ID.; ID.; ID.; DECLARATION OF MARTIAL LAW; DOES NOT SUSPEND FUNDAMENTAL CIVIL RIGHTS OF INDIVIDUALS AS THE BILL OF RIGHTS ENSHRINED IN THE CONSTITUTION REMAIN EFFECTIVE.— All forms of human rights violations and abuses during the implementation of martial law and suspension of powers should not go unpunished. Nonetheless, consistent with the previous rulings of the Court in *Lagman v. Medialdea* and *Lagman v. Pimentel III*, the alleged violations and abuses should be resolved in a separate proceeding. Therefore, the purported human rights abuses mentioned in the petitions, particularly in the Bayan Muna and Valle Petitions, fail to persuade that these are sufficient to warrant a nullification of the extension. A declaration of martial law does not suspend fundamental civil rights of individuals as the Bill of Rights enshrined in the Constitution remain effective. Civil courts and legislative bodies remain open. While it is recognized that, in the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus*, the powers given to officials tasked with its implementation are susceptible to abuses, these instances have already been taken into consideration when the pertinent provisions on martial law were drafted. Safeguards within the 1987 Constitution and existing laws are available to protect the people from these abuses. x x x In addition to the safeguards provided by the Constitution, adequate remedies in the ordinary course of law against abuses and violations of human rights committed by erring public officers are available x x x. In relation to the international human rights principles established under the Universal Declaration of Human Rights (UDHR), the law enforcement officials are also guided by the principles and safeguards declared in the International Covenant on Civil and Political Rights.

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

1. POLITICAL LAW; EXECUTIVE DEPARTMENT; COMMANDER-IN-CHIEF POWERS OF THE PRESIDENT; DECLARATION OF MARTIAL LAW AND SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*; REQUIRE THE EXISTENCE OF REBELLION AS DEFINED UNDER ARTICLE 134 OF THE

REVISED PENAL CODE.— Rebellion, as applied to the exercise of the President's martial law and suspension powers, is defined under Article 134 of the Revised Penal Code x x x. The elements of rebellion are: 1. That there be (a) public uprising and (b) taking up arms against the Government; and 2. That the purpose of the uprising or movement is either: (a) to remove from the allegiance to said Government or its laws the territory of the Philippines or any part thereof, or any body of land, naval or other armed forces; or (b) to deprive the Chief Executive or the Congress, wholly or partially, of any of their powers or prerogatives.

2. ID.; ID.; ID.; EXTENSION OF THE DECLARATION OF MARTIAL LAW OR SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*; REQUIRES THAT THE INVASION OR REBELLION PERSISTS AND PUBLIC SAFETY REQUIRES THE EXTENSION.— Section 18, Article VII of the 1987 Constitution requires two factual bases for the extension of the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*: (a) the invasion or rebellion persists; and (b) public safety requires the extension. The word "persist" means "to continue to exist," "to go on resolutely or stubbornly in spite of opposition, importunity or warning," or to "carry on."

3. ID.; ID.; ID.; ID.; PERSISTENCE OF REBELLION; REBELLION IS ESSENTIALLY A CRIME OF MASSES OR MULTITUDES INVOLVING CROWD ACTION, WHICH CANNOT BE CONFINED *A PRIORI* WITHIN PREDETERMINED BOUNDS.— Undeniably, the AFP reports show that rebellion persists in Mindanao, and the violent activities, including bombing, kidnapping, harassment, and encounters with the military committed by the LTG rebel groups are in furtherance of rebellion with the goal to create a separate province or *wilayat* under the purported Islamic State caliphate (DI) and to establish an independent Bangsamoro state (BIFF) and deprive the President and the Congress of their powers or prerogatives. On the other hand, the CTG aims to overthrow the duly constituted government and establish communist rule. It must be reiterated that the gravamen of the crime of rebellion

is an armed public uprising against the government. By its very nature, rebellion is essentially a crime of masses or multitudes involving crowd action, which cannot be confined *a priori* within predetermined bounds. One aspect noteworthy in the commission of rebellion is that other acts committed in its pursuance are, by law, absorbed in the crime itself because they acquire a political character. x x x The bombings and all other attacks, kidnapping, killings, harassment, recruitment of new members, and propaganda activities conducted by the rebel and terrorist groups show that rebellion continues because these atrocities and propaganda activities are perpetrated by the same rebel groups. The concerted destabilizing activities and actions of the rebel groups are all committed in furtherance of rebellion. x x x [T]he Court should see the individual pieces of evidence which initially may look disparate and unrelated incidents. When these are seen in proper perspective, however, they would readily show that they are all part of the rebellion that justifies the exercise of martial law powers. Some acts of violence in some other parts of Mindanao, no matter how apparently far removed, in place and time, from the Marawi incident, could be another aspect of the continuing rebellion. The acts need not be confined to where it all started as they may have to be done elsewhere. Government success in quelling the uprising in one part could force the rebels to move elsewhere and continue with their operations there.

4. ID.; ID.; ID.; ID.; PUBLIC SAFETY, DEFINED; THE RANGE, EXTENT OR SCOPE OF PUBLIC SAFETY CANNOT BE PHYSICALLY MEASURED BY METES AND BOUNDS.— [W]hile it may be true that the Maute group had been eliminated in Marawi, this should not be seen as the end of the rebellion. Other individuals or groups acting in concert with or animated by the same aim as that of the Maute group, including the New People's Army (*NPA*), still operate in other parts of Mindanao, all with the purpose of wrestling power and authority from the legitimate government. If the purpose of declaring martial law in the first place is to be achieved, then all other acts of rebellion, whether done by the original group that started in Marawi or by some other related or similar groups, should be appreciated as parts intrinsically linked to the rebellion that called forth the proclamation of martial law. The seemingly disconnected

acts of violence and terrorism are interrelated parts of an ongoing rebellion that did not stop just because the government succeeded in quelling the uprising in Marawi. As shown by other incidents elsewhere, and until recently, it is apparent that the government still has some way to go to really achieve its purpose of ensuring the safety and security of the people. Moreover, public safety, which is another component element for the declaration of martial law, "involves the prevention of and protection from events that could endanger the safety of the general public from significant danger, injury/harm, or damage, such as crimes or disasters." Public safety is an abstract term; it does not take any physical form. Plainly, its range, extent or scope could not be physically measured by metes and bounds. Thus, we cannot limit the declaration of martial law only where the attacks or hostilities are happening. x x x It is also to be underscored that with modern means of communication and transportation, it is no longer that difficult for affiliated groups of rebels to communicate and move from place to place. Putting out the rebellion in Marawi does not necessarily mean the end of the rebellion as members of said movement, or their affiliated groups, could easily get in touch with each other and coordinate acts of violence, terrorism and rebellion. Or, they could easily be in one place at one time and in another a short time later.

5. ID.; ID.; ID.; DECLARATION OF MARTIAL LAW; PETITIONS QUESTIONING THE PROCLAMATION OR EXTENSION OF MARTIAL LAW; DECISIONS IN REGARD THERETO MUST BE PROMULGATED WITHIN THIRTY DAYS FROM FILING.— The Constitution mandates that this Court "must promulgate its decision" in regard to petitions questioning the proclamation or extension of martial law within thirty (30) days from filing. The language is couched in the imperative. However, this may not always be achievable, especially if the Court has to do its job of properly and meticulously evaluating the sufficiency of the factual basis. There are certain factors that would not make it feasible for the Court to render judgment within the period mandated by the Constitution. One is the fact that since it involves fact-finding, the Court could not just decide on mere allegations and counter-allegations in pleadings. It has to schedule oral

arguments, which may take days. Another factor is the possibility that there may be several petitions filed questioning the proclamation or the extension, such as in this instant proceeding, as well as in the past ones. x x x Also, the need for the Court to deliberate could result in various opinions, especially when it comes to contentious cases, such as this case. x x x Further, given the fact that when it comes to the extension of martial law, the Congress also has a definitive say, not only that of the President, the Court may have to need additional time to carefully evaluate the factual basis to determine its sufficiency in accordance with the constitutional intent. x x x Given all the foregoing considerations, as well as others that may arise, the Court may not be able to promulgate the decision within the time frame as envisioned by the Fundamental Law. Some delay may be occasioned, but the Court must still act with all deliberate dispatch in keeping with the letter and spirit of the constitutional provision x x x The settled rule is that jurisdiction once acquired is not lost until the case has been terminated."

6. ID.; ID.; ID.; ID.; EXISTENCE OF REBELLION; REBELLION UNDER THE CONCEPT OF MARTIAL LAW MAY BE GIVEN A MEANING THAT TAKES INTO ACCOUNT OTHER FORMS BY WHICH PEOPLE SEEKING TO OVERTHROW THE GOVERNMENT CAN ACCOMPLISH IT.— Rebellion, as a justification for the proclamation of martial law, has been directly identified with the crime as defined in the Revised Penal Code. It might be time for the Court to revisit this aspect and give it a meaning that is attuned to the digital world. Martial law as a means for the State to defend itself should not be limited to the technical meaning as set out in the penal laws requiring the use of arms. In these modern times where the use of computers presents the possibility of rebels crippling government operations, rebellion under the concept of martial law may be given a meaning that takes into account other forms by which people seeking to topple or overthrow the government can accomplish it. In the cyber age, rebellion may not simply be waged by arms but also by some other means which could achieve the same purpose — arms should not be confined to traditional meaning of firearms and ammunition but also digital weapons.

7. ID.; ID.; ID.; ID.; SUFFICIENCY OF FACTUAL BASIS; IN THE DETERMINATION THEREOF, THE COURT MUST EXERCISE ITS DUTY IN A MANNER THAT RECOGNIZES THE INITIAL PRIMARY RESPONSIBILITY OF THE POLITICAL BRANCHES TO EVALUATE FACTS AND CIRCUMSTANCES IN DECIDING WHETHER OR NOT TO EXTEND THE DURATION OF MARTIAL LAW.— While the Court is mandated by the Constitution to determine the sufficiency of the factual basis for the declaration of martial law, or its extension, some consideration must still be given to the factual determination by the President and the Congress. We must not lose sight of the fact that we are not armchair generals second guessing those who are in the field of battle. We may have better perspective from a distance and in hindsight, but then we cannot really see the other details that have to be carefully evaluated and calibrated by the President and the Congress when they act together to extend the duration of martial law. Some leeway, therefore, must be accorded the political departments when it comes to the Court's exercise of its duty to determine sufficiency of the factual basis for the extension of martial law. Nitpicking when it comes to the evidence presented by the government would be inappropriate. x x x The Court must do its job, but it must be done in a manner that recognizes the initial primary responsibility of the political branches to evaluate facts and circumstances in deciding whether or not to extend the duration of martial law. Therefore, some pieces of evidence considered by the President and the Congress should not just be dismissed because it does not conform to the Court's idea of acceptable and credible evidence that would support a judicial determination in ordinary litigation. The evidence available may at best be justified by a consideration of interrelated pieces which are inherently difficult to gather given the fact that rebellion, including terrorism, is an act that would have to employ stealth and secrecy to succeed. Rebellion may have to rely on surprise brought about by the government's failure to appreciate the small and apparently disparate acts or activities all leading to the open outbreak or manifestation of acts to overthrow the government.

PERLAS-BERNABE, *J.*, *separate concurring opinion*:

1. POLITICAL LAW; EXECUTIVE DEPARTMENT; COMMANDER-IN-CHIEF POWERS OF THE PRESIDENT; EXTENSION OF DECLARATION OF MARTIAL LAW; REQUISITES; IN CASES INVOLVING THE EXAMINATION OF A MARTIAL LAW EXTENSION, THE COURT HAS TO DETERMINE WHETHER OR NOT THERE IS SUFFICIENT FACTUAL BASIS TO SHOW THAT THE INVASION OR REBELLION STILL PERSISTS AND PUBLIC SAFETY REQUIRES THE EXTENSION.— [I]n cases involving the examination of a martial law extension, the Court's task is to determine whether or not there is sufficient factual basis to show that: (*a*) the invasion or rebellion still persists; and (*b*) public safety requires the extension. Pursuant to Section 18, Article VII of the 1987 Constitution, these two (2) requirements ought to be satisfied by Congress before it may properly decree another martial law extension.

2. ID.; ID.; ID.; ID.; PERSISTENCE OF REBELLION; A REBELLION SURVIVES IN LEGAL EXISTENCE UP UNTIL THE REBELLIOUS MOVEMENT STOPS, SUCH AS WHEN THE REBELS HAVE ALREADY SURRENDERED OR THAT THEY ARE CAUGHT BY GOVERNMENT OPERATIVES, AND A SATISFACTORY SHOWING OF THE REBEL MOVEMENT'S SUBSTANTIAL INACTIVITY OR LOSS OF CAPABILITY TO MOUNT A PUBLIC UPRISING WOULD REASONABLY SUFFICE.— "[A] rebellion, **because of its peculiar conceptual features, survives in legal existence up until the rebellious movement stops**, such as when the rebels have **already surrendered** or that they are **caught by government operatives**. As it may, however, be impractical, if not impossible, to accurately ascertain if all the members of a rebel movement have surrendered or have been killed or captured at a certain point in time, then **a satisfactory showing of the rebel movement's substantial inactivity or loss of capability to mount a public uprising would reasonably suffice**." Based on the evidence presented by respondents in these cases, there is no sufficient indication that the rebellion spearheaded by the Maute-Hapilon group — who was primarily

responsible for the infamous Marawi siege — has been substantially inactive or has lost the capability to mount a public uprising. x x x Moreover, as respondents have noted, the other DAESH/ISIS-linked rebel groups, which include the Abu Sayyaf Group (ASG) and the Bangsamoro Islamic Freedom Fighters (BIFF), are still continuously conducting their radicalization and recruitment activities in Mindanao. These rebel groups are still actively contending with the military and the police through the numerous violent incidents indicated in their reports, and the bombing incidents throughout Mindanao, most notably, the twin blasts on a church in Jolo, Sulu.

3. ID.; ID.; ID.; ID.; A GRANT THEREOF MAY BE JUSTIFIED BY SUPERVENING EVENTS WHICH NOT ONLY PERTAIN TO THE REGROUPING OF THE REBEL REMNANTS BUT ALSO THE INCLUSION OF OTHER REBEL GROUPS, WHOSE REBELLIOUS ACTIVITIES DURING THE SUPERVENING PERIOD MAY HAVE AMPLIFIED, IF NOT COMPLICATED, THE SITUATION.— [A] grant of an extension of martial law may be justified by "**supervening events [which] not only pertain to the regrouping efforts of the x x x rebel 'remnants' but also the inclusion of other rebel groups, x x x, whose rebellious activities during the supervening period may have amplified - if not, complicated - the situation**. As the Constitution reads, the persistence of an invasion or rebellion (together with the public [safety] requirement) is sufficient for an extension to be decreed. Nowhere has it been required that the extension should solely relate to the supervening activities of the same rebel group covered by the initial proclamation." Notably, it has been argued that the "violent incidents" of these rebel groups have not been substantiated enough by respondents owing to the incomplete entries, non-identification of perpetrators, unstated motives, and inclusion of incidents that are unrelated to rebellion, in the reports. However, to my mind, the existence of minor inconsistencies or the hiatus of information on certain attending details is not entirely fatal to respondents' cause. x x x In my view, absent any palpable indication of any falsity, ill motive, or unreasonableness on the part of the government, due deference should be accorded to the institutional capabilities of our military, which have gained enough experience on the

ground to make critical decisions regarding the safety of our country. Verily, one should be cognizant that the military is, after all, a human institution which is not expected to be completely infallible; thus, the recommending officers may altogether make strategic calculations based on "imperfect" disclosures. As the old adage goes, "incomplete information is better than one that is complete but too late to be used."

4. ID.; ID.; ID.; ID.; PERSISTENCE OF REBELLION; TO CONCLUDE THAT THERE IS ADEQUATE PROOF ON THE PERSISTENCE OF REBELLION, IT SHOULD SUFFICE THAT BASED ON THE CIRCUMSTANCES OBSERVED ON THE GROUND, THERE EXISTS REASONABLE FACTUAL BASIS THAT THE ARMED ENCOUNTERS ARE DRIVEN BY MOTIVES ANCHORED ON REBELLION.— [T]he fact that respondents have not specifically identified the perpetrators or have unstated motives for a *limited* number of incidents should not detract from the overall veracity of the x x x reports. Requiring the military to adduce more detailed information with regard to these incidents may be tantamount to demanding more than "adequate proof of compliance with the constitutional requisites." More so, respondents cannot be completely faulted for failing to clearly establish the motive of these groups *corresponding to each of these incidents*. Motive, as a state of mind, is difficult to prove with exactitude, much more on an isolated basis. One must have a holistic appreciation of the circumstances relevant to the said action to ascertain such a motive. In this regard and keeping in mind the *sui generis* nature of this proceeding, respondents should not be expected to be able to prove motive in the same way that one would prove motive in a criminal proceeding. It should suffice that based on the circumstances observed on the ground, there exists reasonable factual basis that the armed encounters are driven by motives anchored on rebellion. At the risk of belaboring the point, respondents' assertion that these incidents are committed in furtherance of a rebellion was borne from the military's "years of experience on the ground, their expertise in military strategy, and their capacity to make split-second decisions." Accordingly, based on the evidence presented, and absent any compelling reason to hold otherwise, I am inclined to conclude that there exists

adequate proof on the persistence of the rebellion contemplated under Proclamation No. 216, which means that the same has not been rendered *functus officio*.

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

1. POLITICAL LAW; EXECUTIVE DEPARTMENT; COMMANDER-IN-CHIEF POWERS OF THE PRESIDENT; DECLARATION OF MARTIAL LAW AND SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*; SUFFICIENCY OF FACTUAL BASIS; SHALL BE REVIEWED BY THE SUPREME COURT ON A PROBABLE CAUSE STANDARD.— Section 18, Article VII of the 1987 Constitution vests upon the Court the authority to review the factual basis of the President's declaration of martial law and suspension of the privilege of the writ of *habeas corpus* or to any extension thereof. This authority has been expressly recognized as *sui generis* x x x. However, in order to properly exercise this special power of judicial review, the Court must be mindful of its boundaries and limitations. x x x [T]he scope of the Court's power to review under Section 18, Article VII should be confined to the determination of whether the President's exercise of his powers as Commander-in-Chief under said provision, or in this case, the extension of the imposition of martial law and the suspension of the writ of *habeas corpus*, has "sufficient factual basis." x x x With that being said, the Court has been unequivocal in ruling that "sufficient factual basis" necessarily connotes that the President has probable cause to believe that: (1) that there exists an actual invasion or rebellion; and (2) that public safety so requires the imposition of martial law or the suspension of privilege of the writ of *habeas corpus* or the extension thereof. The Court has already clarified in the past that it is axiomatically the probable cause standard, and none other, that should guide the President to establish the existence of the above-mentioned conditions. *Probable cause* here means such evidence which would lead a reasonable man, making use of common sense, to believe that more likely than not, there is actual rebellion or invasion.

2. ID.; ID.; ID.; ID.; ID.; THE DETERMINATION OF WHETHER ALL THE INFORMATION PRESENTED,

TAKEN AS A WHOLE, IS ENOUGH TO PORTRAY THAT A STATE OF REBELLION EXISTS AND THAT THE FURTHER EXTENSION OF MARTIAL LAW IS REQUIRED TO PROTECT PUBLIC SAFETY, IS ENTIRELY THE JUDGMENT CALL OF THE PRESIDENT.— In making an assessment, the Court should consider the totality of the information constituting the "factual basis" of the declaration or extension. All the pieces of evidence should be appraised and evaluated in their entirety, and not on a piecemeal or individual basis. Taken altogether, the information must be sufficient to convince an ordinary man of ordinary intelligence that there is an on-going rebellion. x x x [T]he determination of the absolute correctness, accuracy, or precision of the facts which were made the basis of the imposition of martial law or its extension is not within the power of this Court to ascertain. More simply put, the determination of whether all the information presented, taken as a whole, in spite of inherent obscurities and inconsistencies, is enough to portray that a state of rebellion exists and that the further extension of martial law is required to protect public safety, is entirely the judgment call of the President.

3. **ID.; ID.; ID.; ID.; REQUIREMENT OF REBELLION; THE CRIME OF REBELLION IS COMPLETE THE VERY MOMENT A GROUP RISES PUBLICLY AND TAKES UP ARMS AGAINST THE GOVERNMENT, FOR THE PURPOSE OF OVERTHROWING THE LATTER BY FORCE.—** By its nature and through a perusal of the elements that make up the offense, rebellion can be properly termed as a crime of the masses or multitudes involving crowd action done in furtherance of a political end. Rebellion is committed by rising publicly and taking arms against the government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or other armed forces, or depriving the President or the Legislature, wholly or partially, of any of their powers or prerogatives. x x x The crime of rebellion is complete the very moment a group rises publicly and takes up arms against the Government, for the purpose of overthrowing the latter by force. The Revised Penal Code (RPC) speaks of the intent or purpose to overthrow the

Government as the subjective element, while the acts of rising publicly and taking arms against the Government, which is milder than the more aggressive phrase "levies war" used in the definition of treason under the RPC, is the normative element of the offense, *i.e.* related to the norms or standards given. x x x The finding that the incidences of violence are recurring are a logical and alarming consequence of rebellion's characterization as continuous and supportive of the stance to extend martial law. x x x The continuance and lingering effects of rebellion can be seen from the tangible incidents still attendant even at this later juncture. x x x These reported acts constitute the public uprising and a show of force against the government that would indicate that the rebellion has yet to be quelled. Martial law will be beneficial and not prejudicial in bringing safety and security to the Mindanao region, especially as already manifested by the respondents, there have been orders issued during both the proclamation of martial law in Mindanao and the subsequent extension, which have not yet completed the implementation phase. x x x [There is a] need to preserve the public's safety in the affected areas. Public safety, which is another component element for the declaration of martial law, "involves the prevention of and protection from events that could endanger the safety of the general public from significant danger, injury/harm, or damage, such as crimes or disasters," and the continuing and even escalating violence and threats to public safety dictate that this Court finds in favor of the executive's prerogative to move forward with the extension of martial law.

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

1. POLITICAL LAW; EXECUTIVE DEPARTMENT; COMMANDER-IN-CHIEF POWERS OF THE PRESIDENT; EXTENSION OF PROCLAMATION OF MARTIAL LAW OR SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*; LIMITATIONS; FAILURE TO COMPLY THEREWITH SHALL RESULT TO THE INVALIDITY AND NULLITY OF THE EXTENSION OF SUCH PROCLAMATION AND SUSPENSION.— Sec. 18, Art. VII specifically establishes the

limitations in the exercise of the congressional authority to extend such proclamation or suspension, to wit: 1. That the extension should be upon the President's initiative; 2. That it should be grounded on the persistence of the invasion or rebellion and the demands of public safety; and 3. That it is subject to the Court's review of the sufficiency of its factual basis upon the petition of any citizen. Hence, these three (3) limitations must be present in any extension of the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus*. Failure to comply with any of these limitations shall result to the invalidity and nullity of the extension of such proclamation and suspension.

2. **ID.; ID.; ID.; ID.; SUFFICIENCY OF FACTUAL BASIS; IN REVIEWING THE SUFFICIENCY OF FACTUAL BASIS, THE SUPREME COURT MUST DETERMINE WHETHER THE EXTENSION OF PROCLAMATION OF MARTIAL LAW OR THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IS GROUNDED ON THE PERSISTENCE OF AN INVASION OR REBELLION AND THE DEMANDS OF PUBLIC SAFETY.—** [T]he extension of such proclamation and suspension is currently the subject of the Court's review for the sufficiency of its factual basis. x x x [I]n reviewing the present petitions, the Court must always bear in mind that it must determine whether or not the President is convinced based on the quantum of proof of probable cause that, more likely than not, a rebellion was committed or is being committed. x x x In addition, the Court cannot require the absolute correctness of the facts relied on by the President due to the urgency of the situation x x x. [W]hether the extension of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* is grounded on the persistence of an invasion or rebellion and the demands of public safety — is the primordial issue that must be determined by the Court.

3. **CRIMINAL LAW; REVISED PENAL CODE; REBELLION; ELEMENTS.—** Art. 134 of the Revised Penal Code (*RPC*) defines the crime of rebellion x x x. [T]he elements of the crime of rebellion are as follows: 1. That there be (a) public uprising, and (b) taking up arms against the Government; and 2. That the purpose of the uprising or movement is either: (a) to remove

from the allegiance to said Government or its laws, the territory of the Philippines or any part thereof, or any body of land, naval or other armed forces or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers or prerogatives. On the other hand, Art. 135 of the RPC, as amended by Republic Act (*R.A.*) No. 6968, states the x x x means to commit the crime of rebellion and the penalties for different participations thereof x x x.

4. POLITICAL LAW; EXECUTIVE DEPARTMENT; COMMANDER-IN-CHIEF POWERS OF THE PRESIDENT; DECLARATION OR EXTENSION OF THE PROCLAMATION OF MARTIAL LAW OR SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*; REQUIREMENT OF REBELLION; A BROADER SCOPE OF REBELLION MUST BE CONSIDERED TO INCLUDE MODERN TACTICS WHICH DO NOT CONTEMPLATE TRADITIONAL ARMED STRUGGLE.— Based on the purpose of the crime of rebellion — which is to remove from the allegiance to Government or its laws, the territory of the Philippines or any part thereof, or any body of land, naval or other armed forces - several acts may be committed necessarily in furtherance of the rebellion. But, even though several acts were committed, these acts still constitute as one crime of rebellion as long as they were committed in furtherance of their secessionist goal. x x x Likewise, the rebellion contemplated under the Constitution for the declaration or extension of the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus* is not confined to the traditional concept of armed struggle or in the theater of war. x x x The Constitutional framers had the astute foresight to consider the possibility that modern rebellion would involve a more sophisticated manner of execution with the use of advanced technology and even mass media. They discussed the possibility that rebels may conduct isolated attacks in different places orchestrated to paralyze the country and destabilize the government. x x x Thus, the traditional concept of rebellion, where there is actual use of weapons concentrated in a single place, is not the sole concept of actual rebellion envisioned under the 1987 Constitution. While there may be several acts committed separately in a particular region, these

predicate acts would still be included in one crime of rebellion. These isolated attacks in different places must be examined on whether they were orchestrated to paralyze the country and destabilize the government. In other words, these attacks should not be considered in isolation in a particular area; rather, these must be considered in the totality of the armed struggle of the perpetrators. Also, the Court must consider a broader scope of rebellion, to include modern tactics which do not contemplate traditional armed struggle. With this complete picture of the concept of rebellion, the Court can judiciously determine the persistence of actual rebellion in Mindanao based on the probable cause or delivered by the President.

5. ID.; ID.; ID.; ID.; NECESSARY FOR THE PROTECTION OF THE SECURITY OF THE NATION.— The overriding and paramount concern of martial law is the protection of the security of the nation and the good and safety of the public. Indeed, martial law and the suspension of the privilege of the writ of *habeas corpus* are necessary for the protection of the security of the nation; suspension of the privilege of the writ of *habeas corpus* is precautionary, and although it might curtail certain rights of individuals, it is for the purpose of defending and protecting the security of the state or the entire country and our sovereign people. In this case, after determining that actual rebellion exists based on probable cause, the President also found that the extension of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* are necessary for ensuring the public safety of the people in Mindanao. x x x The magnitude of the atrocities continuously perpetrated by x x x [the] rebel groups reveals their capacity to continue inflicting serious harm and injury, both to life and property. The sinister plans of attack, as uncovered by the AFP, confirm this real and imminent threat. The manpower and armaments these groups possess, the continued radicalization and recruitment of new rebels, the financial and logistical build-up cited by the President, and more importantly, the groups' manifest determination to overthrow the government through force, violence and terrorism, present a significant danger to public safety.

6. ID.; ID.; ID.; ID.; THE POWERS OF REVIEW OF THE SUPREME COURT AND CONGRESS ARE

INDEPENDENT AND DISTINCT, BUT THESE POWERS SHOULD BE COORDINATE WITH EACH OTHER IN DETERMINING THE VALIDITY OF THE PROCLAMATION AND SUSPENSION.— The President and the Congress properly exercised their joint executive and legislative act in extending the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus*. x x x [U]nlike the power of the Court, Congress has a broad power of review under Sec. 18, Art. VII. x x x [W]hen Congress approved the extension of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* initiated by the President, which resulted into a joint executive and legislative act, Congress exercised its broad power of review. It had the power to take into consideration not only data available prior to, but likewise events supervening the declaration, and it could delve into the accuracy of the facts presented before it. In spite of the rigorous review undertaken by the legislative branch, the President's request for the extension of such proclamation and suspension was approved by Congress. **Nevertheless, while the Court and Congress' powers of review are independent and distinct, these powers should, at the very least, be coordinate with each other in determining the validity of the extension of the such proclamation and suspension.** x x x Indeed, the three co-equal branches of the government, while acting independently, must give utmost respect to the findings of each other. When there is a clear insufficiency of factual basis, the Court must effectively nullify the extension of such proclamation or suspension for violating the Constitution; otherwise, the joint executive and legislative act must be upheld and recognized. Pursuant to the Court's review of sufficiency of factual basis, the extension of such proclamation and suspension, which was approved by the overwhelming majority of Congress, passed the arduous requirements imposed by Sec. 18, Art. VII of the Constitution. Thus, the extension of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* is constitutionally justified.

REYES, J. JR., *J.*, *separate concurring opinion*:

1. POLITICAL LAW; EXECUTIVE DEPARTMENT; COMMANDER-IN-CHIEF POWERS OF THE PRESIDENT; EXTENSION OF MARTIAL LAW AND SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*; SUFFICIENCY OF FACTUAL BASIS; IN THE DETERMINATION THEREOF, THE SUPREME COURT CONSIDERS IT IMPERATIVE TO REVIEW THE FACTUAL CIRCUMSTANCES IN ALL RESPECTS AND NOT INDEPENDENTLY.— This Court had already definitively addressed the issue on the determination of the presence of rebellion and its relation to the supposed inaccuracies in reports in the case of *Lagman v. Medialdea*. In said case, this Court considered it imperative to review the factual circumstances in all respects and not independently x x x. Undoubtedly, this calls for the survey of the reports in its entirety. x x x The bombings, violent incidents and other related crimes cannot be discounted as many were killed and injured. Similarly, the recruitment of new members must be noted. All these events were executed in furtherance of the rebel groups' purpose of seizing parts of Mindanao and depriving the government of its power over the same. Moreover, it is worthy to emphasize that it is unlikely to acknowledge rebellion as being committed by *identified* groups of men engaging in an armed conflict with the government in the case of *Lagman v. Pimentel III* x x x.

2. ID.; ID.; ID.; ID.; PERSISTENCE OF REBELLION; FOR THE CRIME OF REBELLION TO BE CONSUMMATED, IT IS NOT REQUIRED THAT ALL ARMED PARTICIPANTS SHOULD CONGREGATE IN ONE PLACE AND PUBLICLY RISE IN ARMS AGAINST THE GOVERNMENT FOR THE ATTAINMENT OF THEIR CULPABLE PURPOSE.— In *Lagman v. Medialdea*, this Court highlighted that rebellion is not confined within predetermined bounds; and for the crime of rebellion to be consummated, it is not required that all armed participants should congregate in one place and publicly rise in arms against the government for the attainment of their culpable purpose. Alternatively put, the fact that reported violent incidents occurred in certain areas does not negate their advancement in other parts of Mindanao.

3. ID.; ID.; ID.; ID.; ID.; THE HALTING OF THE ARMED COMBAT IN MARAWI IN CASE AT BAR DID NOT AUTOMATICALLY AMOUNT TO AN ABSENCE OF REBELLION.— The acts committed by the rebel groups, aside from the Maute group, cannot simply be avoided. The halting of the armed combat in Marawi did not automatically amount to an absence of rebellion. x x x [R]ebellion in Mindanao is still subsisting. It is worthy to emphasize that in the two *Lagman* cases, this Court already accepted that rebellion cannot be characterized in isolation. Significantly, the perpetration by the local terrorist groups and other communist terrorist groups, as indicated in Proclamation No. 216, should be unquestioned. To reiterate, absolute precision cannot be expected from the President who would have to act quickly given the urgency of the situation. It would be more dangerous to require the President to classify and tag rebel groups with rigor before deciding on the need to implement the extension of Martial Law and the suspension of the privilege of the writ of *habeas corpus*, precisely because the actual rebellion and attack, more than the exact identity of all its perpetrators, would be his utmost concern.

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

1. POLITICAL LAW; EXECUTIVE DEPARTMENT; COMMANDER-IN-CHIEF POWERS OF THE PRESIDENT; PROCLAMATION OF MARTIAL LAW OR SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*; SUFFICIENCY OF FACTUAL BASIS; PARAMETERS; IN DETERMINING THE SUFFICIENCY OF FACTUAL BASIS, THE SUPREME COURT LOOKS INTO FULL COMPLEMENT OR TOTALITY OF SUCH FACTUAL BASIS.— [Section 18, Article VII of the Constitution] obliges the Supreme Court to review the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ, or the extension thereof in an appropriate proceeding filed by any citizen. Consistent with the principle of checks and balances in our Constitution, the review we undertake herein is a check on the executive's and the legislative's separate but related powers to initiate and extend the declaration of Martial Law. This delineation of powers

mapped out in Section 18 has already been settled and drawn by this Court in *Lagman v. Medialdea* and enhanced further in *Lagman v. Pimentel* III. In *Lagman v. Medialdea*, the Court firmly outlined the parameters in determining the sufficiency of the factual basis for the declaration of Martial Law: (a) actual rebellion or invasion; (b) public safety requires it; and (c) there is probable cause for the President to believe that there is actual rebellion or invasion. The Court further explained that in determining the sufficiency of the factual basis, it looks into the full complement or totality of such factual basis x x x.

2. ID.; ID.; ID.; ID.; THE QUANTUM OF EVIDENCE THAT THE PRESIDENT NEEDS TO SATISFY IN ORDER TO DECLARE MARTIAL LAW AND SUSPEND THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* AND EXTEND THE SAME IS PROBABLE CAUSE.— The President x x x is not expected to completely validate all the information he received before he can request for the extension of martial law. He needs only to convince himself that there is probable cause or evidence showing that more likely than not a rebellion was committed or is being committed. The quantum of evidence that the President needs to satisfy in order to declare martial law and suspend the privilege of the writ of *habeas corpus* and extend the same is probable cause. Probable cause does not require absolute truth. It has been defined as a "*set of facts and circumstances as would lead a reasonably discreet and prudent man to believe that the offense charged in the Information or any offense included therein has been committed by the person sought to be arrested*." This Court's power to review, therefore, is limited only to the examination on whether the President acted within the bounds set by the Constitution, *i.e.*, whether or not the facts in his possession prior to and at the time of the declaration or suspension are sufficient for him to declare martial law or suspend the privilege of the writ.

3. ID.; ID.; ID.; ID.; THE FUNDAMENTAL PRECEPTS IN ADMINISTRATIVE FACT-FINDING PROCEEDINGS CANNOT BE MADE TO APPLY TO RECOMMENDATIONS MADE BY THE MILITARY AND THE POLICE TO THE PRESIDENT, IN RELATION TO THE FACT-FINDING INQUIRIES WHICH ESTABLISHES

THE POSITIVE THREAT TO NATIONAL SECURITY AND PUBLIC SAFETY.— I cannot agree to the proposition that certain fundamental precepts in administrative fact-finding are applicable in the cases at bar. Such a proposal confuses the parameters and scope of the investigatory powers of the military and police in determining threats to national security and public safety. There is no dissension on my end as to the exposition of *Ang Tibay v. Court of Industrial Relations*, relative to fundamental precepts in administrative fact-finding investigations or proceedings. However, these tenets cannot be made to apply to recommendations made by the military and the police to the President, in relation to its fact-finding inquiries which establishes the positive threat to national security and public safety posed in Mindanao. The investigating functions of the military and the police do not endow them with quasi-judicial powers requiring them to make a finding of substantial evidence in each of their investigations. x x x It is my view that the nature of the evidence that support the findings established out of this investigatory power, which is essentially the function of the military and police, is not substantial evidence, which is the norm in administrative cases. Indeed, in a Section 18 review of the sufficiency of the factual basis for the declaration of martial law, the President need only find probable cause for the existence of rebellion (or invasion) and that the declaration of martial law is required by public safety. x x x Here, the military and the police, performed their function of providing intelligence reports resulting from their investigations, to the President, the Commander-in-Chief. Although these reports may have contained discrepancies, the President, in his discretion, found probable cause to believe that the rebellion in Mindanao is ongoing and that public safety is endangered, thereby requiring him to request for the further extension of Martial Law in Mindanao for another year. Thus, I find that the President's factual basis to further extend Proclamation No. 216 is grounded on validated confidential information which were lifted from ground level activities and intelligence reports gathered by the military. These validated incidents and circumstances encountered by the military in the area necessitate the extension of Proclamation No. 216 in Mindanao.

4. ID.; ID.; ID.; ID.; CONGRESS IS VESTED WITH THE DISCRETION TO DETERMINE THE DURATION OF AND THE NUMBER OF EXTENSIONS OF MARTIAL LAW.— The extension of Proclamation No. 216 is categorically within the powers of Congress and is shorn up by the ruling in *Lagman v. Pimentel III*. We need not look beyond Section 18 which clearly grants unto Congress the power to shorten or extend the President's proclamation of Martial Law or suspension of the privilege of the writ of *habeas corpus* x x x. [T]he proviso which declares that "[U]pon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension *for a period to be determined by the Congress*, if the invasion or rebellion shall persist and public safety requires it" is silent on the number of times Congress may extend the effectivity of martial law as well as its duration. Evidently, Congress is vested with the discretion to determine the duration of and the number of extensions of the martial law. x x x [T]he framers of the Constitution fitted Congress with enough flexibility to determine the duration of the extension without prejudice to the President's request for another extension. This is only logical and proper considering that the amount of time necessary to quell a rebellion cannot be measured with mathematical accuracy, definitiveness or even finality.

5. ID.; ID.; ID.; ID.; THE ISSUE ON THE MANNER BY WHICH CONGRESS DELIBERATES ON THE PRESIDENT'S REQUEST FOR EXTENSION IS A POLITICAL QUESTION WHICH IS NOT SUBJECT TO JUDICIAL REVIEW.— This Court, in *Lagman v. Pimentel III*, already ruled on the issue of the manner by which Congress deliberates on the President's request for extension, which issue is not subject to judicial review. Indeed, "the Court cannot review the rules promulgated by Congress in the absence of any constitutional violation." Upon evaluation, the petitioners unfortunately failed to provide evidence in order to demonstrate to this Court how Congress conducted its joint session in a manner which contradicted the Constitution or its own rules. Hence, there is no merit in petitioners' contention that the members of the Congress were given merely a short period of time to discuss and explain their arguments before the voting to extend Proclamation No. 216. The motivations of each member of Congress and the duration on which they deliberated on the

President's request for a third extension are political questions which the Court need not rule on. Simply put, Congress, as a body, performed its functions within the ambit of the Constitution and the authority granted therein.

6. ID.; ID.; ID.; ID.; THE LENGTHENING OF MARTIAL LAW SHOULD REST ON THE FACT THAT THERE IS SUFFICIENT BASIS THAT REBELLION STILL EXISTS AND THAT PUBLIC SAFETY REQUIRES THE SAME AND SHOULD NOT DEPEND ON THE PARTICULAR GROUP MENTIONED IN THE PROCLAMATION.— Despite the cessation of the Marawi siege, Proclamation No. 216 has not become *functus officio*. x x x [E]ven with the end of the Marawi siege, rebellion persists as confirmed by the various validated reported incidents submitted by the military such as bombing incidents, kidnapping episodes and other atrocities. In addition, modern day rebellion need not take place in the battlefield of the parties' own choosing. It may also include underground propaganda, recruitment, procurement of arms and raising of funds which are conducted far from the battle fronts. x x x [T]he fact that the Maute group had been vanquished does not mean that the rebellion in Mindanao has been finally quelled; neither does it prohibit the extension of the initial or original proclamation of Martial Law. To my mind, as long as the rebellion persists and there is an undeniable threat to public safety, regardless of whoever or whichever group is waging the same, the original or initial declaration of martial law, or even its subsequent extension, would stand firmly on constitutional moorings. The lengthening of martial law should not depend on the particular group mentioned in the Proclamation; rather, it should rest on the fact that there is sufficient basis that rebellion still exists and that public safety requires the same. The qualifying factors must be the very existence of rebellion or invasion and threat to public safety. Significantly enough, Proclamation No. 216 did not exclusively refer to the Maute rebellion; "other rebel groups" were clearly referenced therein.

CARPIO, *J.*, *dissenting opinion*:

1. POLITICAL LAW; EXECUTIVE DEPARTMENT; COMMANDER-IN-CHIEF POWERS OF THE PRESIDENT; DECLARATION OF MARTIAL LAW; THE DECLARATION OF MARTIAL LAW ON THE GROUND OF REBELLION REQUIRES THE EXISTENCE OF ACTUAL REBELLION, NOT AN IMMINENT DANGER OF REBELLION OR THREAT OF REBELLION.— [T]he declaration of martial law on the ground of rebellion under paragraph 3, Section 18, Article VII of the 1987 Constitution requires the **existence of an *actual* rebellion**, not an *imminent danger* of rebellion or *threat* of rebellion. x x x Imminent danger or threat of rebellion is not sufficient. The 1987 Constitution requires the existence of **actual rebellion**. "Imminent danger" as a ground to declare martial law or suspend the privilege of the writ, which ground was present in both the 1935 and 1973 Constitutions, was intentionally removed in the 1987 Constitution. By the intentional deletion of the words "imminent danger" in the 1987 Constitution, **actual rebellion** is now required and the President can no longer use imminent danger of rebellion as a ground to declare martial law or suspend the privilege of the writ. Thus, the President cannot proclaim martial law or suspend the privilege of the writ absent an **actual rebellion**. This is the clear, indisputable letter and intent of the 1987 Constitution. This Court in *Lagman v. Medialdea* held that the term "**rebellion**" in Section 18, Article VII of the 1987 Constitution refers to the crime of rebellion as defined by the Revised Penal Code x x x. **By definition, Article 134 of the Revised Penal Code requires an actual rebellion for the crime of rebellion to exist. Since there is no longer an actual rebellion by the Maute group in Marawi City and there is no showing of an actual Maute rebellion in other parts of Mindanao, Joint Resolution No. 6, extending martial law and the suspension of the privilege of the writ, is therefore unconstitutional.**

2. ID.; ID.; ID.; DECLARATION OF MARTIAL LAW OR SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*; REQUISITES.— In exercising his

Commander-in-Chief power to declare martial law or suspend the privilege of the writ, the President is required by the 1987 Constitution to establish the following: **(1) the existence of rebellion or invasion**; and (2) public safety requires the declaration of martial law or suspension of the privilege of the writ to suppress the rebellion or invasion. Needless to say, the absence of either element will not authorize the President, who is sworn to defend the Constitution, to exercise his Commander-in-Chief power to declare martial law or suspend the privilege of the writ.

3. CRIMINAL LAW; REVISED PENAL CODE; REBELLION; ELEMENTS.— Based on its statutory definition in the Revised Penal Code, the crime of rebellion has the following elements: (1) there is a (a) public uprising and (b) taking arms against the Government; and (2) the purpose of the uprising is either (a) to remove from the allegiance to the Government or its laws: (1) the territory of the Philippines or any part thereof; or (2) any body of land, naval, or other armed forces; or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives.

4. POLITICAL LAW; EXECUTIVE DEPARTMENT; COMMANDER-IN-CHIEF POWERS OF THE PRESIDENT; EXTENSION OF THE DECLARATION OF MARTIAL LAW AND SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*; THE IDENTITY OF THE REBEL GROUP USED BY CONGRESS TO EXTEND MARTIAL LAW AND SUSPEND THE PRIVILEGE OF THE WRIT MUST BE LIMITED TO THE SAME REBEL GROUP CONTAINED IN THE INITIAL PROCLAMATION OF THE PRESIDENT; CASE AT BAR.— [T]he authority of Congress to extend the proclamation of martial law and the suspension of the privilege of the writ must be strictly confined to the actual rebellion cited by President Rodrigo Roa Duterte (President Duterte) in Proclamation No. 216. **The said proclamation clearly identifies the "Maute group" as the only rebel group subject of the proclamation, which specifically mentions the Maute group as rebelling by "rising (publicly) and taking arms against the [g]overnment for the purpose of removing from the allegiance**

to said [g]overnment" Marawi City. x x x The identity of the rebel group used by Congress to extend martial law and suspend the privilege of the writ must be limited to the same rebel group contained in the initial proclamation of the President. This is in consonance with Section 18, Article VII of the 1987 Constitution x x x. The Constitution is clear that upon the initiative of the President and the joint voting of both chambers of Congress, the proclamation of martial law and the suspension of the privilege of the writ may be extended "if the x x x rebellion shall **persist**" or, in simpler terms, if the rebellion led by the rebel group cited in the initial proclamation shall **continue**. In this case, the rebellion of the Maute group had undoubtedly been terminated upon the death of their leader, Isnilon Hapilon, and the liberation of Marawi City. In fact, in a statement dated 17 October 2017, President Duterte publicly declared "**Marawi's liberation and beginning of (Marawi City's) rehabilitation**." On October 2017, National Defense Secretary Delfin Lorenzana also affirmed the "**termination of all combat operations in Marawi City**." Furthermore, in the year 2018, the President and representatives of the Armed Forces of the Philippines have been consistent in their public statements that the actual rebellion in Marawi City had finally ended x x x. Hence, the end of the armed Maute rebellion bars the extension of Proclamation No. 216 which was issued because of the Maute rebellion. Any extension pursuant to Proclamation No. 216 under Joint Resolution No. 6 is unconstitutional. To uphold the extension of martial law and the suspension of the privilege of the writ under Joint Resolution No. 6 in the absence of an actual rebellion would sanction a clear violation of Section 18, Article VII of the 1987 Constitution.

5. ID.; ID.; ID.; DECLARATION OF MARTIAL LAW AND SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*; THE GOVERNMENT BEARS THE BURDEN OF PROOF OF SHOWING THE SUFFICIENCY OF THE FACTUAL BASIS THEREOF.— The burden of proof to show the sufficiency of the factual basis of the declaration of martial law and the suspension of the privilege of the writ is on the Government. The *sui generis* proceeding under paragraph 3, Section 18, Article VII of the 1987 Constitution is intended as a checking mechanism against the

abusive imposition of martial law or suspension of the privilege of the writ. The Government bears the burden of justifying the resort to extraordinary powers that are subject to the extraordinary review mechanisms of this Court under the Constitution. This is only logical because it is the Government that is in possession of facts and intelligence reports justifying the declaration of martial law or suspension of the privilege of the writ.

LEONEN, *J.*, *dissenting opinion*:

1. POLITICAL LAW; EXECUTIVE DEPARTMENT; COMMANDER-IN-CHIEF POWERS OF THE PRESIDENT; DECLARATION OF MARTIAL LAW AND SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*; SUFFICIENCY OF FACTUAL BASES; WANTING WHEN THE FACTS CITED AS BASES SHOW ACTS OF TERRORISM, AND NOT REBELLION; CASE AT BAR.— At the outset, the government's designation of the Maute Group as rebels is erroneous. The group neither had the numbers nor the sophistication necessary to hold ground in Marawi. It did not seek to control the centers of governance. Its ideology, inspired by the extremist views of Salafi Jihadism, could not sway the local community to take up arms and overwhelm the local and national government. During the Marawi siege, local terrorist groups acted not to control seats of governance, but to slow down the advance of government forces and facilitate their members' escapes. They committed atrocities to establish their terrorist credentials and sow fear. Terrorists and terrorism cannot be neutralized through the declaration of martial law. Counteracting violent extremism calls for thoughtful action, along with "patience, community participation, precision, and a sophisticated strategy that respects rights, and at the same time uses force decisively at the right time and in the right way." As for the sufficiency of the factual bases surrounding the issuance of the Proclamation, I pointed out that the government's presentation of facts was utterly wanting. The factual bases cited were primarily allegations, with the government deliberately failing to present their information's sources and their vetting process. Furthermore, some of the factual bases cited in the Proclamation would not lead to a

conclusion that rebels were impelled by political motives like overthrowing the government or wresting government control over a portion of Mindanao. Thus, the facts cited as bases for the Proclamation show acts of terrorism, not necessarily rebellion.

2. ID.; ID.; ID.; DECLARATION OF MARTIAL LAW; THE CONSTITUTION DOES NOT ALLOW A VAGUE DECLARATION AND EXTENSION OF MARTIAL LAW WITHOUT CLEAR PRONOUNCEMENT OF THE SCOPE AND PARAMETERS OF ITS APPLICATION.— The martial law declaration has been vague from the beginning, and continues to be with each extension. The Proclamation did not provide the scope and parameters of its application. It merely declared a state of martial law in Mindanao for 60 days and suspended the privilege of the writ of *habeas corpus* for the same period. x x x The lack of parameters, standards, or criteria continue to hound the third extension of martial law. The intelligence reports, which became the basis for the third extension of martial law, cite a gamut of criminal acts committed in Mindanao from January 1, 2018 to November 30, 2018. These include ambuscades, arson, firefighting/attack, grenade throwing, harassment, improvised explosive device or landmine explosion, kidnapping, attempted kidnapping, liquidation, murder, and robbery/ hold-up, among others. The government maintained that the criminal acts were committed "relative to the continuing rebellion being waged by the [local terrorist and rebel groups]"; however, its conclusion was not supported by its own intelligence reports. Perpetrators were not identified or, if identified, no motive was attributed behind their criminal acts. The calculated vagueness behind the Proclamation leads to its broad and indiscriminate application, empowering law enforcement officers with unbridled discretion to carry out its operations against unspecified enemies. Indeed, the Proclamation has created dubious and imaginary monsters, and enforcers of the law will not hesitate to slay them with the great and limitless power bestowed upon them.

3. ID.; ID.; ID.; ID.; THE EXISTENCE OF ILLEGAL DRUG SYNDICATES CANNOT BE THE BASIS OF MARTIAL LAW DECLARATION.— Just as the vagueness of what powers to exercise leads to unduly broad powers, the absence of any

clear target leads to the probability of indefinite and repeated extensions. This is based on illegal activities still occurring in places in Mindanao despite the subsistence of martial law. x x x Curiously, figures on anti-illegal drug operations have repeatedly been cited in the government's letters and reports on martial law, as if the figures were targets in the proclamation and implementation of martial law. x x x Similarly, in his letter to President Duterte, General Carlito G. Galvez, Jr. cited the Armed Forces' support of anti-illegal drug operations as one of the outcomes of the martial law implementation in Mindanao. Likewise, all of the Armed Forces' monthly reports included figures that pertained to the dismantling of "illegal drug syndicates and other lawless armed groups," reporting: (1) the volume of illegal drugs confiscated; and (2) the number of personalities who surrendered, were killed, or were captured. Notably, the existence of illegal drug syndicates was not, and cannot be, the basis of the martial law declaration. These conflicting assertions on the targets of martial law raise doubts on whether any target exists at all, or if the government has been implementing martial law to sincerely quell a supposed rebellion and restore civil rule in Mindanao. They reveal a lack of foresight, preparation, or strategy in the implementation of martial law, which should put this Court on guard in this exercise.

4. ID.; ID.; ID.; DECLARATION OF MARTIAL LAW AND SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*; SUFFICIENCY OF FACTUAL BASIS; THE BURDEN IS ON THE GOVERNMENT TO SHOW THAT IT HAS SUFFICIENT FACTUAL BASIS FOR THE EXTENSION THEREOF.— It is this Court's constitutional duty to review, in an appropriate proceeding, the sufficiency of the factual basis for the extension of martial law and suspension of the privilege of the writ of *habeas corpus*. Thus, this Court is bound to reassess and independently determine the sufficiency of the factual basis presented by the government. We cannot accept the President's conclusion *pro forma* and adopt it as our own. Settled is the rule that the burden is on the government to show this Court that it has sufficient factual basis for the extension of martial law and suspension of the privilege of the writ of *habeas corpus*. The government is duty bound to adequately prove that the facts and information it alleged can

support the extension. This may be done by presenting evidence supporting its factual allegations, and the context for its interference. Standards must be set to guide this Court as it treads the multitudinous reports given to determine the sufficiency of the factual bases invoked by the President. x x x [T]he facts alleged and relied upon by the President must be: (1) credible; (2) complete or sufficient to establish a conclusion; (3) consistent with each other; and (4) able to establish a sensible connection between the incidents reported and the existence of rebellion, and the consequent need for martial law's proclamation or extension. The government's presentation of facts justifying the extension has not met these standards.

5. **ID.; ID.; ID.; ID.; ID.; FACTS ARE DEEMED JUDICIALLY SUFFICIENT WHEN IT IS SHOWN THAT THEY CAME FROM CREDIBLE SOURCES, THESE BEING THE FOUNDATION OF THE PRESIDENT'S EXERCISE OF ITS COMMANDER-IN-CHIEF POWERS.—** Due to the multifarious responsibilities demanding the president's attention, he or she is constrained to heavily rely on the intelligence reports submitted by those under his or her command. The President banks on his or her alter egos' reports to determine the proclamation or extension of martial law. These reports constituting the factual bases of the President's judgment must go through a strict validation process. To serve as sufficient bases, they must be subjected to a scrupulous process of analysis and validation. This process must be airtight in nature to avoid, or at least minimize, dubious data. Finally, to ensure that the source of information is credible, the information collected must be transparent. Facts are deemed judicially sufficient when it is shown that they came from credible sources, these being the foundation of the President's exercise of its commander-in-chief powers under Article VII, Section 18 of the Constitution. The credibility of the information rests upon the degree of validation used to confirm its authenticity. The function of validating information is vital to the resulting judgment of the President. x x x Respondents submitted numerous reports as basis for the third extension of martial law. These reports, according to respondents, are the consolidation of various intelligences and accounts of different field units and multiple

sources within the government. Since the reports were the foundation of the President's judgment, this Court probed into how they were validated and authenticated. Regrettably, respondents failed to illuminate on this matter x x x. The rights curtailed by martial law demand that the government ensure the information it gathered had come from credible sources. Respondents' failure to indicate the analytical process their reports have gone through raises serious doubts on their authenticity and reliability. With the government forcing upon this Court the premise that the facts it alleged warrant a martial law extension, without properly citing any standard to validate them, this Court will be constrained to accept the alleged facts as absolute truth. This cannot be the case. The Constitution explicitly grants this Court the power to review the sufficiency of the factual basis for the martial law extension. Anything less will render this Court's judicial power of review inutile.

6. ID.; ID.; ID.; ID.; EXISTENCE OF REBELLION; A MERE INVOCATION OF RANDOM FIREFIGHTS OR ENCOUNTERS INVOLVING ARMED MEN CANNOT ENGENDER A BELIEF THAT THEY ARE UNDERTAKEN IN FURTHERANCE OF REBELLION.— Although many criminal incidents were alleged to support the claim that there is an ongoing rebellion in Mindanao, many of the reports were glaringly incomplete, and lacked a crucial detail: who the perpetrators were. Members of this Court rigorously scrutinized the submissions made by respondents and found glaring inadequacy in their reports. A number of the violent incidents reported to be associated to an ongoing rebellion do not indicate their perpetrators. Likewise, the motives behind these attacks were not indicated. x x x During the oral arguments, these omissions were pointed out to respondents, who were then directed by this Court to include in their Memorandum updates on the perpetrators' identities. However, they failed to conclusively ascertain that these attacks were executed by insurgents to further the rebellion. x x x Assuming that these violent incidents were authored by terrorist groups, respondents failed to show that they were committed to further the rebellion. No definite connection was presented to show that these incidents were carried out to advance the objectives of the rebellion.

They failed to demonstrate how these events support the government's conclusion of persisting rebellion in Mindanao. They also failed to show that these were the kinds of rebellion which met the requirement of necessity and public safety in the Constitution. x x x Contrary to respondents' justification, including kidnapping incidents and family feuds in the intelligence reports are not clerical errors. Their insertion means that these acts were committed to further the objectives of rebellion. By doing so, the government is duty bound to give details as to why they were included. Respondents failed to overcome the burden of proving the connection between these instances. That the attacks were perpetrated by members of the terrorist groups that the President mentioned does not mean that they were committed in furtherance of rebellion. At best, they were politically motivated or based only on grudges involving private matters. A mere invocation of random firefights or encounters involving armed men cannot engender a belief that they were undertaken in furtherance of rebellion.

7. ID.; ID.; ID.; DECLARATION OF MARTIAL LAW; MARTIAL LAW SHOULD BE DECLARED ONLY WHEN THE CALLING-OUT POWERS OF THE PRESIDENT BECOMES INADEQUATE TO QUELL REBELLION.— [M]artial law is product of necessity. It is only called when the civil government is incapable of maintaining peace and order. It should not be indefinite, but a mere temporary condition. Article VII, Section 18 of the 1987 Constitution provides that as commander-in-chief, the President shall have the power to call out the Armed Forces to suppress rebellion. Martial law should be declared only when the calling-out powers of the President becomes inadequate to quell rebellion x x x. A perusal of respondents' justification for a further extension of martial law leads to a single conclusion: there is absolutely no necessity for martial law. In his December 6, 2018 letter, the President categorically stated that rebellion have already been put under control. The factual bases provided by the President in justifying the martial law extension is insufficient. Respondents, with all the data and information it has presented, failed to discharge the burden of proving that there is absolute necessity in extending martial law in Mindanao. The President is, however, not without recourse. The lawless and violent incidents in Mindanao may

either be quelled by professional police action or the President's calling-out powers in relation to the Armed Forces.

8. ID.; ID.; ID.; DECLARATION OF MARTIAL LAW AND SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*; SUFFICIENCY OF FACTUAL BASIS; THE SUPREME COURT IS MANDATED BY THE CONSTITUTION TO REVIEW AND ASSESS THE FACTUAL BASES RELIED UPON BY THE PRESIDENT IN DECLARING MARTIAL LAW.— Under Article VII, Section 18, this Court is duty bound to review the sufficiency of the factual basis of the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*. x x x The historical developments that led to the advent of the 1987 Constitution show its framers' unmistakable intent to expand the power of this Court to review and check on possible abuses committed by the executive department in the exercise of its powers. As it stands, the 1987 Constitution mandates this Court to review and assess the factual bases relied upon by the President in declaring martial law. The political question doctrine has steadily diminished.

JARDELEZA, *J.*, *dissenting opinion*:

1. POLITICAL LAW; EXECUTIVE DEPARTMENT; COMMANDER-IN-CHIEF POWERS OF THE PRESIDENT; DECLARATION OF MARTIAL LAW; IN MARTIAL LAW LITIGATION, TRANSPARENCY SHOULD BE THE RULE, CONFIDENTIALITY THE EXCEPTION.— To begin, I reiterate my position that public interest is better served when proceedings such as these are conducted with full transparency. In fact, our actual experience with three successive years of martial law litigation convinces me that the Court should reject, for being anathema to our constitutional system, any plea from the Government to present its evidence *in camera*. By requiring authorship of its own evidence and submissions, full accountability can be exacted from the Government to justify its resort to such an extreme measure as the declaration of martial law and/or suspension of the privilege of the writ. x x x In cases such as this, transparency

should be the rule, confidentiality the exception. The Court should be neither allayed nor cowed by general invocations of reasons of national security; to be the meaningful check the Constitution intended it to be, the Court should require more than general invocations of confidentiality. All evidence should be made public, save for instances when the Government is able to immediately show how a specific piece of evidence, if publicly disclosed, may reveal critical information. x x x An approach that gives the public more time to independently verify the facts as presented by the Government would also serve to sharpen the sense of obligation and responsibility of the concerned Government functionaries to make their Reports as accurate as possible, and, in turn, enable the Court to better ascertain the truth respecting the matters of fact presented to it.

2. ID.; ID.; ID.; ID.; REQUIREMENT OF REBELLION; REASONABLY MET IRRESPECTIVE OF WHETHER LOCAL OR COMMUNIST TERRORIST GROUPS ARE ACTUALLY PERPETRATING REBELLION AS DEFINED IN THE REVISED PENAL CODE, OR MERELY CARRYING OUT TERRORIST ATTACKS OR LAWLESS VIOLENCE, AS LONG AS THESE GROUPS COMMIT PUBLIC, ARMED RESISTANCE TO THE GOVERNMENT.— I have previously articulated my views on the definition of "rebellion" as used under Section 18, Article VII of the Constitution, which is simply "armed public resistance to the Government." A "rebel," on the other hand, is defined as "a person who refuses allegiance to, resists, or rises in arms against the government or ruler of his or her country," or a "person who resists any authority, control, or tradition"; one "who unjustly take up arms against the ruler of the society, or the lawful and constitutional government, whether their view be to deprive him of the supreme authority or to resist his lawful commands in some instance, and to impose conditions on him." These definitions overlap with what is considered "terrorism" or a "terrorist" under Republic Act (RA) No. 9372, otherwise known as the Human Security Act of 2007, which lists rebellion under Article 134 of the Revised Penal Code (RPC) as one of the predicate crimes for the commission of terrorism. Since a rebel, as above defined, can fit the profile of

the local and communist terrorist groups sought to be quelled by the Government in this present extension of martial law in Mindanao, I take no issue on the question of whether local or communist terrorist groups are actually perpetrating rebellion as defined in the RPC, or merely carrying out terrorist attacks or lawless violence. As long as these groups commit public, armed resistance to the government, to me, the requirement of rebellion as used under Section 18, Article VII of the Constitution has been reasonably met. In fact, I have no serious disagreement with the majority's conclusion that, with the proliferation of both local and communist terrorist groups, a state of rebellion continues to exist in Mindanao. x x x [T]he Court should accord "rebellion" a meaning that will not unduly tie the government's hands and unwittingly make it ill-equipped to deal with the exigencies of the times. x x x [T]he purpose of the strict proscriptions under Section 18, Article VII of the Constitution is not so much to limit the meaning of rebellion but more to limit the instances calling for the President's exercise of his power to declare martial law and/or suspend the privilege of the writ of *habeas corpus*. Otherwise stated, the restrictions in Section 18, Article VII of the Constitution are directed mainly on the exercise of presidential power; it is not necessarily fixated on the meaning of the terms used. If the purpose of martial law is self-preservation, then the government should be allowed to wield that power as a potent tool to realize its purpose, unhampered by technicalities in meaning that was neither placed nor intended by the framers in the first place.

3. ID.; ID.; ID.; ID.; PUBLIC SAFETY REQUIREMENT; NOT SATISFIED WHEN THERE IS NO ASSERTION THAT THERE ARE ACTUAL AND SUSTAINED ARMED HOSTILITIES WITH GOVERNMENT FORCES NOR ANY CLAIM THAT ARMED GROUPS HAVE ACTUALLY TAKEN OVER, AND ARE HOLDING, TERRITORY.— In these present petitions, the Government attempts once more to present evidence showing the magnitude of the rebellion for purposes of extending martial law in Mindanao until December 31, 2019. After going over the Government's evidence, I do not find any of the circumstances present which reasonably indicate that the state of rebellion in Mindanao has reached a scale as to justify the President's exercise of his extraordinary

powers. Nowhere in its presentation or its pleadings did the Government assert that there are actual and sustained armed hostilities (*e.g.*, continuous exchange of fire) between government troops and the terrorist groups in any place in Mindanao. Neither was there any claim (much less, actual evidence) that these terrorist groups have taken over, or are actually holding, territory, similar to what the Maute rebels were able to achieve during the Marawi siege. At most, the Government's data shows that the armed terrorist groups have not been quelled, and that they continue to be dangerous and capable of inflicting violence and terror in Mindanao. This notwithstanding, the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*, given their tremendous effect on certain civil liberties, are measures of last resort, not knee-jerk responses, to address such terror threats.

4. ID.; ID.; ID.; ID.; SHOULD NOT BE EXTENDED WHEN BY THE GOVERNMENT'S ESTIMATION, THE SCALE OR MAGNITUDE OF REBELLION HAS BEEN SIGNIFICANTLY REDUCED OR DEGRADED.— In his letter to President Duterte recommending the extension of martial law, Secretary of National Defense Delfin N. Lorenzana attributed the "**degradation** in manpower and capabilities" of rebel groups to be "a result of the continued operations of the security forces of the National Government." AFP Chief of Staff, General Carlito Galvez, Jr. (Gen. Galvez), for his part, also reported a "*significant* **reduction** on the capability of the threat groups." In his letter to President Duterte, he mentioned a 62% and 45% **reduction** in the manpower and firepower, respectively, of *local* terrorist groups, and a 31% and 38% reduction in manpower and firepower, respectively, of *communist* terrorist groups. He also reported a **reduction** in threat atrocities from local and communist terrorist groups by 22% and 36%, respectively. Thus, and as a trier of fact who previously voted *against* the extension of martial law in 2018 due to lack of reasonable showing of scale, I find even less reason to further extend martial law here, when even by the Government's own estimation, the *scale* or *magnitude* of the rebellion in Mindanao has been significantly reduced or degraded. Notably, publicly available information seems to validate the government's findings of degradation/reduction. x x x Indeed, the power to declare

martial law rests solely in the executive. Gen. Madrigal exhibited sufficient discernment when he stated during oral arguments that the AFP's role is recommendatory, meaning it does not bind the president. I find that the position taken by the Solicitor General underrates the military's competence to recommend the lifting of martial law based on verifiable facts, as it also undermines the president's ability to act upon the recommendation of his own subordinates. The stance taken by the Solicitor General, to my mind, is not only unfair to the Court, but also unfair to its principals. x x x The AFP's statements on its use of certain metrics and the baselines considered for a recommendation on martial law are entitled to the highest credibility, having been conveyed by high-ranking military officials in proceedings sanctioned by the Constitution. More importantly, as a Member of the Court specifically mandated by the Constitution to determine the sufficiency of the factual bases for the President's declaration of martial law and/or suspension of the privilege of the writ of *habeas corpus*, I appreciate the AFP's use of science and metrics. To me, these serve as objective and reasonable measures by which I can arrive at a conclusion. In fact, it is my view that the Court should inquire into its application in similar future cases as a way of measuring the factual existence of the twin requirements for the declaration or extension of martial law. In the same manner, the government is duty-bound to make a truthful reporting and make information transparent. This is the essence of public accountability of all government entities whose primary duty is to serve and protect the People.

5. ID.; ID.; ID.; ID.; SHOULD BE LIFTED WHEN THERE IS NO LONGER ANY FACTUAL BASIS TO EXTEND IT.— [P]ublic office is a public trust; public officers and employees must, first and foremost, be accountable to the people at all times. They must serve the people with utmost responsibility, integrity, loyalty, and efficiency. Public officials and employees are expected to discharge their duties with the highest degree of excellence, professionalism, intelligence and skill. Consequently, the AFP is expected to remain as faithful to its duty make the correct reporting of facts as it is with its mandate to protect the people and safeguard their rights. Thus, it should stand to reason that if the AFP finds that there is no longer a

need to extend martial law based on facts gathered from its intelligence activities and the application of the 30% rule on degradation, it is duty-bound to make a recommendation to the President to lift the declaration. Similarly, if the President determines that there is no longer any factual basis to extend martial law based, among others, on the recommendation of the AFP, then it is also his duty to lift it. He is no less accountable to the people by virtue of his position. In fact, it is his first and foremost duty to uphold the sanctity of our laws.

CAGUIOA, *J.*, *dissenting opinion*:

1. POLITICAL LAW; EXECUTIVE DEPARTMENT; COMMANDER-IN-CHIEF POWERS OF THE PRESIDENT; EXTENSION OF MARTIAL LAW AND SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS*; SUFFICIENCY OF FACTUAL BASIS; THE GOVERNMENT BEARS THE BURDEN OF PROOF TO SHOW SUFFICIENT FACTUAL BASIS FOR THE EXTENSION OF MARTIAL LAW AND SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* AND THIS BURDEN ENTAILS THE INTRODUCTION OF SUBSTANTIAL EVIDENCE.— Section 18, Article VII of the Constitution squarely places the burden of proof upon the political departments to show sufficient factual basis for the extension of martial law and the suspension of the privilege of the writ of *habeas corpus*. x x x Accordingly, applying the presumption of regularity in the performance of official duty and the presumption that x x x [the] reports are *prima facie* evidence of the facts stated therein in a manner that excuses the respondents from introducing substantial evidence to prove to the Court that the twin requirements for the extension exist, defeats any intelligent review under Section 18. x x x Section 18 is in the nature of a neutral fact-checking mechanism by the Court. Having established the quantum of evidence required for the determination of the elements of rebellion as defined in the Revised Penal Code (RPC) as "probable cause", and in the determination of the twin requirements as substantial evidence, there are certain fundamental precepts in administrative fact-finding that are applicable x x x [as held] x x x [i]n *Ang Tibay*

v. CIR x x x. As applied to a Section 18 review, x x x [the] fundamental principles require the government to show as much of its factual basis **to enable the Court** to reach the conclusion that the third extension of martial law and the suspension of the privilege of the writ of *habeas corpus* is justified by substantial evidence. This burden entails the introduction of evidence of such quality and quantity that, after the consideration by the Court, there is "substantial evidence," that is, **relevant evidence with rational probative force, as a reasonable mind might accept as adequate to support a conclusion**. Stated differently, the evidence of the government must be such that, after weeding out the irrelevant evidence and those that are incompetent (uncorroborated hearsay or rumor) even under flexible evidentiary rules of an administrative proceeding, enough evidence remains to engender in the mind of the Court the finding that (1) rebellion persists in Mindanao, and (2) public safety requires the extension. ***This cannot be hurdled by the expediency of a presumption.*** To be certain, according the political departments the presumption of regularity in a Section 18 proceeding is simply untenable **and completely opposite to the duty of government to positively establish, with facts and evidence, the basis for the extension of Martial Law** x x x. That said, and even if the presumption of regularity can somehow apply in a Section 18 proceeding, it will not prevent the Court from examining the government's evidence for consistency and credibility and weighing their rational probative force. x x x [T]he Court notes that this disputable presumption, even if accorded, may not even apply. After a careful examination of the submissions of the government, it is immediately evident that **the evidence itself contain irregularities that foreclose the application of the presumption**.

2. ID.; ID.; ID.; ID.; REQUISITES.— The Court has previously held that the rebellion required for the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus*, or the extension thereof, is rebellion as defined under Article 134 of the Revised Penal Code x x x. In this regard, the rule as it stands — and that which is applicable for the instant review — is that for purposes of establishing the sufficiency of the factual basis for the extension of martial law, the government bears the burden of proof to show that: *First*,

(1) [T]here is a (a) public uprising and (b) taking [of] arms against the [G]overnment; and (2) [T]he purpose of the uprising or movement is either (a) to remove from the allegiance to the Government or its laws: (i) the territory of the Philippines or any part thereof; or (ii) any body of land, naval, or other armed forces; or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives. And *second*, that public safety requires the extension.

3. ID.; ID.; ID.; ID.; PERSISTENCE OF REBELLION; THE CONCURRENCE OF BOTH THE OVERT ACT OF REBELLION AND THE SPECIFIC PURPOSE MUST BE SHOWN WITH SUBSTANTIAL EVIDENCE BY THE GOVERNMENT.— To show the first requirement — the persistence of rebellion already parsed in *Lagman v. Medialdea*, the government must show with substantial evidence **the concurrence of both the overt act of rebellion and the specific purpose**. This is consistent with the jurisprudence on rebellion x x x. To be able to make a reasonable inference from the compiled reports submitted, these reports (also called entries) were identified, analyzed, and then grouped according to: (1) the **designation of the incident**, (2) the **perpetrator**, (3) the **motive**, and (4) completeness of the entry. The number of reported **casualty** is also noted. x x x The evidence readily shows certain gaps that needed to either be completed or supplemented in order to make a showing of relevance and comprehensibility. x x x During the oral arguments, these gaps were painstakingly identified by some members of the Court to allow the respondents to address them. The respondents were even given a list of these incidents and were requested to complete or supplement them in their Memorandum. Remarkably, the AFP Letter in response to the Court's request for additional information explained the paucity of information of some reports on account of them being "spot reports" that contain information that are only available at that given reporting time window. It went on to state that "[subsequent developments are communicated through 'progress reports' and detailed 'special reports.'" Unfortunately, nothing in the Memorandum of the respondents was submitted to complete the incomplete entries. As well, even as the Court requested an update on these "spot reports," no reports designated as "progress reports" or "special

reports" were submitted. Neither did the respondents attempt to even explain how a fair amount of these incidents were attributed, or could be attributable, to what the respondents called "rebels" — despite the fact that the reports do not identify the perpetrators or the motive, or supply the identity of the perpetrators, **all of which point to the conclusion that these are common crimes committed for private purposes**. The respondents only explained that "[i]nquiries made with informants thereafter have become the basis in ascribing these violent activities to a particular threat group." The Court cannot make this leap for the respondents. While the Court does not now presume to impose a mathematical or mechanical formula to determine sufficiency of factual basis, the totality of the respondents' submissions in support of the extension in this case does not constitute substantial evidence to show that rebellion persists in Mindanao.

4. ID.; ID.; ID.; DECLARATION OF MARTIAL LAW; SUFFICIENCY OF FACTUAL BASIS; THE MERE FACT OF A PERSISTING REBELLION, STANDING ALONE CANNOT BE THE BASIS OF EXTENSION BECAUSE THE REQUIREMENT OF PUBLIC SAFETY IS A SEPARATE AND DISTINCT REQUISITE THAT MUST BE PROVEN.— Section 18, Article VII provides that to justify the declaration of martial law, two requisites must **concur**: (1) actual invasion or rebellion, and (2) public safety requires the exercise of such power. In *Lagman v. Medialdea*, the Court held that "[w]ithout the concurrence of the two conditions, the President's declaration of martial law and/or suspension of the privilege of the writ of *habeas corpus* must be struck down." Thus, the mere fact of a persisting rebellion or existence of rebels, standing alone, cannot be the basis for the extension. x x x [T]hat the requirement that public safety is imperiled is a separate and distinct requirement that the respondents have the burden to prove. Indeed, "the requirement of actual rebellion serves to **localize** the scope of martial law to cover only the areas of armed public uprising. Necessarily, the initial scope of martial law is the place where there is actual rebellion, meaning, concurrence of the normative act of armed public uprising and the intent. **Elsewhere, however, there must be a clear showing of the requirement of public safety**

necessitating the inclusion." In the present case, the respondents failed to prove that the public safety of the whole of Mindanao is imperiled. x x x It is well x x x to qualify that while rebellion and public safety indeed have no fixed physical dimensions — and that, as a result, the Executive is given sufficient leeway to determine the scope of the territory covered by martial law in light of the information before him — the said discretion granted by the Constitution cannot be so broad so as to render nugatory the specific limitations placed by it to justify the imposition of the extraordinary power. This limited, although sufficient, discretion is precisely the rationale for the power granted to, *and duty* imposed upon, the Court, under Section 18, Article VII of the Constitution, to check the sufficiency of the factual basis for the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus*. To state once more, Section 18 is a neutral and straightforward fact-checking mechanism that serves the functions of (1) preventing the concentration in one person — the Executive — of the power to put in place a rule that significantly implicates civil liberties, (2) providing the sovereign people a forum to be informed of the factual basis of the Executive's decision, or, at the very least, (3) assuring the people that a separate department independent of the Executive may be called upon to determine for itself the propriety of the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*. Thus, the Court — in the performance of the afore-discussed constitutionally-granted power and duty — was called upon to hold that public safety no longer requires the extension of martial law **in the whole of Mindanao from January 1, 2019 to December 31, 2019** x x x. In light of the x x x failure of the respondents to substantiate a significant number of the attacks they claim to have imperiled public safety, the inevitable conclusion is that public safety does not require the further extension of martial law and suspension of the privilege of the writ of *habeas corpus* for the entire year of 2019.

5. ID.; ID.; ID.; ID.; THE NECESSITY OF MARTIAL LAW IS DICTATED NOT MERELY BY THE GRAVITY OF THE REBELLION SOUGHT TO BE QUELLED, BUT ALSO BY THE NECESSITY OF MARTIAL LAW TO ADDRESS THE EXIGENCIES OF A GIVEN SITUATION.— [T]he

Constitution requires an *actual* rebellion or invasion, along with a concurrent real threat to public safety, in order for the President to declare martial law — a threat of rebellion, no matter how imminent, cannot be a ground to declare martial law or extend such declaration. x x x Verily, martial law is a law of necessity. "Necessity creates the conditions for martial law and at the same time limits the scope of martial law." In this context, the necessity of martial law is dictated not merely by the gravity of the rebellion sought to be quelled, but also by the necessity of martial law to address the exigencies of a given situation. Thus, the President's exercise of extraordinary powers must be measured against the scale of necessity and calibrated accordingly. The Court's determination of insufficiency of factual basis implies that the conditions for the use of such extraordinaiy power are absent. This does not mean, in any manner whatsoever, that the Court assumes to do such calibration in the President's stead. Rather, the Court merely checks the said calibration in hindsight, in accordance with its power and mandate under the Constitution. Necessity in the context of martial law should be understood in the concept envisioned by the framers of the 1987 Constitution, *i.e.*, a theater of war. x x x Consequently, the necessity of martial law requires a showing that it is necessary for the military to perform civilian governmental functions or acquire jurisdiction over civilians to ensure public safety.

6. ID.; ID.; ID.; ID.; A FINDING BY THE SUPREME COURT THAT THE PRESIDENT NEED NOT DECLARE MARTIAL LAW AS THE SITUATION MAY BE ADDRESSED BY THE CALLING OUT POWERS IS NOT BY ANY MEANS AN ENCROACHMENT ON THE EXECUTIVE'S PREROGATIVE IN THE EXERCISE OF THE EXTRAORDINARY POWERS.— While the standard of necessity may appear exacting, it should not be seen as an undue restraint on the powers that the President may exercise in the given exigencies. x x x [T]he President is equipped with broad and expansive powers to suppress acts of lawless violence, and even actual rebellion or invasion in a theater of war, through the calling out power — a power which neither requires any concurrence by the legislature nor is subject to judicial review. x x x [A] finding by the Court that the President need not declare martial law as the situation in Mindanao may be addressed by

the calling out powers is not by any means an encroachment on the Executive's prerogative in the exercise of the extraordinary powers. On the contrary, the Court would be merely doing its Constitutionally-mandated duty of ensuring that the declaration of martial law, or the extension thereof, has been made in accordance with the limits prescribed by the Constitution, *i.e.*, that actual invasion or rebellion exists (or persists) and that public safety requires the imposition of martial law and the suspension of the privilege of the writ of *habeas corpus*. In this case, the respondents have failed to prove that rebellion persists and that public safety has been imperiled to the extent necessitating the extension of martial law and the suspension of the privilege of the writ of *habeas corpus*. x x x [T]he events and circumstances, while worthy of stern condemnation and military reprisal, do not show the existence of an actual rebellion in a theater of war — at most, they merely indicate a threat or imminent danger. Thus, in the absence of an armed public uprising which imperils the operation of the civilian government, a declaration of martial law or any extension thereof necessarily fails the test of sufficiency, as such absence negates not only the existence of an actual (or persisting) rebellion, but also refutes the respondents' assertion that said declaration or extension is necessitated by the requirements of public safety.

7. ID.; ID.; ID.; ID.; CONGRESS MAY EXTEND THE PRESIDENT'S PROCLAMATION OF MARTIAL LAW ONLY IF THE SAME REBELLION NECESSITATING SUCH PROCLAMATION SHALL PERSIST.— *Functus officio* is the Latin phrase for "having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force or authority." It is applied to an officer whose term has expired, and who has consequently no further official authority; and also to an instrument, power, agency, which has fulfilled the purpose of its creation, and is therefore of no further virtue or effect. x x x [I]t is clear that Proclamation No. 216 was issued to quell the Marawi siege as perpetrated by the Maute group. The third extension, on the other hand, as advanced by the respondents themselves, is based on the alleged ongoing rebellion perpetrated by the LTRGs and the CTRGs. This cannot be, as violent attacks by different armed groups could easily form the basis of an endless chain of extensions,

so long as there are overlaps in the attacks. This dangerously supports the theoretical possibility of perpetual martial law. Thus, by clear mandate of the Constitution that Congress may extend the President's proclamation of martial law only if the **same** rebellion necessitating such proclamation shall persist, then Proclamation No. 216 has become *functus officio* with the cessation of the Marawi Siege.

8. ID.; ID.; ID.; ID.; SUFFICIENCY OF FACTUAL BASIS; THE SUPREME COURT'S ROLE IS TO RESOLVE WHETHER THERE IS SUFFICIENT BASIS FOR EXTENDING MARTIAL LAW WITHOUT REGARD TO THE QUESTION OF WHETHER OR NOT CONGRESS COMMITTED GRAVE ABUSE OF DISCRETION.— The constitutional mandate under Section 18, Article VII is to delve into both factual and legal issues indispensable to the final determination of the sufficiency of the factual basis of the extension of martial law and suspension of the privilege of the writ of *habeas corpus*. As a neutral and straightforward fact-checking mechanism, the Court's role prescinds independently from how the Legislature evaluated the President's request. **The Court's role in Section 18 is to make *its own* determination.** This necessarily means that a Section 18 review does not concern itself with the correctness or wrongness of the assessment made by Congress. In other words, the question of whether there is sufficient basis for extending Martial Law is to be resolved by the Court under the aegis and within the parameters only of Section 18 — without regard to the question of whether or not Congress committed grave abuse of discretion. **The Court fulfills its role under Section 18 totally independent of whatever Congress may have said.** x x x [A]s Congress is bestowed by the Constitution the power to formulate, adopt, and promulgate its own rules, the Court will not hesitate to presume good faith on the part of Congress with respect to the rules it adopted in deliberating the extension of martial law and the suspension of the privilege of the writ of *habeas corpus*. x x x [G]ood faith belief is irrelevant in the Court's duty under a Section 18 review. To be sure, a nullification resulting from a Section 18 review does not ascribe any grave abuse to the actors involved in the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus* or the extension thereof. Stated differently, the declaration or suspension, or

the extension thereof may fail to pass constitutional muster under Section 18 despite the good faith belief of the actors. The test of sufficient factual basis — the establishment of the twin requirements — goes beyond a showing of good faith belief. x x x The independent review of the Court, being akin to administrative fact-finding, must either be supported by substantial evidence or pass the test of reasonableness in order to hurdle the standard of Section 18. Accordingly, the test of grave abuse, even the existence thereof in the declaration, suspension, or extension, will not be determinative of the outcome of a Section 18 review by the Court. If the government can show sufficient factual basis for the proclamation, suspension, or extension — meaning that it presents to the Court substantial evidence to support the existence or persistence of rebellion and the requirement of public safety, as the case may be, — then the assailed action will be upheld even without having to determine whether or not there is a showing of grave abuse. Conversely, no amount of good faith belief will save a declaration, suspension, or extension from being nullified if the government fails to meet its burden to adduce substantial evidence to the Court in a Section 18 review proving the twin requirements for the declaration, suspension, or extension.

9. ID.; ID.; ID.; ID.; THE MANNER BY WHICH CONGRESS APPROVED THE EXTENSION OF MARTIAL LAW AND THE SUSPENSION OF THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IS A POLITICAL QUESTION THAT IS NOT REVIEWABLE BY THE SUPREME COURT.— [J]urisprudence has defined a political question as involving "those questions which, under the Constitution, are to be *decided by the people* in their sovereign capacity, or in regard to which *full discretionary authority* has been delegated to the Legislature or executive branch of the Government." x x x The Constitution does not provide specific rules as to the time limits to be observed by the members of Congress in conducting its deliberations, as well as with respect to the quality and quantity of documents and data that must be furnished to the members of Congress during the deliberations. Hence, as Section 18 is silent as to the procedural rules that Congress must observe in conducting its deliberations, Congress, as an independent branch of government, is given some leeway in determining how it should

conduct its deliberations for the extension of martial law and the suspension of the privilege of the writ of *habeas corpus*. Further, there is no specific procedural rule on the deliberations for the extension of martial law and the suspension of the privilege of the writ of *habeas corpus* laid down in the most recent version of the Rules of the House of Representatives promulgated by the House. x x x Therefore, considering the foregoing, the manner by which Congress approved the extension of martial law and the suspension of the privilege of the writ of *habeas corpus* is beyond the scope of the Court's review in a Section 18 petition, and is a political question that is not reviewable by the Court.

10. ID.; ID.; ID.; ID.; REQUIREMENT OF REBELLION; REBELLION IS NOT A CONTINUING CRIME IN THE SENSE THAT ONCE IT HAS BEEN DETERMINED TO HAVE EXISTED, REBELLION BECOMES *RES JUDICATA*.— The jurisprudence on rebellion as a continuing crime, predominantly *Umil v. Ramos* (*Umil*), was made in the context of warrantless arrests. Instead of being in support for the proposition that martial law may be declared and extended in areas where there is no armed public uprising, *Umil*, while I hesitate to speak of its lingering applicability, is precisely an argument against declaring or extending martial law anywhere and everywhere rebels may be without the demand of public safety because, to reiterate, **martial law is not necessary to run after rebels even outside the areas of armed uprising**. Rebellion is not a continuing crime in the sense that once it has been determined to have existed, rebellion becomes *res judicata*. The floodgates have been opened for a perpetual martial law in *Lagman v. Pimentel III*, and we are seeing the results now. This is unfortunate, because there has been no dearth of opinions attempting to place "rebellion as a continuing crime" in its proper context — which is demonstrably entirely separate from the question presented in Section 18, that is, whether a rebellion found in Section 18 continues to exist. x x x [T]here is no pretense at precedent that can support the proposition that rebellion continues when it has not been shown to exist.

APPEARANCES OF COUNSEL

Lagman & Lagman Law Firm for petitioners in G.R. No. 243522.

National Union of Peoples' Lawyer (NUPL) for petitioners in G.R. No. 243677.

Ateneo Human Rights Center for petitioners in G.R. No. 243745.

Free Legal Assistance Group (FLAG) for petitioners in G.R. No. 243797.

Office of the Solicitor General for respondents.

D E C I S I O N

CARANDANG, *J.*:

These are consolidated petitions[1] filed under Section 18,[2] Article VII of the Constitution, assailing the constitutionality of the third extension from January 1, 2019 to December 31, 2019, of the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao.

Petitioners further pray for the issuance of a Temporary Restraining Order (TRO) or a Writ of Preliminary Injunction (WPI) to enjoin the respondents from implementing the one-year extension.

The Antecedents

On May 23, 2017, President Rodrigo Roa Duterte issued Proclamation No. 216, declaring a state of martial law and

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[1] *Rollo* (G.R. No. 243522), pp. 3-48; *rollo* (G.R. No. 243677), pp. 3-38; *rollo* (G.R. No. 243745), pp. 3-30; *rollo* (G.R. No. 243797), pp. 7-18.

[2] Section 18. x x x

x x x x x x x x x

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.

suspending the privilege of the writ of *habeas corpus* in the whole of Mindanao to address the rebellion mounted by members of the Maute Group and Abu Sayyaf Group (ASG), for a period not exceeding sixty (60) days.[3]

Proclamation No. 216 cited the following justifications for the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*:

x x x x x x x x x

WHEREAS, today 23 May 2017, the same Maute terrorist group has taken over a hospital in Marawi City, Lanao del Sur, established several checkpoints within the City, burned down certain government and private facilities and inflicted casualties on the part of Government forces, and started [the] flying [of] the flag of the Islamic State of Iraq and Syria (ISIS) in several areas, thereby openly attempting to remove from the allegiance to the Philippine Government this part of Mindanao and deprive the Chief Executive of his powers and prerogatives to enforce the laws of the land and to maintain public order and safety in Mindanao, constituting the crime of rebellion; and

WHEREAS, this recent attack shows the capability of the Maute group and other rebel groups to sow terror, and cause death and damage to property not only in Lanao del Sur but also in other parts of Mindanao.

x x x x x x x x x.[4]

On May 25, 2017, within the 48-hour period set in Section 18, Article VII of the 1987 Constitution, the President submitted to the Senate and the House of Representatives his written Report, citing the factual events and reasons that impelled him to issue the said Proclamation. Both Houses expressed their full support to the Proclamation, under the Senate P.S. Resolution No. 388

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[3] *Rollo* (G.R. No. 243522), p. 152; see also Resolution of Both Houses No. 6, *id*. at 56-58.

[4] The fifth and sixth Whereas Clauses, Proclamation No. 216.

and House Resolution No. 1050, finding no cause to revoke the same.[5]

Subsequently, three (3) consolidated petitions assailing the sufficiency of the factual basis of Proclamation No. 216 were filed before this Court.

In a Decision dated July 4, 2017, the Court in *Representative Edcel C. Lagman, et al. v. Hon. Salvador C. Medialdea, et al.*,[6] found sufficient factual bases for the issuance of Proclamation No. 216 and declared it constitutional.

On July 18, 2017, the President requested Congress to extend the effectivity of Proclamation No. 216. In a Special Joint Session on July 22, 2017, the Congress adopted Resolution of Both Houses No. 2, which extended Proclamation No. 216 until December 31, 2017.[7]

Acting on the recommendations of the Department of National Defense (DND) Secretary Delfin N. Lorenzana (Secretary Lorenzana) and the then Armed Forces of the Philippines (AFP) Chief of Staff General Rey Leonardo Guerrero (General Guerrero) in a letter dated December 8, 2017, the President again asked both the Senate and the House of Representatives to extend the Proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao for one year, from January 1, 2018 to December 31, 2018.[8]

Thereafter, four (4) consolidated petitions were filed before this Court assailing the constitutionality of the second extension of Proclamation No. 216.

In a Decision dated February 6, 2018, this Court in *Representative Edcel C. Lagman, et al. v. Senate President*

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[5] *Rollo* (G.R. No. 243522), pp. 152-153.

[6] G.R. Nos. 231658, 231771 and 231774, July 4, 2017.

[7] *Rollo* (G.R. No. 243522), p. 153.

[8] *Id.* at 108-112 and 153-155.

Aquilino Pimentel III, et al.,[9] found sufficient factual bases for the second extension of the Proclamation from January 1 to December 31, 2018, and declared it constitutional.

Before the expiration of the second extension of Proclamation No. 216 or on December 4, 2018, Secretary Lorenzana in a letter[10] to the President, recommended the third extension of martial law and the suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao for one year from January 1, 2019 up to December 31, 2019.[11] Secretary Lorenzana wrote the recommendation to the President primarily to put an end to the continuing rebellion in Mindanao waged by the DAESH-inspired groups and its local and foreign allies, particularly the Daulah Islamiyah (DI), and the threat posed by the Communist Party of the Philippines-New People's Army Terrorists (CNTs).[12]

Likewise, the AFP Chief of Staff General Carolito G. Galvez, Jr. (General Galvez) and Chief of the Philippine National Police (PNP) Director-General Oscar D. Albayalde (Director-General Albayalde) recommended the further extension of martial law and the suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao for one year beginning January 1, 2019 up to December 31, 2019, based on current security assessment for the total eradication of the Local Terrorist Groups (LTG), ASG, Bangsamoro Islamic Freedom Fighters (BIFF), DI, and other lawless armed groups and the CNTs, their foreign and local allies, supporters, financiers, in order to fully contain the continuing rebellion in Mindanao and to prevent it from escalating to other parts of the country, and to ensure complete rehabilitation and reconstruction of the most affected areas, as well as to attain lasting peace and order, and to preserve the socio-economic growth and development of the entire Mindanao.[13]

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[9] G.R. Nos. 235935, 236061, 236145 and 236155, February 6, 2018.

[10] *Rollo* (G.R. No. 243522), pp. 201-202.

[11] *Id*. at 201.

[12] *Id*. at 202.

[13] *Id*. at 208-213.

Acting on these recommendations, the President, in a letter[14] dated December 6, 2018 to the Senate and the House of Representatives, requested for the third extension of Proclamation No. 216 from January 1, 2019 to December 31, 2019.[15] The President stated in his letter that, although there has been significant progress in putting rebellion under control and ushering in substantial economic gains in Mindanao, the joint security assessment submitted by General Galvez of the AFP and Director-General Albayalde of the PNP highlighted essential facts indicating that rebellion still persists in Mindanao and that public safety requires the continuation of martial law in the whole of Mindanao.[16] Private sectors, Regional and Provincial Peace and Order Councils, and local government units in Mindanao were also clamoring for a further extension of the proclamation.[17] The President cited the following essential facts to extend the proclamation:

> The Abu Sayyaf Group, Bangsamoro Islamic Freedom Fighters, Daulah Islamiyah (DI), and other terrorist groups (collectively labeled as LTG) which seek to promote global rebellion, continue to defy the government by perpetrating hostile activities during the extended period of Martial Law. At least four (4) bombings/ Improvised Explosive Device (IED) explosions had been cited in the AFP report. The Lamitan City bombing on 31 July 2018 that killed eleven (11) individuals and wounded ten (10) others, the Isulan, Sultan Kudarat IED explosion on 28 August and 02 September 2018 that killed five (5) individuals and wounded forty-five (45) others, and the Barangay Apopong IED explosion that left eight (8) individuals wounded.
>
> The DI forces continue to pursue their rebellion against the government by furthering the conduct of their radicalization activities, and continuing to recruit new members, especially in vulnerable Muslim communities.
>
> While the government was preoccupied in addressing the challenges posed by said groups, the CTG, which has publicly declared its intention

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[14] *Id*. at 51-55.

[15] *Id*. at 52.

[16] *Id*. at 52-53.

[17] *Id*. at 113-123.

to seize political power through violent means and supplant the country's democratic form of government with Communist rule, took advantage and likewise posed serious security concerns. Records disclosed that at least three hundred forty-two (342) violent incidents, ranging from harassments against government installations, liquidation operations, and arson attacks as part of extortion schemes, which occurred mostly in Eastern Mindanao, had been perpetrated from 01 January 2018 to 30 November 2018. About twenty-three (23) arson incidents had been recorded and it had been estimated that the amount of the properties destroyed in Mindanao alone has reached One Hundred Fifty-Six (156) Million Pesos. On the part of the military, the atrocities resulted in the killing of eighty-seven (87) military personnel and wounding of four hundred eight (408) others.

Apart from these, major Abu Sayyaf Group factions in Sulu continue to pursue kidnap for ransom activities to finance their operations. As of counting, there are a total of eight (8) kidnappings that have occurred involving a Dutch, a Vietnamese, two (2) Indonesians, and four (4) Filipinos.

The foregoing merely illustrates in general terms the continuing rebellion in Mindanao. I will be submitting a more detailed report on the subsisting rebellion in the next few days.

A further extension of the implementation of Martial Law and suspension of the privilege of the writ of *habeas corpus* in Mindanao will enable the AFP, the PNP, and all other law enforcement agencies to finally put an end to the on-going rebellion in Mindanao and continue to prevent the same from escalating in other parts of the country. We cannot afford to give the rebels any further breathing room to regroup and strengthen their forces. Public safety indubitably requires such further extension in order to avoid the further loss of lives and physical harm, not only to our soldiers and the police, but also to our civilians. Such extension will also enable the government and the people of Mindanao to sustain the gains we have achieved thus far, ensure the complete rehabilitation of the most affected areas therein, and preserve the socio-economic growth and development now happening in Mindanao.[18]

On December 12, 2018, the Senate and the House of Representatives, in a joint session, adopted Resolution No. 6,

[18] *Id*. at 53-54.

entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao for another period of one (1) year from January 1, 2019 to December 31, 2019."[19] Joint Resolution No. 6, partly states:

x x x x x x x x x

WHEREAS, on December 10, 2018, the House of Representatives received a communication dated December 6, 2018 from President Rodrigo Roa Duterte, informing the Senate and the House of Representatives, that on December 5, 2018, he received a letter from Secretary of National Defense Delfin N. Lorenzana, as Martial Law Administrator, requesting for further extension of Martial Law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao up to December 31, 2019;

WHEREAS, in the same letter, the President cited the joint security report of the Armed Forces of the Philippines (AFP) Chief of Staff, General Carlito G. Galvez, Jr., and the Philippine National Police (PNP) Director- General, Oscar D. Albayalde, which highlighted the accomplishment owing to the implementation of Martial Law in Mindanao, particularly the reduction of the capabilities of different terrorist groups, the neutralization of six hundred eighty-five (685) members of the local terrorist groups (LTGs) and one thousand seventy-three (1,073) members of the communist terrorist' group (CTG); dismantling of seven (7) guerilla fronts and weakening of nineteen (19) others; surrender of unprecedented number of loose firearms; nineteen percent (19%) reduction of atrocities committed by CTG in 2018 compared to those inflicted in 2017; twenty-nine percent (29%) reduction of terrorist acts committed by LTGs in 2018 compared to 2017; and substantial decrease in crime incidence;

WHEREAS, the President nevertheless pointed out that notwithstanding these gains, there are certain essential facts proving that rebellion still persists in the whole of Mindanao and that public safety requires the continuation of Martial Law, among others: (a) the Abu Sayyaf Group, Bangsamoro Islamic Freedom Fighters, Daulah Islamiyah (DI), and other terrorist groups, collectively labeled as LTGs which seek to promote global rebellion, continue to defy the government by perpetrating hostile activities during the extended period of Martial Law that at least four (4) bombing incidents had

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

been cited in the AFP report: (1) the Lamitan City bombing on July 31, 2018 that killed eleven (11) individuals and wounded ten (10) others; (2) the Isulan, Sultan Kudarat improvised explosive device (IED) explosion on August 28 and September 2, 2018 that killed five (5) individuals and wounded forty-five (45) others; and (3) the Barangay Apopong IED explosion that left eight (8) individuals wounded; (b) the DI forces also continue to pursue their rebellion against the government by furthering the conduct of their radical ization activities and continuing to recruit new members especially in vulnerable Muslim communities; and (c) the CTG, which publicly declared its intention to seize political power through violent means and supplant the country's democratic form of government with communist rule which posed serious security concerns;

WHEREAS, the President also reported that at least three hundred forty-two (342) violent incidents, ranging from harassments against government installations, liquidation operations and arson attacks occurred in Mindanao, killing eighty-seven (87) military personnel and wounding four hundred eight (408) others causing One Hundred fifty-six million pesos (₱156,000,000.00) worth of property damages;

WHEREAS, the Senate and the House of Representatives are one in the belief that the security assessment submitted by the AFP and the PNP to the President indubitably confirms the continuing rebellion in Mindanao which compels further extension of the implementation of Martial Law and the suspension of the privilege of the writ of *habeas corpus* for a period of one (1) year, from January 1, 2019 to December 31, 2019, to enable the AFP, the PNP, and all other law enforcement agencies, to finally put an end to the ongoing rebellion and to continue to prevent the same from escalating in other parts of the country;

WHEREAS, Section 18, Article VII of the 1987 Philippine Constitution authorizes the Congress of the Philippines to extend, at the initiative of the President, the proclamation or suspension of the privilege of the writ of *habeas corpus* for a period to be determined by the Congress of the Philippines, if the invasion or rebellion shall persist and public safety requires it;

WHEREAS, after thorough discussion and extensive debate, the Congress of the Philippines in a Joint Session, by two hundred thirty-five (235) affirmative votes comprising the majority of all its Members,

has determined that rebellion and lawless violence still persist in Mindanao and public safety indubitably requires further extension of the Proclamation of Martial Law and the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao: Now, therefore, be it *Resolved by the Senate and the House of Representatives in a Joint Session assembled*, To further extend Proclamation No. 216, series of 2017, entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao" for another period of one (1) year from January 1, 2019 to December 31, 2019.[20]

The Parties' Arguments

A. Petitioners' Case

Based on their respective petitions and memoranda[21] and their oral arguments before this Court on January 29, 2019, petitioners' arguments are summarized as follows:

a) The Court is mandated to independently determine the sufficiency of factual bases of the extension of martial law and it must not limit its review on the basis of the declaration presented by the Executive and Legislative branches of the government.[22] Given the Court's critical role in the system of checks and balances, it must be proactive and in keeping with the Constitutional mandate that the Supreme Court is the ultimate guardian of the Constitution, particularly of the allocation of powers, the guarantee of individual liberties and the assurance of the people's sovereignty.[23]

b) The present factual situation of Mindanao no longer calls for a third extension of martial law and the suspension of the

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

[21] *Rollo* (G.R. No. 243522), pp. 753-787; *rollo* (G.R. No. 243677), pp. 258-294; *rollo* (G.R. No. 243745), pp. 276-318; *rollo* (G.R. No. 243797), pp. 295-313.

[22] *Rollo* (G.R. No. 243745), p. 23.

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

privilege of the writ of *habeas corpus* because no actual rebellion persists in Mindanao.[24] The acts of lawlessness and terrorism by the remnants of terrorist groups and by the communist insurgents enumerated in the letter of the President were not established to be related or connected to the crime of rebellion, and can all be subdued and suppressed under the calling out power of the President.[25]

c) The absence of the requirement of public safety is underscored by the very absence of an actual rebellion consisting of an armed uprising against the government for the purpose of removing Mindanao or a portion thereof from the allegiance to the Republic. More so, the alleged rebellion in Mindanao does not endanger public safety.[26] The threat to public safety contemplated under the Constitution is one where the government cannot sufficiently or effectively govern, as when the courts or government offices cannot operate or perform their functions.[27]

d) Proclamation No. 216 has become *functus officio* and the extension is no longer necessary, considering the deaths of the leaders of the ASG and the Maute brothers, and the cessation of combat operations and the liberation of Marawi City.[28]

e) Congress committed grave abuse of discretion in approving the third extension hastily despite the absence of sufficient factual basis.[29]

f) The third extension violates the constitutional proscription against a long duration of martial law or the suspension of the privilege of the writ of *habeas corpus*.[30] The constitutional

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[24] *Rollo* (G.R. No. 243522), pp. 7-8.

[25] *Id.* at 21.

[26] *Id*. at 10, 37-38.

[27] *Rollo* (G.R. No. 243677), p. 22

[28] *Rollo* (G.R. No. 243522), pp. 10, 38-41.

[29] *Rollo* (G.R. No. 243745), p. 312.

[30] *Rollo* (G.R. No. 243522), p. 7.

limitations on the period of martial law must be for a short or limited duration, which must not exceed sixty (60) days, and should the third extension be granted, the martial law regime would have lasted 951 days.[31]

g) The "justifications" proffered by the President in his letter merely illustrates in general terms, lacking in specifics to support the claim that rebellion persists in Mindanao, and the President undertook to submit to the Congress a more detailed report which he failed to do.[32]

h) The resolutions and recommendations for martial law extension by the Regional and Provincial Peace and Order Councils were due only to their desire for peace and order, economic development, and not because rebellion persists in Mindanao.[33]

i) The third extension of martial law will lead to further violation of citizens' political, civil, and human rights.[34]

B. Respondents' Case

Respondents, through the Office of the Solicitor General (OSG), argue that:

a) The Court's power of judicial review under Section 18, Article VII is limited to the determination of the sufficiency of the factual basis of the extension of martial law and suspension of the privilege of the writ of *habeas corpus*.[35]

b) There is sufficient factual basis to extend the effectivity of Proclamation No. 216 as rebellion persists in Mindanao, and public safety requires it.[36] The President and both Houses of

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[31] *Id*. at 41-42.

[32] *Id*. at 9.

[33] *Id*. at 33-34.

[34] *Id*. at 8, 11, 45-46.

[35] *Id*. at 802, 806-809.

[36] *Id.* at 159.

Congress found that there is probable cause or evidence to show that rebellion persists in Mindanao.[37]

c) The events happening in Mindanao strongly indicate that the continued implementation of martial law is necessary to protect and insure public safety.[38]

d) The deaths of the leaders of the ASG, the Maute brothers and the cessation of the Marawi siege did not render *functus officio* the declaration of *martial law* under Proclamation No. 216.[39] Although the Marawi siege ended, the factual circumstances which became the basis for the second extension still exists and continuously threaten the peace and order situation in Mindanao.[40]

e) Congress has the sole prerogative to extend martial law and the suspension of the privilege of the writ of *habeas corpus* since the 1987 Constitution does not limit the period of extension and suspension, nor prohibit further extensions or suspensions.[41]

f) Congress has the absolute discretion in determining the rules of procedure with regard to the conduct and manner by which Congress deliberates on the President's request for extension of martial law, and therefore is not subject to judicial review.[42]

g) The alleged human rights violations do not warrant the nullification of martial law and the suspension of the privilege of the writ of *habeas corpus*. There are sufficient legal safeguards to address human rights abuses.[43]

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[37] *Id*. at 162-163.

[38] *Id*. at 159, 170-173.

[39] *Id.* at 173-176.

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

[41] *Id.* at 159, 178-187.

[42] *Id*. at 159, 187-189.

[43] *Id*. at 160, 190-192.

h) Petitioners failed to prove that they are entitled of injunctive relief.[44]

The Issues

The following are the issues to be resolved as identified by the Court:[45]

A. Whether there exists sufficient factual basis for the extension of martial law in Mindanao.

1. Whether rebellion exists and persists in Mindanao.
2. Whether public safety requires the extension of martial law in Mindanao.
3. Whether the further extension of martial law has not been necessary to meet the situation in Mindanao.

B. Whether the Constitution limits the number of extensions and the duration for which Congress can extend the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus*.

C. Whether Proclamation No. 216 has become *functus officio* with the cessation of Marawi siege that it may no longer be extended.

D. Whether the manner by which Congress approved the extension of martial law is a political question and is not reviewable by the Court *[E]n [B]anc*.

1. Whether Congress has the power to determine its own rules of proceedings in conducting the joint session under Section 18, Article VII of the Constitution.

2. Whether Congress has the discretion as to how it will respond to the President's request for the extension of martial law in Mindanao — including the length of the period of deliberation and interpellation of the executive branch's resource persons.

E. Whether the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* or extension thereof may be reversed by a finding of grave abuse of discretion on the part of Congress. If so, whether the extension of martial law was attended by grave abuse of discretion.

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[44] *Id*. at 160, 192-196.

[45] Amended Advisory, *id*. at 731-734.

F. Whether the allegations of human rights violations in the implementation of martial law in Mindanao is sufficient to warrant nullification of its extension.

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Ruling of the Court

The requirements of rebellion and public safety are present to uphold the extension of martial law in Mindanao from January 1, 2019 to December 31, 2019.

Since the Court must determine the sufficiency of the factual basis for the declaration as well as the extension of martial law and suspension of the writ of *habeas corpus*, the standard of review under Section 18, Article VII is not grave abuse of discretion.

The sufficiency of the factual basis for the extension of martial law in Mindanao must be determined from the facts and information contained in the President's request, supported by reports submitted by his alter egos to Congress. These are the bases upon which Congress granted the extension. The Court cannot expect exactitude and preciseness of the facts and information stated in these reports, as the Court's review is confined to the sufficiency and reasonableness thereof. While there may be inadequacies in some of the facts, *i.e.*, facts which are not fully explained in the reports, these are not reasons enough for the Court to invalidate the extension as long as there are other related and relevant circumstances that support the finding that rebellion persists and public safety requires it.

Contrary to *Monsod, et al.*, the Court need not make an independent determination of the factual basis for the proclamation or extension of martial law and the suspension of the privilege of the writ of *habeas corpus*. The Court is not a fact-finding body required to make a determination of the correctness of the factual basis for the declaration or extension

of martial law and suspension of the writ of *habeas corpus*. It would be impossible for the Court to go on the ground to conduct an independent investigation or factual inquiry, since it is not equipped with resources comparable to that of the Commander-in-Chief to ably and properly assess the ground conditions.

Thus, in determining the sufficiency of the factual basis for the extension of martial law, the Court needs only to assess and evaluate the written reports of the government agencies tasked in enforcing and implementing martial law in Mindanao.

Indeed, in *Montenegro v. Castañeda*,[46] the Court pronounced that:

> [W]hereas the Executive branch of the Government is enabled thru its civil and military branches to obtain information about peace and order from every quarter and corner of the nation, the judicial department, with its very limited machinery cannot be in better position to ascertain or evaluate the conditions prevailing in the Archipelago.
>
> But even supposing the President's appraisal of the situation is merely prima facie, we see that petitioner in this litigation has failed to overcome the presumption of correctness which the judiciary accords to acts of the Executive and Legislative Departments of our Government.

The quantum of proof applied by the President in his determination of the existence of rebellion is probable cause. The Court in *Lagman v. Medialdea*[47] held that "in determining the existence of rebellion, the President only needs to convince himself that there is probable cause or evidence showing that more likely than not a rebellion was committed or is being committed. To require him to satisfy a higher standard of proof would restrict the exercise of his emergency powers."

The Court need not delve into the accuracy of the reports upon which the President's decision is based, or the correctness of his decision to declare martial law or suspend the writ, for

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[46] 91 Phil. 882, 890 (1952).

[47] G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1, 147.

this is an executive function. The threshold or level (degree) of sufficiency is, after all, an executive call. The President, who is running the government and to whom the executive power is vested, is the one tasked or mandated to assess and make the judgment call which was not exercised arbitrarily.

The Court in the case of *David v. Macapagal-Arroyo*[48] held that:

> As to how the Court may inquire into the President's exercise of power, the Court through the case of *Lansang [v. Garcia]*, adopted the test that "judicial inquiry can go no further than to satisfy the Court not that the President's decision is correct," but that "the President did not act arbitrarily." Thus, the standard laid down is not correctness, but arbitrariness. In the case of *Integrated Bar of the Philippines [v. Zamora]*, this Court added that "it is incumbent upon the petitioner to show that the President's decision is totally bereft of factual basis" and that if he fails, by way of proof, to support his assertion, then "this Court cannot undertake an independent investigation beyond the pleadings." (Citations omitted)

In finding sufficiency of the factual basis for the third extension, the Court has to give due regard to the military and police reports which are not palpably false, contrived and untrue; consider the full complement or totality of the reports submitted, and not make a piecemeal or individual appreciation of the facts and the incidents reported. The President's decision to extend the declaration and the suspension of the Writ, when it goes through the review of the Legislative branch, must be accorded a weightier and more consequential basis. Under these circumstances, the President's decision or judgment call is affirmed by the representatives of the People.

The December 6, 2018 letter of the President to the Congress is not a mere repetition of his previous letters requesting for extensions as petitioners would like Us to believe. Although couched in general terms, specific updates on the current state

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[48] 522 Phil 705, 854 (2006).

of violence and what the government has done to eradicate the current threats waged by different rebel groups were reported. These updates are periodically reviewed by the martial law implementers and are presented to the President in order to ensure the responsiveness and suitability of measures undertaken by the government.

While the primary justification for the President's request for extension is the on-going rebellion in Mindanao, the situation remains the same despite the death of the leaders, and the addition of rebel groups whose activities were intensified and pronounced after the first and second extensions.

The factual basis for the extension of martial law is the continuing rebellion being waged in Mindanao by Local Terrorist Rebel Groups (LTRG) — identified as the ASG, BIFF, DI, and other groups that have established affiliation with ISIS/DAESH, and by the Communist Terrorist Rebel Groups (CTRG) — the components of which are the Communist Party of the Philippines (CPP), New People's Army (NPA), and the National Democratic Front (NDF).

The Department of National Defense's (DND's) "Reference Material, Joint Session on the Extension of Martial Law in Mindanao," which was presented during the Joint Session of Congress, and offered in evidence as Slides during this Court's Oral Arguments on January 29, 2019, shows the following violent incidents from January 1 to November 30, 2018 as part of the continuing rebellion being waged by the LTRGs:[49]

Type of Incident	Number of Incidents
Ambuscade	6
Arson	2
Firefighting/Attack	4

[49] Respondents' Memorandum, citing Slides Nos. 8 and 9, Reference Material, Joint Session on the Extension of Martial Law in Mindanao, *rollo* (G.R. No. 243522), p. 826.

Grenade Throwing	4
Harassment	54
IED/Landmining Explosion	31
Attempted Kidnapping	1
Kidnapping	19
Liquidation	9
Murder	4
Shooting	3
Total	**137**

In the same Reference Material, the DND reported the following violent incidents for the period of January 1 to November 30, 2018 relative to the continuing rebellion being conducted by the CTRGs:[50]

Type of Incident	Number of Incidents
Ambush	15
Raid	4
Nuisance Harassment	41
Harassment	29
Disarming	5
Landmining	8
SPARU Operations	18
Liquidation	23
Kidnapping	5
Robbery/Hold-up	1
Bombing	1
Arson	27
Total	**177**

From the slides presented by respondents during the Oral Arguments on January 29, 2019, and as summarized by

[50] Respondents' Memorandum, citing Slide No. 26, Reference Material, Joint Session on the Extension of Martial Law in Mindanao, *id*. at 826-827.

respondents in their Memorandum, the following events transpired in Mindanao:[51]

a) No less than 181 persons in the martial law Arrest Orders have remained at large.

b) Despite the dwindling strength and capabilities of the local terrorist rebel groups, the recent bombings that transpired in Mindanao that collectively killed 16 people and injured 63 others in less than 2 months is a testament on how lethal and ingenious terrorist attacks have become.

c) On October 5, 2018, agents from the Philippine Drug Enforcement Agency (PDEA) who conducted an anti-drug symposium in Tagoloan II, Lanao Del Sur, were brutally ambushed, in which five (5) were killed and two (2) were wounded.

d) The DI continues to conduct radicalization activities in communities and recruitment of new members, targeting relatives and orphans of killed DI members. Its presence in these areas immensely disrupted the government's delivery of basic services and clearly needs military intervention.

e) Major ASG factions in Sulu and Basilan have fully embraced the DAESH ideology and continue their express kidnappings. As of December 6, 2018, there are still seven (7) remaining kidnap victims under captivity.

f) Despite the downward trend of insurgency parameters, Mindanao remains to be the hotbed of communist rebel insurgency in the country. Eight (8) out the 14 active provinces in terms of communist rebel insurgency are in Mindanao.

g) The Communist Terrorist Rebel Group in Mindanao continues its hostile activities while conducting its organization, consolidation and recruitment. In fact, from January to November 2018, the number of Ideological, Political and Organization (IPO) efforts of this group amounted to 1,420, which indicates their continuing recruitment of new members. Moreover, it is in Mindanao where the most violent incidents initiated by this group transpire. Particularly, government forces and business establishment are being subjected to harassment, arson and liquidations when they defy their extortion demands.

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[51] *Id*. at 832-833.

h) The CTRG's exploitation of indigenous people is so rampant that Lumad schools are being used as recruiting and training grounds for their armed rebellion and anti-government propaganda. On November 28, 2018, Satur Ocampo and 18 others were intercepted by the Talaingod PNP checkpoint in Davao del Norte for unlawfully taking into custody 14 minors who are students of a learning school in Sitio Dulyan, Palma Gil in Talaingod town. Cases were filed against Ocampo's camp for violations of Republic Act (R.A.) No. 10364, in relation to R.A. No. 7610, as well as violation of Article 270 of the Revised Penal Code (RPC), due to the Philippine National Police's (PNP) reasonable belief that the school is being used to manipulate the minds of the students' rebellious ideas against the government.

The cited events demonstrate the spate of violence of rebel groups in Mindanao in pursuit of the singular objective to seize power over parts of Mindanao or deprive the President or Congress of their power and prerogatives over these areas. The absence of motives indicated in several reports does not mean that these violent acts and hostile activities committed are not related to rebellion which absorbs other common crimes.

In addition, these violent incidents should not be viewed as isolated events but in their totality, showing a consistent pattern of rebellion in Mindanao. As explained by the AFP Office of Deputy Chief of Staff for Intelligence (OJ2) in its letter to the OSG, the violent incidents cannot be viewed in isolation:

[T]he events in the lists were not selected but rather constitute the complete record of all violent incidents that occurred in 2018 that are attributed to a specific threat group or any of its members. The argument advanced is that **these incidents should be viewed in their totality and not as unrelated, isolated events**. These violent incidents, when combined with the recorded armed encounters or clashes between government troops and rebel groups, and taking into account the substantial casualties resulting from these combined events, show a consistent pattern of armed uprising or rebellion in Mindanao.[52] (Emphasis Ours)

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[52] *Id*. at 838.

The test of sufficiency is not accuracy nor preciseness but reasonableness of the factual basis adopted by the Executive in ascertaining the existence of rebellion and the necessity to quell it.

REBELLION EXISTS AND PERSISTS IN MINDANAO

Essential to the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* is rebellion defined under Article 134 of the Revised Penal Code, as applied in the cases of *Lagman v. Medialdea* and *Lagman v. Pimentel III*:

> Art. 134. *Rebellion or insurrection; How committed.* — The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof, of any body of land, naval or other armed forces, depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.

Thus, for rebellion to exist, the following elements must be present, to wit: "(1) there is a (a) public uprising and (b) taking arms against the Government; and (2) the purpose of the uprising or movement is either (a) to remove from the allegiance to the Government or its laws: (i) the territory of the Philippines or any part thereof; or (ii) any body of land, naval, or other armed forces; or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives."[53]

And it was emphasized in *Lagman v. Medialdea*[54] that:

> It has been said that the "gravamen of the crime of rebellion is an armed public uprising against the government;" and that by nature, "rebellion is x x x a crime of masses or multitudes, involving crowd action, that cannot be confined *a priori*, within predetermined bounds." We understand this to mean that the precise extent or range of the rebellion could not be measured by exact metes and bounds. (Citations omitted)

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[53] G.R. Nos. 235935, 236061, 236145 and 236155, February 6, 2018.

[54] G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1, 205-206.

Rebellion, within the context of the situation in Mindanao, encompasses no definite time nor particular locality of actual war and continues even when actual fighting has ceased. Therefore, it is not restricted as to the time and locality of actual war nor does it end when actual fighting has ended. The state of rebellion results from the commission of a series or combination of acts and events, past, present and future, primarily motivated by ethnic, religious, political or class divisions which incites violence, disturbs peace and order, and poses serious threat to the security of the nation. The ultimate objective of the malefactors is to seize power from the government, and specifically "*for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof, of any body of land, naval or other armed forces, depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives*."[55]

The visible and invisible facets of rebellion is accurately depicted in *Lagman v. Medialdea*:[56]

> In fine, **it is difficult, if not impossible, to fix the territorial scope of martial law in direct proportion to the "range" of actual rebellion and public safety simply because rebellion and public safety have no fixed physical dimensions. Their transitory and abstract nature defies precise measurements**; hence, the determination of the territorial scope of martial law could only be drawn from arbitrary, not fixed, variables. The Constitution must have considered these limitations when it granted the President wide leeway and flexibility in determining the territorial scope of martial law.[57] (Emphasis ours)

The nuance added to the concept of rebellion under the 1987 Constitution was amplified in Justice Presbiterio Velasco, Jr.'s Dissenting Opinion in *Fortun v. Macapagal-Arroyo*,[58] citing

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[55] Revised Penal Code, Art. 134.

[56] G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1.

[57] *Id*. at 208-209.

[58] G.R. Nos. 190293, 190294, 190301, 190302, 190307, 190356, 190380, March 20, 2012.

the excerpts from the *Brief of Amicus Curiae of Fr. Joaquin Bernas, S.J.* where it was stated:

> From all these it is submitted that the focus on public safety adds a nuance to the meaning of rebellion in the Constitution which is not found in the meaning of the same word in Article 134 of the Penal Code. The concern of the Penal Code, after all, is to punish *acts of the past*. But the concern of the Constitution is to counter threat to public safety both *in the present and in the future* arising from present and past acts. Such nuance, it is submitted, gives to the President a degree of flexibility for determining whether rebellion constitutionally exists as basis for martial law even if facts cannot obviously satisfy the requirements of the Penal Code whose concern is about past acts. To require that the President must first convince herself that there can be proof beyond reasonable doubt of the existence of rebellion as defined in the Penal Code and jurisprudence can severely restrict the President's capacity to safeguard public safety for the present and the future and can defeat the purpose of the Constitution
>
> What all these point to are that the twin requirements of actual rebellion or invasion and the demand of public safety are inseparably entwined. But whether there exists a need to take action in favour of public safety is a factual issue different in nature from trying to determine whether rebellion exists. x x x.[59] (Italics in the original)

In the Matter of the Petition for Habeas Corpus of Benigno S. Aquino v. Enrile,[60] which was decided in 1974 under the 1973 Constitution, the Court has already acknowledged that:

> The state of rebellion continues up to the present. The argument that while armed hostilities go on in several provinces in Mindanao there are none in other regions except in isolated pockets in Luzon, and that therefore there is no need to maintain martial law all over the country, ignores the sophisticated nature and ramifications of rebellion in a modern setting. It does not consist simply of armed clashes between organized and identifiable groups on fields of their own choosing. It includes subversion of the most subtle kind, necessarily clandestine and operating precisely where there is no actual fighting. Underground propaganda, through printed news sheets

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[59] *Id*.

[60] G.R. No. L-35538, September 17, 1974, 59 SCRA 183.

or rumors disseminated in whispers; recruitment of armed and ideological adherents, raising of funds, procurement of arms and material, fifth-column activities including sabotage and intelligence — all these are part of the rebellion which by their nature are usually conducted far from the battle fronts. They cannot be counteracted effectively unless recognized and dealt with in that context.[61]

Equally relevant is the very early pronouncement by this Court in *Montenegro v. Castañeda*[62] in relation to the suspension of the privilege of the writ of *habeas corpus* under Proclamation No. 210, s. 1950, describing the nature of rebellious acts:

> To the petitioner's unpracticed eye the repeated encounters between dissident elements and military troops may seem sporadic, isolated, or casual. But the officers charged with the Nation's security, analyzed the extent and pattern of such violent clashes and arrived at the conclusion that they are warp and woof of a general scheme to overthrow his government *vi et armis*, by force and arms.[63]

Recognizing the political realities in the country, the geography of Mindanao, the increasing number of local and foreign sympathizers who provide financial support, and the advances in technology that have emboldened and reinforced the terrorists' and extremists' capabilities to disturb peace and order, the declaration of martial law cannot be restricted only to areas where actual fighting continue to occur. As a result, rebels have become more cunning and instigating rebellion from a distance is now more attainable, perpetrating acts of violence clandestinely in several areas of Mindanao.

PUBLIC SAFETY REQUIRES THE EXTENSION OF MARTIAL LAW IN MINDANAO

The Resolutions coming from the Regional Peace and Order Council (RPOC) of Region XI (Davao City)[64] and Region XIII

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[61] *Id*. at 240-241.

[62] 91 Phil. 882, 890 (1952).

[63] *Id.*

[64] Resolution No. 06, Series of 2018 dated October 24, 2018, *rollo* (G.R. No. 243522), pp. 113- 114.

(Caraga);[65] the Provincial Peace and Order Council (PPOC) of the Province of Agusan del Norte,[66] Agusan del Sur,[67] and Dinagat Islands;[68] and the Office of the Governor, Province of Saranggani,[69] expressing support for the President's declaration of martial law and its extension, reflect the public sentiment for the restoration of peace and order in Mindanao. These resolutions are initiated by the people of Mindanao, the very same people who live through the harrows of war, things and experiences that we can only read about. Importance must be given to these resolutions as they are in the best position to determine their needs.

Citing the *Brief of Amicus Curiae of Fr. Joaquin Bernas, S.J.* in Justice Velasco, Jr.'s Dissenting Opinion in *Fortun v. Macapagal-Arroyo*,[70] the demands of public safety is determined through the application of prudential estimation, thus:

> The need of public safety is an issue whose existence, unlike the existence of rebellion, is not verifiable through the visual or tactile sense. Its existence can only be determined through the application of prudential estimation of what the consequences might be of existing armed movements. Thus, in deciding whether the President acted rightly or wrongly in finding that public safety called for the imposition of martial law, the Court cannot avoid asking whether the President acted wisely and prudently and not in grave abuse of discretion amounting to lack or excess of jurisdiction. Such decision involves the verification of factors not as easily measurable as the demands of Article 134 of the Penal Code and can lead to a prudential judgment

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[65] Resolution No. 01, Series of 2018 dated November 15, 2018, *id.* at 115.

[66] Resolution No. 2018-09 dated November 15, 2018, *id*. at 117-118.

[67] Resolution No. 10, Series of 2018 dated November 20, 2018, *id*. at 119-120.

[68] Resolution No. 03, Series of 2018 dated November 16, 2018, *id*. at 121-122.

[69] *Id*. at 123.

[70] G.R. Nos. 190293, 190294, 190301, 190302, 190307, 190356, 190380, March 20, 2012.

in favour of the necessity of imposing martial law to ensure public safety even in the face of uncertainty whether the Penal Code has been violated. This is the reason why courts in earlier jurisprudence were reluctant to override the executive's judgment.

In sum, since the President should not be bound to search for proof beyond reasonable doubt of the existence of rebellion and since deciding whether public safety demands action is a prudential matter, the function of the President is far different from the function of a judge trying to decide whether to convict a person for rebellion or not. Put differently, looking for rebellion under the Penal Code is different from looking for rebellion under the Constitution.

Ultimately, it is the Commander-in-Chief, aided by the police and military, who is the guardian and keeper of public safety.

The Congress has the prerogative to extend the martial law and the suspension of the privilege of the writ of habeas corpus as the Constitution does not limit the period for which it can extend the same.

This Court in the case of *Lagman v. Medialdea*[71] explained the only limitations to the exercise of congressional authority to extend such proclamation or suspension: a) the extension should be upon the President's initiative; b) it should be grounded on the persistence of the invasion or rebellion and the demands of public safety; and c) it is subject to the Court's review of the sufficiency of its factual basis upon the petition of any citizen.

Why Section 18 of Article VII of the Constitution did not fix the period of the extension of martial law and the suspension of the privilege of the writ of *habeas corpus* and granted Congress the authority to decide its duration is fully explained in the deliberations of the Constitutional Commission on the matter, *viz*:

MR. SUAREZ.

Thank you, Madam President. I concur with the proposal of

[71] G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1.

Commissioner Azcuna but may I suggest that we fix a period for the duration of the extension, because it could very well happen that the initial period may be shorter than the extended period and it could extend indefinitely. So if Commissioner Azcuna could put a certain limit to the extended period, I would certainly appreciate that, Madam President. x x x x x x x x x

MR. SUAREZ.

Thank you Madam President. May we suggest that on line 7, between the words "same" and "if," we insert the phrase FOR A PERIOD OF NOT MORE THAN SIXTY DAYS, which would equal the initial period for the first declaration just so it will keep going.

THE PRESIDENT.

What does the Committee say?

MR. REGALADO.

May we request a clarification from Commissioner Suarez on this proposed amendment? This extension is already a joint act upon the initiative of the President and with the concurrence of the Congress. It is assumed that they have already agreed not only on the fact of extension but on the period of extension. If we put it at 60 days only, then thereafter they have to meet again to agree jointly on a further extension.

MR. SUAREZ.

That is precisely intended to safeguard the interests and protect the lives of citizens.

MR. REGALADO.

In the first situation where the President declares martial law, there had to be a prescribed period because there was no initial concurrence requirement. And if there was no concurrence, the martial law period ends at 60 days. Thereafter, if they intend to extend the same suspension of the privilege of the writ or the proclamation of martial law, it is upon the initiative of the President this time, and with the prior concurrence of Congress. So, the period of extension has already been taken into account by both the Executive and the Legislative, unlike the first situation where the President acted alone without prior concurrence. The reason for the limitation in the first does not apply to the extension.

MR. SUAREZ.

We are afraid of a situation that may develop where the extended period would be even longer than the initial period, Madam President.

It is only reasonable to suggest that we have to put a restriction on the matter of the exercise of this right within a reasonable period.

MR. REGALADO.

Madam President, following that is the clause "extend the same if the invasion or rebellion shall persist and public safety requires it." That by itself suggests a period within which the suspension shall be extended, if the invasion is still going on. But there is already the cut-off 60-day period. Do they have to meet all over again and agree to extend the same?

MR. SUAREZ.

That is correct. I think the two of them must have to agree on the period; but it is theoretically possible that when the President writes a note to the Congress, because it would be at the instance of the President that the extension would have to be granted by Congress, it is possible that the period for the extension may be there. It is also possible that it may not be there. That is the reason why we want to make it clear that there must by a reasonable period for the extension. So, if my suggestion is not acceptable to the Committee, may I request that a voting be held on it Madam President.

FR. BERNAS.

Madam President, may I just propose something because I see the problem. Suppose we were to say: "or extend the same FOR A PERIOD TO BE DETERMINED BY CONGRESS" — that gives Congress a little flexibility on just how long the extension should be. x x x x x x x x x

THE PRESIDENT.

Is that accepted by Commissioner Suarez?

MR. SUAREZ.

Yes, Madam President.

MR. OPLE.

May I just pose a question to the Committee in connection with the Suarez amendment? Earlier Commissioner Regalado: said that that point was going to be a collective judgment between the President: and the Congress. Are we departing from that now in favor, of giving Congress the plenipotentiary power to determine the period?

FR. BERNAS.

Not really, Madam President, because Congress would be doing

this in consultation with the President, and the President would be outvoted by 300 Members.

MR. OPLE.

Yes, but still the idea is to preserve the principle of collective judgment of that point upon the expiration of the 60 days when, upon his own initiative, the President seeks for an extension of the proclamation of martial law or the suspension of the privilege of the writ.

FR. BERNAS.

Yes, the participation of the President, is that when we put all of these encumbrances on the President and Commander-in-Chief during an actual invasion and rebellion, given an intractable Congress that may be dominated by opposition parties, we may be actually impelling the President to use the sword of Alexander to cut the Gordian knot by just declaring a revolutionary government that sets him free to deal with the invasion or the insurrection. That is the reason I am in favor of the present formulation. However, if Commissioner Suarez insists on his amendment, I do not think I will stand in the way.

Thank you, Madam President.

MR. SUAREZ.

We will accept the committee suggestion, subject to style later on. x x x x x x x x x.[72]

The records of the Constitutional Commission show that Commissioner Suarez's proposal to add a similar 60-day limitation to the extension of an initial proclamation of martial law was not adopted by a majority of the members of the Commission. The framers evidently gave enough flexibility on Congress to determine the duration of the extension.

The Constitutional limits/checks set by the Constitution to guard against the whimsical or arbitrary use of the extra ordinary powers of the Chief Executive under Section 18, Article VII are well in place and are working. At the initial declaration of the martial law, the President observed the 60-day limit and the requirement to report to Congress. In this initial declaration as well as in the extensions, the President's decision was based

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[72] II Record of the Constitutional Commission (1986), pp. 508-509.

on the reports prepared by the different specialized agencies of the Executive branch charged with external and internal security of the whole country. These were the same reports submitted to Congress which were deliberated on, no matter how brief the time allotment was for each of the law makers' interpellations. Yet the evidence or basis to support the extension of martial law passed through the scrutiny of the Chief Executive and through several more of the House of Representatives and the Senate. The Court must remember that We are called upon to rule on whether the President, and this time with the concurrence of the two Houses of Congress, acted with sufficient basis in approving anew the extension of martial law. We must not fall into or be tempted to substitute Our own judgment to that of the People's President and the People's representatives. We must not forget that the Constitution has given us separate and quite distinct roles to fill up in our respective branches of government.

Proclamation No. 216 has not become functus officio with the cessation of the Marawi siege.

While Proclamation No. 216 specifically cited the attack of the Maute group in Marawi City as basis for the declaration of martial law, rebellion was not necessarily ended by the cessation of the Marawi siege. Rebellion in Mindanao still continues, as shown by the violent incidents stated in reports to the President, and was made basis by the Congress in approving the third extension of martial law. These violent incidents continuously pose a serious threat to security and the peace and order situation in Mindanao.

Martial law in Mindanao should not be confined to the Marawi siege. Despite the death of Hapilon and the Maute brothers, the remnants of their groups have continued to rebuild their organization through the recruitment and training of new members and fighters to carry on the rebellion. Clashes between rebels and government forces continue to take place in other

parts of Mindanao. Kidnapping, arson, robbery, bombings, murder — crimes which are absorbed in rebellion — continue to take place therein. These crimes are part and parcel of the continuing rebellion in Mindanao.

The report of the military shows that the reported IED incidents, ambuscade, murder, kidnapping, shooting and harassment in 2018 were initiated by ASG members and the BIFF.[73]

Be it noted that rebellion is a continuing crime.[74] It does not necessarily follow that with the liberation of Marawi, rebellion no longer exists. It will be a tenuous proposition to confine rebellion simply to a resounding clash of arms with government forces.[75] It was held in *Lagman v. Pimentel III*[76] that:

> We recognized that "rebellion is not confined within predetermined bounds," and "for the crime of rebellion to be consummated, it is not required that all armed participants should congregate in *one* place x x x and publicly rise in arms against the government for the attainment of their culpable purpose." We held that the grounds on which the armed public uprising actually took place should not be the measure of the extent, scope or range of the actual rebellion when there are other rebels positioned elsewhere, whose participation did not necessarily involve the publicity aspect of rebellion, as they may also be considered as engaged in the crime of rebellion.
>
> In a similar vein, the termination of armed combat in Marawi does not conclusively indicate that the rebellion has ceased to exist. It will be a tenuous proposition to confine rebellion simply to a resounding clash of arms with government forces. As noted in *Aquino, Jr. v. Enrile*, modern day rebellion has other facets than just the taking up of arms, including financing, recruitment and propaganda, that may

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[73] *Rollo* (G.R. No. 243522), pp. 861-881.

[74] *Representative Edcel C. Lagman, et al. v. Senate President Aquilino Pimentel III, et al.*, *supra* note 9.

[75] *Id*.

[76] G.R. Nos. 235935, 236061, 236145 and 236155, February 6, 2018.

not necessarily be found or occurring in the place of the armed conflict.[77] (Citations omitted)

In sum, Proclamation No. 216 did not become *functus officio* with the cessation of the Marawi siege. Considering that rebellion persists and that the public safety requires it, there is sufficient factual basis to extend martial law in Mindanao for the third time.

The manner by which Congress approved the extension of martial law and the suspension of the privilege of the writ of habeas corpus is a political question that is not reviewable by the Court.

We cannot say anything more than what has been expounded and find no reason to deviate from the ruling on this matter in the case of *Lagman v. Pimentel III*:[78]

> No less than the Constitution, under Section 16 of Article VI, grants the Congress the right to promulgate its own rules to govern its proceedings, to wit:
>
> > Section 16. (3) **Each House may determine the rules of its proceedings**, punish its Members for disorderly behavior, and, with the concurrence of two-thirds of all its Members, suspend or expel a Member. A penalty of suspension, when imposed, shall not exceed sixty days. (Emphasis ours)
>
> In *Pimentel, Jr., et al. v. Senate Committee of the Whole*, this constitutionally-vested authority is recognized as a grant of full discretionary authority to each House of Congress in the formulation, adoption and promulgation of its own rules. As such, the exercise of this power is generally exempt from judicial supervision and interference, except on a clear showing of such arbitrary and improvident use of the power as will constitute a denial of due process.
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> This freedom from judicial interference was explained in the 1997 case of *Arroyo v. De Venecia*, wherein the Court declared that:

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[77] *Id*.

[78] G.R. Nos. 235935, 236061, 236145 and 236155, February 6, 2018.

> But the cases, both here and abroad, in varying forms of expression, all deny to the courts the power to inquire into allegations that, in enacting a law, a House of Congress failed to comply with its own rules, in the absence of showing that there was a violation of a constitutional provision or the rights of private individuals.

In other words, the Court cannot review the rules promulgated by Congress in the absence of any constitutional violation. Petitioners have not shown that the above-quoted rules of the Joint Session violated any provision or right under the Constitution.

Construing the full discretionary power granted to the Congress in promulgating its rules, the Court, in the case of *Spouses Dela Paz (Ret.) v. Senate Committee on Foreign Relations, et al.* explained that the limitation of this unrestricted power deals only with the imperatives of quorum, voting and publication. It should be added that there must be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained.[79] (Citations omitted)

The allegations of human rights violations in the implementation of martial law in Mindanao is not sufficient to warrant a nullification of its extension.

All forms of human rights violations and abuses during the implementation of martial law and suspension of powers should not go unpunished. Nonetheless, consistent with the previous rulings of the Court in *Lagman v. Medialdea* and *Lagman v. Pimentel III*, the alleged violations and abuses should be resolved in a separate proceeding. Therefore, the purported human rights abuses mentioned in the petitions, particularly in the Bayan Muna and Valle Petitions, fail to persuade that these are sufficient to warrant a nullification of the extension.

A declaration of martial law does not suspend fundamental civil rights of individuals as the Bill of Rights enshrined in the

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[79] *Id.*

Constitution remain effective. Civil courts and legislative bodies remain open. While it is recognized that, in the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus*, the powers given to officials tasked with its implementation are susceptible to abuses, these instances have already been taken into consideration when the pertinent provisions on martial law were drafted. Safeguards within the 1987 Constitution and existing laws are available to protect the people from these abuses. In *Lagman v. Medialdea*,[80] the Court emphasized that:

> It was the collective sentiment of the framers of the 1987 Constitution that *sufficient* safeguards against possible misuse and abuse by the Commander-in-Chief of his extraordinary powers are already in place and that no further emasculation of the presidential powers is called for in the guise of additional safeguards.

In *Lagman v. Pimentel III*,[81] the Court discussed these safeguards to wit:

> Nevertheless, cognizant of such possibility of abuse, the framers of the 1987 Constitution endeavored to institute a system of checks and balances to limit the President's exercise of the martial law and suspension powers, and to establish safeguards to protect civil liberties. Thus, pursuant to Section 18, Article VII of the 1987 Constitution:
>
> (a) The President may declare martial law or suspend of the privilege of the writ of the privilege of *habeas corpus* only when there is an invasion or rebellion and public safety requires such declaration or suspension.
> (b) The President's proclamation or suspension shall be for a period not exceeding 60 days.
> (c) Within 48 hours from the proclamation or suspension, the President must submit a Report in person or in writing to Congress.
> (d) The Congress, voting jointly and by a vote of at least a majority of all its Members, can revoke the proclamation or suspension.
> (e) The President cannot set aside the Congress' revocation of his proclamation or suspension.

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[80] G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1, 205.

[81] G.R. Nos. 235935, 236061, 236145 and 236155, February 6, 2018.

(f) The President cannot, by himself, extend his proclamation or suspension. He should ask the Congress' approval.
(g) Upon such initiative or request from the President, the Congress, voting jointly and by a vote of at least a majority of all its Members, can extend the proclamation or suspension for such period as it may determine.
(h) The extension of the proclamation or suspension shall only be approved when the invasion or rebellion persists and public safety requires it.
(i) The Supreme Court may review the sufficiency of the factual basis of the proclamation or suspension or the extension thereof, in an appropriate proceeding filed by any citizen.
(j) The Supreme Court must promulgate its decision within 30 days from the filing of the appropriate proceeding.
(k) Martial law does not suspend the operation of the Constitution.

Accordingly, the Bill of Rights remains effective under a state of martial law. Its implementers must adhere to the principle that civilian authority is supreme over the military and the armed forces is the protector of the people. They must also abide by the State's policy to value the dignity of every human person and guarantee full respect for human rights.

> (l) Martial law does not supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function.
> (m) The suspension of the privilege of the writ applies only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion
> (n) Finally, during the suspension of the privilege of the writ, any person thus arrested or detained should be judicially charged within three days, otherwise he should be released.[82]

In addition to the safeguards provided by the Constitution, adequate remedies in the ordinary course of law against abuses and violations of human rights committed by erring public officers are available including the following:

1. R.A. No. 7438 (An Act Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation as Well

[82] *Id*.

as the Duties of the Arresting, Detaining and Investigating Officers, and Providing Penalties for Violations Thereof);
2. R.A. No. 9372 or the Human Security Act of 2007;
3. R.A. No. 9745 or the Anti-Torture Act of 2009; and
4. Writs of Amparo (A.M. No. 07-9-12-SC) and Habeas Data (A.M. No. 08-1-16-SC); and
5. Universal Declaration of Human Rights (UDHR).

In relation to the international human rights principles established under the Universal Declaration of Human Rights (UDHR), the law enforcement officials are also guided by the principles and safeguards declared in the International Covenant on Civil and Political Rights. Soft law instruments of particular relevance to law enforcement include United Nations' (UN) Basic Principles [o]n the Use of Force and Firearms by Law Enforcement Officials (BPUFF),[83] Code of Conduct for Law Enforcement Officials (CCLEO),[84] Standard Minimum Rules for the Treatment of Prisoners (SMR),[85] Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles),[86] and Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

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[83] Adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, August 27 to September 7, 1990. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx> (visited February 15, 2019).

[84] Adopted by General Assembly Resolution 34/69 of 17 December 1979. <https://www.ohchr.org/en/professionalinterest/pages/lawenforcementofficials.aspx> (visited February 15, 2019).

[85] Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. <https://www.unodc.org/pdf/criminal_justiceUN_Standard__Minimum_Rules_for_the_Treatment_of_Prisoners.pdf> (visited February 15, 2019).

[86] Adopted by General Assembly resolution 43/173 of 9 December 1988. <https://www.ohchr.org/en/professionalinterest/pages detentionorimprisonment.aspx> (visited February 15, 2019).

(Victims Declaration).[87] These instruments uphold the principles of legality, proportionality, necessity, and accountability in situations involving the use of force by law enforcers.

A Final Word

While the Maute uprising was the immediate concern at that time, We must not forget that the country was confronted with not just one or two rebel bands but several rebel groups or anti-government entities. The country faced rebellion from several fronts. The extensions of Proclamation No. 216 are the Chief Executive's decisive response to several existing rebellions throughout Mindanao. Each of these persisting challenges to the authority of the legitimate government is certainly a basis sufficient to warrant the declaration of martial law. Surely, the President does not want a repeat of the Maute experience and wait until a city is overrun before declaring martial law. The Constitutional safeguards found in Section 18, Article VII does not demand that a city be first taken over or people get killed and billions of properties go up in smoke before the President may be justified to use his options under Section 18. What the Constitution asks is only that there be actual rebellion, an existing rebellion in the territory where Martial rule is to be imposed. The declaration should not be arbitrary or whimsical, but its basis should not also be so accurate that there is no room for changes or correction. Considering the volatility of conflict, situations may change at the blink of an eye. And the Executive is burdened with such responsibility to act decisively.

WHEREFORE, the Court **FINDS** sufficient factual bases for the issuance of Resolution of Both Houses No. 6 and **DECLARES** it as **CONSTITUTIONAL**. Accordingly, the consolidated petitions are hereby **DISMISSED**.

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[87] Adopted by General Assembly resolution 40/34 on 29 November 1985. <http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/40/34> (visited February 15, 2019).

SO ORDERED.

Bersamin, C.J. and *del Castillo, JJ.*, concur.

Peralta, Perlas-Bernabe, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., and *Hernando, JJ.*, see separate concurring opinions.

Carpio, Leonen, Jardeleza, and *Caguioa, JJ.*, dissent, see dissenting opinions.

SEPARATE CONCURRING OPINION

PERALTA, *J.*:

Once again, the Court is confronted with the issue of the constitutionality of the further extension of martial law and suspension of the privilege of the writ of *habeas corpus* in Mindanao by the Congress with the adoption of Resolution of Both Houses No. 6, which approved the extension of Proclamation No. 216 from January 1, 2019 until December 31, 2019.

FACTUAL ANTECEDENTS

On May 23, 2017, President Rodrigo R. Duterte issued Proclamation No. 216, declaring a state of martial law and suspending the privilege of the writ of *habeas corpus* in the whole of Mindanao for a period not exceeding sixty (60) days, to quell the rebellion launched by the Maute Group and the Abu Sayyaf Group (*ASG*). The Senate and the House of Representatives supported the proclamation in separate

resolutions.[1] Petitions were filed before this Court, assailing the factual basis of Proclamation No. 216. In *Lagman v. Medialdea*,[2] the Court held that Proclamation No. 216 was constitutional as there were sufficient factual bases for the proclamation.

On July 22, 2017, the Congress passed Resolution of Both Houses No. 2, extending the imposition of martial law and suspension of the privilege of the writ of *habeas corpus* in Mindanao up to December 31, 2017. A second extension was granted from January 1, 2018 to December 31, 2018, and the Court upheld the extension in *Lagman, et al. v. Pimentel III, et al*.[3]

On December 6, 2018, President Duterte wrote a letter to the Senate and the House of Representatives to initiate the further extension of martial law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao from January 1, 2019 to December 31, 2019. President Duterte said that although there were gains during the period of extension of martial law in 2018, the Armed Forces of the Philippines (*AFP*) and the Philippine National Police (*PNP*) highlighted certain essential facts indicating that rebellion still exists in Mindanao and public safety requires the continuation of martial law in the whole of Mindanao. The ASG, the Bangsamoro Islamic Freedom Fighters (*BIFF*), Daulah Islamiyah (*DI*) and other terrorist groups (collectively labeled as "LTG)," which seek to promote global rebellion, continue to defy the government by perpetrating hostile activities; and the DI forces continue their radicalization activities and recruitment of new members. President Duterte cited four bombing incidents by terrorist groups in Lamitan, Basilan City on July 31, 2018; Isulan, Sultan Kudarat on August 28, 2018

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[1] P.S. Resolution No. 388 (Senate); House Resolution No. 1050 (House of Representatives).

[2] G.R. No. 231658, G.R. No. 231771 and G.R. No. 231774, July 4, 2017, 829 SCRA 1.

[3] G.R. No. 235935, G.R. No. 236061, G.R. No. 236145 and G.R. No. 236155, February 6, 2018.

and September 2, 2018; and General Santos City on September 16, 2018, which resulted in the death of 16 persons and wounding of 63 persons. He also cited the kidnap for ransom activities of the ASG in Sulu to finance their operations. He stated that there were a total of eight (8) kidnappings involving a Dutch, a Vietnamese, two (2) Indonesians, and four (4) Filipinos. He also stated that at least 342 violent incidents were perpetrated by the Communist Terrorist Groups (*CTG*) in furtherance of their public declaration to seize political power and supplant the nation's democratic form of government with communism. These incidents include harassment, attacks against government installations, liquidation operations, and various arson attacks as part of extortion schemes which took place mostly in Eastern Mindanao from January 1, 2018 to November 30, 2018.

President Duterte averred that a further extension of the implementation of martial law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao will enable the AFP, the PNP, and all other law enforcement agencies to finally put an end to the ongoing rebellion in Mindanao and continue to prevent the same from escalating in other parts of the country. Public safety requires the extension to avoid further loss of lives and physical harm to the civilians, our soldiers and the police.

On December 12, 2018, the Senate and the House of Representatives adopted Joint Resolution No. 6, which extended for the third time the period of martial law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao from January 1, 2019 to December 31, 2019.

Petitioners filed their respective petitions under Section 18, Article VII of the 1987 Constitution, questioning the sufficiency of the factual basis of the third extension of martial law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao, and contending that rebellion does not persist in Mindanao and public safety does not require it.

Petitioners Lagman, *et al.*, among others, contend that what were alleged in President Duterte's letter were mere acts of

lawlessness and terrorism by so-called remnants of terrorist groups and by the communist insurgents which can all be subdued and suppressed under the calling out power of the President. Petitioners Bayan Muna Partylist Representative Carlos Isagani Zarate, *et al.* also contend that the President's letter does not allege that the situation has deteriorated and the civilian government no longer functions effectively, requiring the exercise of the powers of martial rule to ensure public safety, but instead shows the significant progress of government to quell the rebellion in Mindanao, and the government no longer qualifies or categorizes such rebellion as being "actual." They further contend that the enumerated incidents of violence by the different rebel groups lumped together by the government and the damage they inflicted were not serious threats to public safety.

MAIN ISSUE

The main issue raised is whether or not there exists sufficient factual basis for the extension of martial law in Mindanao: (1) whether rebellion exists and persists in Mindanao; and (2) whether public safety requires the extension of martial law in Mindanao.

The consolidated petitions essentially assail the Congress' act of approving President Duterte's letter-request dated December 6, 2018 and extending the implementation of martial law in Mindanao from January 1 to December 31, 2019.

Article VII, Section 18[4] of the 1987 Constitution grants the power to extend the proclamation of martial law or suspension

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[4] SECTION 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension,

of the privilege of the writ of *habeas corpus* to the Congress, upon the initiative of the President, for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

Rebellion exists and persists in Mindanao

Rebellion, as applied to the exercise of the President's martial law and suspension powers, is defined under Article 134 of the Revised Penal Code:[5]

> Art. 134. *Rebellion or insurrection; How committed.* - The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof, of any body of land, naval or other armed forces, depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.

The elements of rebellion are:

1. That there be (a) public uprising and (b) taking up arms against the Government; and
2. That the purpose of the uprising or movement is either: (a) to remove from the allegiance to said Government or its laws the territory of the Philippines or any part thereof, or any body of land, naval or other armed forces; or (b) to deprive the Chief Executive or the Congress, wholly or partially, of any of their powers or prerogatives.[6]

Section 18, Article VII of the 1987 Constitution requires two factual bases for the extension of the proclamation of martial law or the suspension of the privilege of the writ of *habeas*

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which revocation shall not be set aside by the President. **Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.** (Emphasis supplied.)

[5] *Lagman, et al. v. Pimentel III, et al., supra* note 3.

[6] *Lagman v. Medialdea, supra* note 2, at 214.

corpus: (a) the invasion or rebellion persists; and (b) public safety requires the extension.[7]

The word "persist" means "to continue to exist," "to go on resolutely or stubbornly in spite of opposition, importunity or warning," or to "carry on."[8] It is the opposite of the words "cease," "discontinue," "end," "expire," "finish," "quit," "stop" and "terminate."[9]

It should be noted that in the second extension of martial law and suspension of the privilege of the writ of *habeas corpus*, the Court, in *Lagman v. Pimentel III*,[10] held that the second extension was constitutional because aside from finding that public safety required the extension, the Court also found that **the rebellion that spawned the Marawi crisis persists**, and that the remaining members have regrouped, substantially increased in number, and are no less determined to turn Mindanao into a DAESH/ISIS territory based on the AFP report, thus:

> The Dawlah Islamiyah is the Daesh-affiliate organization in the Philippines responsible for the Marawi Siege. It is comprised of several local terrorist groups that pledged allegiance to Daesh leader Abu Bakr Al-Baghdadi.
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> x x x x x x x x x
>
> After the successful Marawi Operation, the Basilan-based ASG is left with 74 members; the Maute Group with 30 members; the Maguid Group has 11; and the Turaifie Group has 22 members with a total of 166 firearms.
>
> However, manpower increased by more or less 400, with almost the same strength that initially stormed Marawi City, through clandestine and decentralized recruitment of the Daesh-inspired groups at their respective areas of concentration.
>
> ASG Basilan-based recruited more or less 43 new members in Basilan; more or less 250 by the Maute Group in the Lanao provinces;

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[7] *Lagman, et al. v. Pimentel III, et al., supra* note 3.

[8] *Id.*

[9] *Id.*

[10] *Id.*

37 by the Maguid Group in Sarangani and Sultan Kudarat, and more or less 70 by the Turaifie Group in Maguindanao. These newly recruited personalities were motivated by clannish culture as they are relatives of terrorist personalities; revenge for their killed relatives/parents during the Marawi operations; financial gain as new recruits were given an amount ranging from PhP15,000.00 to ₱50,000.00; and, as radicalized converts.

These newly recruited members are undergoing trainings in tactics, marksmanships and bombing operations at the different areas of Mount Cararao Complex, Butig, and Piagapo all of Lanao Del Sur. Recruits with high potentials [sic] were given instruction on IED-making and urban operations.

Furthermore, the situation has become complicated with the influx of Foreign Terrorist Fighters (FTFs), capitalizing on the porous maritime boundaries in Southern Philippines, in the guise as tourists and business men. As of this period, 48 FTFs were monitored joining the Daesh-inspired groups, particularly the Maute Group in Lanao and Turaifie Group in Central Mindanao. The closeness of these two groups is predominant with @ Abu DAR who has historically established link with Turaifie.

On Dawlah Islamiyah-initiated violent incidents, these have increased to 100% for the 2nd Semester. x x x

The AFP's data also showed that Foreign Terrorist Fighters (FTFs) are now acting as instructors to the new members of the Dawlah Islamiyah.[11] (Citations omitted.)

The Court further stated that:

Petitioners in G.R. Nos. 236061 and 236155 have asserted that the rebellion no longer persists as the President himself had announced the liberation of Marawi City, and armed combat has ceased therein. Petitioners in G.R. No. 236061 added that Col. Romeo Brawner, Deputy Commander of the Joint Task Force Ranao, was also quoted as saying that the Maute-ISIS problem was about to be over. The statements, however, were admittedly made on October 17, 2017, nearly two months before the President's request for extension in December 2017. Such declaration does not preclude the occurrence of supervening events as the AFP discovered through their monitoring

[11] *Id.*

efforts. It is not inconceivable that remnants of the Dawlah Islamiyah would indeed regroup, recruit new members and build up its arsenal during the intervening period. The termination of a rebellion is a matter of fact. Rebellion does not cease to exist by estoppel on account of the President's or the AFP's previous pronouncements. **Furthermore, it is settled that rebellion is in the nature of a continuing crime. Thus, members of the Dawlah Islamiyah who evaded capture did not cease to be rebels.**

So also, it does not necessarily follow that with the liberation of Marawi, the DAESH/ISIS-inspired rebellion no longer exists. Secretary Lorenzana, during the Congress' Joint Session on December 13, 2017, explained that while the situation in Marawi has substantially changed, the rebellion has not ceased but simply moved to other places in Mindanao x x x.

x x x x x x x x x

In Lagman, We recognized that "rebellion is not confined within predetermined bounds," and "for the crime of rebellion to be consummated, it is not required that all armed participants should congregate in one place x x x and publicly rise in arms against the government for the attainment of their culpable purpose." We held that the grounds on which the armed public uprising actually took place should not be the measure of the extent, scope or range of the actual rebellion when there are other rebels positioned elsewhere, whose participation did not necessarily involve the publicity aspect of rebellion, as they may also be considered as engaged in the crime of rebellion.

In a similar vein, the termination of armed combat in Marawi does not conclusively indicate that the rebellion has ceased to exist. It will be a tenuous proposition to confine rebellion simply to a resounding clash of arms with government forces. As noted in *Aquino, Jr. v. Enrile*, modern day rebellion has other facets than just the taking up of arms, including financing, recruitment and propaganda, that may not necessarily be found or occurring in the place of the armed conflict[.][12] (Citations omitted; emphasis supplied.)

In the belief that the rebellion that spawned the Marawi crisis continues to persist until the present, the third extension for the implementation of martial law and the suspension of the

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[12] *Id.*

privilege of the writ of *habeas corpus* was initiated by the President and approved by the Congress.

To reiterate, in his letter dated December 6, 2018 to the Congress, President Duterte manifested that the security assessment submitted by the AFP and the PNP highlights certain essential facts which show that rebellion still persists in Mindanao and that public safety requires the continuation of martial law in the whole of Mindanao, to wit:

> The Abu Sayyaf Group, Bangsamoro Islamic Freedom Fighters, Daulah Islamiyah (DI), and other terrorist groups (collectively labeled as ITG) which seek to promote global rebellion, continue to defy the government by perpetrating hostile activities during the extended period of Martial Law. At least four (4) bombings/Improvised Explosive Device (IED) explosions had been cited in the AFP report. The Lamitan City bombing on 31 July 2018 that killed eleven (11) individuals and wounded ten (10) others, the Isulan. Sultan Kudarat IED explosion on 28 August and 02 September 2018 that killed five (5) individuals and wounded forty-five (45) others, and the Barangay Apopong IED explosion that left eight (8) individuals wounded.
>
> The DI forces continue to pursue their rebellion against the government by furthering the conduct of their radicalization activities, and continuing to recruit new members, especially in vulnerable Muslim communities.
>
> While the government was preoccupied in addressing the challenges posed by said groups, the CTG, which has publicly declared its intention to seize political power through violent means and supplant the country's democratic form of government with Communist rule, took advantage and likewise posed serious security concerns. Records disclosed that at least three hundred forty-two (342) violent incidents, ranging from harassments against government installations, liquidation operations, and arson attacks as part of extortion schemes, which occurred mostly in Eastern Mindanao, had been perpetrated from 01 January 2018 to 30 November 2018. About twenty-three (23) arson incidents had been recorded and it had been estimated that the amount of the properties destroyed in Mindanao alone has reached One Hundred Fifty-Six (156) Million Pesos. On the part of the military, the atrocities resulted in the killing of eighty-seven (87) military personnel and wounding of four hundred eight (408) others.

Apart from these, major Abu Sayyaf Group factions in Sulu continue to pursue kidnap for ransom activities to finance their operations. As of counting, there are a total of eight (8) kidnappings that have occurred involving a Dutch, a Vietnamese, two (2) Indonesians, and four (4) Filipinos.[13]

During the Oral Argument, the AFP Deputy Chief of Staff for Intelligence, Major General Pablo Lorenzo, made a presentation in behalf of the respondents to inform the Court about the security situation in Mindanao, to establish that rebellion still exists and that public safety requires the extension of martial law in Mindanao. He stated:

[A]s a backgrounder, the violent take-over of Marawi City by local terrorist groups and embedded foreign terrorist fighters affiliated with the Islamic State led the President to declare martial law in Mindanao on May 23, 2017 by virtue of Presidential Proclamation No. 216. This bloody attempt to create a separate province or wilayat under the purported Islamic State caliphate necessitated a strong, swift and decisive action by the government. On July 22, 2017, martial law was extended for five more months until the end of 2017 in order to sustain the operational momentum against the Daulah Islamiyah hold-up in Marawi and prevent the spillover of rebellion in other areas in Mindanao, as a result, Marawi City was liberated from terrorists on October 23, 2017. On December 13, 2017, the Philippine Congress approved anew another extension of martial law up to the end of 2018 to effectively quell the remnants of this rebel groups that continue to take up arms against the government. On February 6, 2018, the Supreme Court upheld the constitutionality of the martial law extension. On December 12, 2018, the Philippine Congress approved the request of the President to extend Martial law for one more year up to the end of 2019. The constitutionality of which, however, is again being questioned in this august body. This presentation will therefore show that after almost 20 months since martial law was first declared in Mindanao, rebellion still exists and that the safety of the public is imperiled by the rebellion notwithstanding the gains achieved during its period of implementation. The factual basis for the extension of martial law is anchored on the continuing rebellion being waged by the communist terrorist group

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[13] President Rodrigo R. Duterte's Letter, dated December 6, 2018, addressed to the Congress; *rollo*, G.R. No. 243522 (Vol. 1), pp. 53-54.

and the local communist terrorist groups along with their foreign terrorist allies. The following slides provide the current status and activities of these groups.

(Slides being flashed on the screen.)

For the local terrorist groups and the foreign terrorist fighters, there are two major terrorist groups waging rebellion in the country. First, the Daulah Islamiyah which is the local franchise of the Islamic State and the Bangsamoro Islamic Freedom Fighters or BIFF, a faction that broke away from the MILF when the latter agreed to settle for enhanced autonomy instead of an independent Islamic State. The Daulah Islamiyah or "DI" is a collective term of all local terrorist groups that have pledged allegiance to Islamic State leader Abu Bakar al Baghdadi. It used to be headed by the late Isnilon Hapilon. After its failed attempt in Marawi, the DI continued its rebellion. In its official newsletter from the (inaudible) Roll dated 22 September 2018, the Islamic State provided the rationale for the continuing war that is being waged by its affiliates around the world and I quote: "To defend the lands of Islam and to make the word of Allah the highest". Moreover, the Islamic State, through the same newsletter, as well as its mock news agency [continues] to claim credit for the accomplishments of the soldiers of the kilafa or caliphate including those in East Asia wilayat indeed as the Islamic State Central in Iraq and Syria [continues] to lose territories, the burden of continuing its fight and projecting its global presence has now fallen into the hands of its affiliates including the East Asia wilayat to which the DI belongs. At present, the Daulah Islamiyah is comprised of the post Marawi remnants of the local Islamic State affiliated groups namely: the Lanao based Maute group led by Owayda M. Abdulmajid alias Abu Dar, the Maguindanao based Turaife group still headed by former BIFF Vice-Chairman for Internal Affairs Esmail Abdulmalik a.k.a. Abu Turaife, the Saranggani based Maguid group whose de facto leader is now Jeffrey Nilong a.k.a. Moymoy and the Basilan and Sulu based Abu Sayyaf groups led by Puruji Indama and Hajan Sawadjaan, respectively. The Daulah Islamiyah's total manpower is placed at 574 equipped with 564 firearms, its presence and influence can be felt in 154 barangays in Western, Southern, and Central Mindanao. Foreign Terrorists Fighters or FTF's are also embedded with these DI affiliated groups which further complicate the government's effort to effectively address this LTGs. Aside from their high level of motivation brought about by their deep ideological foundations, they

usually bring with them combat experience, contacts in international terrorist networks and functional knowledge in urban warfare tactics, IED fabrication and employment, anti-armor operations, cyber communications and financial operations, among others. As such, the FTF's continued presence facilitates the transmission of ideology, knowledge and competencies to local terrorist groups. They have also become primary instigators of more daring and deadly attacks. For instance, on July 31, 2018, foreign terrorist fighter Abu Kathir Al-Maghribi became the first suicide bomber recorded in the Philippines since the rise of the Islamic State. As of the latest count, there are four validated foreign terrorist fighters in the country while another 60 are on the watch list. For 2018, this DI affiliated groups figured in 72 encounters or clashes with government security forces resulting in 84 killed and 168 wounded on the pail of the enemy, government security forces and civilians. In one instance, specifically last 16 November 2018, the ASG was able to kill five soldiers and injured 23 others. One of the soldiers who was killed, Corporal Renhart T. Macad was even beheaded. An FTF was likewise seen together with the engaged Abu Sayyaf group. From January to December 2018, the DI carried out 76 composed of ten other DI affiliated groups and 66 Abu Sayyaf group atrocities or violent activities, the most significant of which are the bombings and kidnappings. With regards to bombings, the most significant are the bombing in Lamitan City, Basilan by the ASG, two bombings in Isulan, Sultan Kudarat and the recent bombing in Cotabato City by the DI Turaife group and one bombing in General Santos City by the DI-Maguid group. Collectively, this resulted in one, 17, rather, killed and 100 injured mostly civilians. On kidnappings, which has been the primary source of funds by the Abu Sayyaf group, a total of 18 incidents victimizing 39 individuals were recorded for 2018. This allowed the group to accumulate approximately 41.9 million pesos in ransom payments. Thus far, a total of eight kidnapped victims composed of five foreigners and three locals are still being held captive by the Abu Sayyaf group. The DI affiliated groups have been monitored actively conducting radicalization activities in vulnerable Muslim communities and recruiting new members specifically targeting aggrieved relatives and orphans of killed Daulah Islamiyah members during the Marawi crisis. Opportunity to exact revenge and monetary incentive have become common inducements for potential recruits. The DI was also monitored conducting specialized military trainings on several occasions this year, a total of 36 recruitment and eight training activities were conducted by the DI last year. Significant of this were the IED training conducted by the DI-Maute group in

Balindong, Lanao del Sur in March, the sniping training conducted by the DI-Maguid group in Palembang, Sultan Kudarat in May 2018, and the combat training of Abu Sayyaf group members under Basilan based sub-leader Puruji Indama, [along] with one Moroccan national in Sumisip, Basilan in August 2018. As mentioned earlier, the Bangsamoro Islamic Freedom Fighters broke away from the MILF when the latter decided to seriously [engage] in peace negotiations with the government. The BIFF has adopted the original objective of the MILF which is to establish an independent Bangsamoro state. As such, the group is strongly opposed to the MILF sponsored Bangsamoro Organic Law which is threatening the groups relevance and purpose of existence. Because of this, the BIFF is exploring all means to derail its implementation while continuing its violent push for the creation of an independent Bangsamoro homeland. At present, the BIFF is composed of the Karialan and Bungos factions. Their combined manpower and firearms are placed at 264 and 254, respectively. The BIFF [continues] to exert considerable influence in 50 barangays in the Municipality of Shariff Aguak, Datu Saudi-Ampatuan, Datu Unsay, Datu Hoffer Ampatuan, Datu Salibo and Datu Piang, all in Maguindanao. It also operates in some parts of North Cotabato, particularly in Pikit, Midsayap and Aleosan. For 2018, the BIFF figured in 55 encounters or clashes with government security forces that resulted in 14 killed and 36 injured in the enemy/government security forces and civilians alike. Furthermore, the BIFF managed to undertake 76 atrocities or violent activities; the most significant are the 21 IED attacks and 40 harassments of military installations. All these incidents resulted in the killing of 7 government forces, 8 civilians and the wounding of 23 government forces and 5 civilians. Significantly, the BIFF was able to conduct 2 IED trainings, one in South Uti and another one in Shariff Aguak, Maguindanao in February and December last year with around 50 participants who were tasked to conduct test missions in key urban areas in Central Mindanao after these trainings.[14]

In respondents' Memorandum, the Office of the Solicitor General mentioned the Department of National Defense's reference material presented during the Joint Session of Congress on the extension of martial law, which showed a total of 137 violent incidents committed by the local terrorist rebel groups

[14] TSN, Oral Argument, G.R. Nos. 243522, 243677, 243745 and 243797, January 29, 2019, pp. 11-14.

(ASG, BIFF, DI, and other groups that have established affiliation with ISIS/DAESH) from January 1 to November 30, 2018, as follows:

Type of Incident	Number of Incidents
Ambuscade	6
Arson	2
Firefighting/Attack	4
Grenade Throwing	4
Harassment	54
IED/Landmining Explosion	31
Attempted Kidnapping	1
Kidnapping	19
Liquidation	9
Murder	4
Shooting	3
TOTAL	137[15]

In the same reference material, the Department of National Defense reported the incidents for the period January 1 to November 30, 2018 relative to the continuing rebellion being conducted by the CTG, as follows:

Type of Incident	Number of Incidents
Ambush	15
Raid	4
Nuisance Harassment	41
Harassment	29
Disarming	5
Landmining	8
SPARU Operations	18
Liquidation	23
Kidnapping	5

[15] Memorandum of Respondents; *rollo*, G.R. No. 243522 (Vol. 2), p. 826.

Robbery/Hold-Up	1
Bombing	1
Arson	27
TOTAL	177[16]

The violent incidents of harassment, kidnapping and arson were explained by Major General Pablo Lorenzo, thus:

> The word "harassment" is a military term for a type of armed attack where the perpetrators fire at stationary military personnel, auxiliaries, or installations for a relatively short period of time (as opposed to a full armed attack) for the purpose of inflicting casualties, as a diversionary effort to deflect attention from another tactical undertaking, or to project presence in the area. x x x. Harassments are undertaken not in isolation but as part of a bigger military strategy. This is a common tactic employed by the Communist Terrorist Group, the ASG, DI, and BIFF. On the other hand, kidnapping is undertaken particularly by the ASG to finance its operational and administrative expenses in waging rebellion. As shown in the presentation during the oral arguments, the ASG has amassed an estimated PhP41.9 million in ransom proceeds for 2018 alone. With regard to arson, the tactic is commonly used by the same rebel groups for various purposes such as intimidating people who are supportive of the government, as punitive action for those who refuse to give in to extortion demands, or simply to terrorize the populace into submission. All these activities are undoubtedly undertaken in furtherance of rebellion.[17]

Undeniably, the AFP reports show that rebellion persists in Mindanao, and the violent activities, including bombing, kidnapping, harassment, and encounters with the military committed by the LTG rebel groups are in furtherance of rebellion with the goal to create a separate province or *wilayat* under the purported Islamic State caliphate (DI) and to establish an independent Bangsamoro state (BIFF) and deprive the President and the Congress of their powers or prerogatives. On the other hand, the CTG aims to overthrow the duly constituted government and establish communist rule.

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[16] *Id.* at 826-827.

[17] *Id.* at 853-854.

It must be reiterated that the gravamen of the crime of rebellion is an armed public uprising against the government. By its very nature, rebellion is essentially a crime of masses or multitudes involving crowd action, which cannot be confined *a priori* within predetermined bounds. One aspect noteworthy in the commission of rebellion is that other acts committed in its pursuance are, by law, absorbed in the crime itself because they acquire a political character.[18] This peculiarity was underscored in the case of *People v. Hernandez, et al.*,[19] thus:

> In short, political crimes are those directly aimed against the political order, as well as such common crimes as may be committed to achieve a *political purpose. The decisive factor is the intent or motive.* If a crime usually regarded as common, like homicide, is perpetrated for the purpose of removing from the allegiance "to the Government the territory of the [Philippine] Islands or any part thereof," then said offense becomes stripped of its "common" complexion, inasmuch as, being part and parcel of the crime of rebellion, the former acquires the political character of the latter.[20] (Emphasis in the original.)

The bombings and all other attacks, kidnapping, killings, harassment, recruitment of new members, and propaganda activities conducted by the rebel and terrorist groups show that rebellion continues because these atrocities and propaganda activities are perpetrated by the same rebel groups. The concerted destabilizing activities and actions of the rebel groups are all committed in furtherance of rebellion.

Thus, the Court, in appreciating the evidence, would have to consider the fact that the entire picture could only be arrived at after piecing together what may appear initially as fragments which hardly mean anything. But such pieces could only present a better image when they are seen as parts of a whole. Such pieces are just like those of a jigsaw puzzle, or individual elements of a mosaic. When seen individually, they do not seem to make

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[18] *People v. Lovedioro*, 320 Phil. 481, 488 (1995).

[19] 99 Phil. 515 (1956).

[20] *Id.* at 535-536.

sense, but when arranged in the proper manner and seen from a distance, they present an entirely different picture.

In the same way, the Court should see the individual pieces of evidence which initially may look disparate and unrelated incidents. When these are seen in proper perspective, however, they would readily show that they are all part of the rebellion that justifies the exercise of martial law powers. Some acts of violence in some other parts of Mindanao, no matter how apparently far removed, in place and time, from the Marawi incident, could be another aspect of the continuing rebellion. The acts need not be confined to where it all started as they may have to be done elsewhere. Government success in quelling the uprising in one part could force the rebels to move elsewhere and continue with their operations there.

Public safety requires the extension of martial law in Mindanao

To recapitulate, the following events and circumstances strongly indicated that the continued implementation of martial law in Mindanao is necessary to protect public safety.

a. 181 persons in the martial law arrest orders have remained at large;

b. Despite the dwindling strength and capabilities of the terrorist groups, the recent bombings that transpired in Mindanao collectively killed 16 people and injured 63 others in less than 2 months;

c. On October 5, 2018, agents from the Philippine Drug Enforcement Agency who conducted an anti-drug symposium in Lanao del Sur were brutally ambushed, in which 5 were killed and 2 were wounded;

d. The DI continues to conduct radicalization activities in vulnerable Muslim communities and recruitment of new members, targeting relatives and orphans of killed DI members;

e. As of December 6, 2018, there are still 7 remaining kidnap victims under captivity;

f. Mindanao remains to be the hotbed of communist rebel insurgency in the country. 8 out of the 14 active provinces in terms of communist rebel insurgency are in Mindanao;

g. From January to November 2018, the number of Ideological Political and Organizational efforts of the communist group amounted to 1420 which indicated their continuing recruitment of new members;

h. The CTG exploitation of indigenous people is so rampant that Lumad schools are being used as recruiting and training grounds. On November 28, 2018, Satur Ocampo and 18 others were intercepted in a PNP checkpoint in Davao del Norte for unlawfully taking into custody 14 minors.

Considering the above-cited incidents, while it may be true that the Maute group had been eliminated in Marawi, this should not be seen as the end of the rebellion. Other individuals or groups acting in concert with or animated by the same aim as that of the Maute group, including the New People's Army (*NPA*), still operate in other parts of Mindanao, all with the purpose of wrestling power and authority from the legitimate government. If the purpose of declaring martial law in the first place is to be achieved, then all other acts of rebellion, whether done by the original group that started in Marawi or by some other related or similar groups, should be appreciated as parts intrinsically linked to the rebellion that called forth the proclamation of martial law.

The seemingly disconnected acts of violence and terrorism are interrelated parts of an ongoing rebellion that did not stop just because the government succeeded in quelling the uprising in Marawi. As shown by other incidents elsewhere, and until recently, it is apparent that the government still has some way to go to really achieve its purpose of ensuring the safety and security of the people.

Moreover, public safety, which is another component element for the declaration of martial law, "involves the prevention of and protection from events that could endanger the safety of the general public from significant danger, injury/harm, or

damage, such as crimes or disasters." Public safety is an abstract term; it does not take any physical form. Plainly, its range, extent or scope could not be physically measured by metes and bounds.[21]

Thus, we cannot limit the declaration of martial law only where the attacks or hostilities are happening. This has been settled in *Lagman v. Medialdea*:[22]

> Perhaps another reason why the territorial scope of martial law should not necessarily be limited to the particular vicinity where the armed public uprising actually transpired, is because of the unique characteristic of rebellion as a crime. "The crime of rebellion consists of many acts. It is a vast movement of men and a complex net of intrigues and plots. Acts committed in furtherance of rebellion[,] though crimes in themselves[,] are deemed absorbed in one single crime of rebellion." Rebellion absorbs "other acts committed in its pursuance". Direct assault, murder, homicide, arson, robbery, and kidnapping, just to name a few, are absorbed in the crime of rebellion if committed in furtherance of rebellion; "[i]t cannot be made a basis of a separate charge." Jurisprudence also teaches that not only common crimes may be absorbed in rebellion but also "offenses under special laws [such as Presidential Decree No. 1829] which are perpetrated in furtherance of the political offense." "All crimes, whether punishable under a special law or general law, which are mere components or ingredients, or committed in furtherance thereof, become absorbed in the crime of rebellion and cannot be isolated and charged as separate crimes in themselves."
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> In fine, it is difficult, if not impossible, to fix the territorial scope of martial law in direct proportion to the "range" of actual rebellion and public safety simply because rebellion and public safety have no fixed physical dimensions. Their transitory and abstract nature defies precise measurements; hence, the determination of the territorial scope of martial law could only be drawn from arbitrary, not fixed, variables. The Constitution must have considered these limitations when it granted the President wide leeway and flexibility in determining the territorial scope of martial law.

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[21] *Lagman, et al. v. Pimentel III, et al., supra* note 3.

[22] *Supra* note 2.

Moreover, the President's duty to maintain peace and public safety is not limited only to the place where there is actual rebellion; it extends to other areas where the present hostilities are in danger of spilling over. It is not intended merely to prevent the escape of lawless elements from Marawi City, but also to avoid enemy reinforcements and to cut their supply lines coming from different parts of Mindanao. Thus, limiting the proclamation and/or suspension to the place where there is actual rebellion would not only defeat the purpose of declaring martial law, it will make the exercise thereof ineffective and useless.

x x x. Clearly, the power to determine the scope of territorial application belongs to the President. "The Court cannot indulge in judicial legislation without violating the principle of separation of powers, and, hence, undermining the foundation of our republican system."[23] (Citations omitted.)

It is also to be underscored that with modern means of communication and transportation, it is no longer that difficult for affiliated groups of rebels to communicate and move from place to place. Putting out the rebellion in Marawi does not necessarily mean the end of the rebellion as members of said movement, or their affiliated groups, could easily get in touch with each other and coordinate acts of violence, terrorism and rebellion. Or, they could easily be in one place at one time and in another a short time later.

The Court is likewise in no different position now as it was during the initial declaration of martial law and its second extension. The Court can only act within the confines of its powers in determining the sufficiency of the factual basis for declaring or extending martial law.

Based on the AFP's end of first semester data, the ASG has a total of 424 members with 473 firearms. The BIFF has 264 members with 254 firearms and affecting 50 barangays. The DI has a reach of 16 barangays and is composed of 59 members of the Maute Group with 61 firearms, 6 members of the Maguid Group with 10 firearms, and 85 members of the Toraife Group with 20 firearms. The total barangays affected are 204. There

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[23] *Id*. at 207-209.

is also a consistent influx of foreign terrorists in the country who are primarily responsible for the conduct of trainings to local terrorist fighters. There are 4 identified foreign terrorist fighters, while 60 others are among those in the AFP's watchlist.

AFP General Carlito G. Galvez, Jr. and PNP Chief Oscar D. Albayalde emphasized the need to end the ongoing rebellion because the Daesh-inspired groups and its local and foreign allies, and also the Communist Party of the Philippines-NPA forces in Mindanao, have shifted their strategy from establishing a *wilayat* to global insurgency or rebellion. Thus, they continue their recruitment and radicalization activities by teaching their new members how to launch deadlier attacks and to sow chaos and instability that will extremely endanger the public.

If the President can rely on the AFP and PNP intelligence reports and classified documents, this Court should also do so. To reiterate, the Court is not equipped with the competence and logistical machinery to determine the strategical value of other places in the military's efforts to quell the rebellion and restore peace. It would be engaging in an act of adventurism if it dares to embark on a mission of deciphering the territorial metes and bounds of martial law. The Court has no military background and technical expertise to predict that. In the same manner, the Court lacks the technical capability to determine which part of Mindanao would best serve as forward operating base of the military in their present endeavor in Mindanao. It is on this score that the Court should give the President sufficient leeway to address the peace and order problem in Mindanao.[24]

Again, as explained in *Lagman v. Medialdea*,[25] the Court's reliance on the fact-finding capabilities of the Executive Department should not be considered as a constitutional lapse as this is in line with the function of the Court in determining the sufficiency of factual basis of the further extension of martial law, it must be limited only to the facts and information mentioned

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[24] *Lagman v. Medialdea, supra* note 2, at 209-210.

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

in the AFP Report. We cannot "undertake an independent investigation beyond the pleadings."

Deadline for Decision-Rendition

The Constitution mandates that this Court "must promulgate its decision" in regard to petitions questioning the proclamation or extension of martial law within thirty (30) days from filing.[26] The language is couched in the imperative. However, this may not always be achievable, especially if the Court has to do its job of properly and meticulously evaluating the sufficiency of the factual basis. There are certain factors that would not make it feasible for the Court to render judgment within the period mandated by the Constitution. One is the fact that since it involves fact-finding, the Court could not just decide on mere allegations and counter-allegations in pleadings. It has to schedule oral arguments, which may take days.

Another factor is the possibility that there may be several petitions filed questioning the proclamation or the extension, such as in this instant proceeding, as well as in the past ones. The Court could not just limit itself to the issues raised in the initial petition and ignore the rest.

Also, the need for the Court to deliberate could result in various opinions, especially when it comes to contentious cases, such as this case. There may be changing majority depending on how the members of the Court would appreciate the facts and circumstances. Coming up with the final majority opinion may mean a slight delay.

Further, given the fact that when it comes to the extension of martial law, the Congress also has a definitive say, not only that of the President, the Court may have to need additional time to carefully evaluate the factual basis to determine its

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[26] "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 or the extension thereof, and must promulgate its decision thereon within thirty days from its filing." (Art. VII, Sec. 18, Par. 3, CONSTITUTION.)

sufficiency in accordance with the constitutional intent. Since it is no longer merely the decision of the President that is being considered but also that of the Congress itself, the Court may have to tread more carefully in undertaking its determination of factual sufficiency. It would be unbecoming of the Court to come up with a half-baked decision simply because of time pressure, especially when it comes to very important matters, such as the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus.*

Given all the foregoing considerations, as well as others that may arise, the Court may not be able to promulgate the decision within the time frame as envisioned by the Fundamental Law. Some delay may be occasioned, but the Court must still act with all deliberate dispatch in keeping with the letter and spirit of the constitutional provision. In *Fortun, et al. v. President Macapagal-Arroyo, et al.*,[27] the Court also stated: "But what if the 30 days given it by the Constitution proves inadequate? Justice Antonio T. Carpio himself offers the answer in his dissent: that 30-day period does not operate to divest this Court of its jurisdiction over the case. The settled rule is that jurisdiction once acquired is not lost until the case has been terminated."[28]

Meaning of rebellion must be appreciated in the context of modern technology

Rebellion, as a justification for the proclamation of martial law, has been directly identified with the crime as defined in the Revised Penal Code. It might be time for the Court to revisit this aspect and give it a meaning that is attuned to the digital world. Martial law as a means for the State to defend itself should not be limited to the technical meaning as set out in the penal laws requiring the use of arms. In these modern times where the use of computers presents the possibility of rebels crippling government operations, rebellion under the concept of martial law may be given a meaning that takes into account

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[27] 684 Phil. 526 (2012).

[28] *Id.* at 561.

other forms by which people seeking to topple or overthrow the government can accomplish it. In the cyber age, rebellion may not simply be waged by arms but also by some other means which could achieve the same purpose — arms should not be confined to traditional meaning of firearms and ammunition but also digital weapons.

Determination by both Political Departments

While the Court is mandated by the Constitution to determine the sufficiency of the factual basis for the declaration of martial law, or its extension, some consideration must still be given to the factual determination by the President and the Congress. We must not lose sight of the fact that we are not armchair generals second guessing those who are in the field of battle. We may have better perspective from a distance and in hindsight, but then we cannot really see the other details that have to be carefully evaluated and calibrated by the President and the Congress when they act together to extend the duration of martial law. Some leeway, therefore, must be accorded the political departments when it comes to the Court's exercise of its duty to determine sufficiency of the factual basis for the extension of martial law. Nitpicking when it comes to the evidence presented by the government would be inappropriate.

This is not to say that the Court should just lean backward and put its imprimatur on whatever the President and the Congress would have done. If the Court were to do that, it would constitute an abdication of its constitutional power. The Court must do its job, but it must be done in a manner that recognizes the initial primary responsibility of the political branches to evaluate facts and circumstances in deciding whether or not to extend the duration of martial law. Therefore, some pieces of evidence considered by the President and the Congress should not just be dismissed because it does not conform to the Court's idea of acceptable and credible evidence that would support a judicial determination in ordinary litigation. The evidence available may at best be justified by a consideration of interrelated pieces which are inherently difficult to gather given the fact that rebellion, including terrorism, is an act that would have to employ

stealth and secrecy to succeed. Rebellion may have to rely on surprise brought about by the government's failure to appreciate the small and apparently disparate acts or activities all leading to the open outbreak or manifestation of acts to overthrow the government.

Rebellion may be like cancer gnawing at the vital organs of society. It may only be noticed when already in its advanced stage, at which time there would be need to take radical remedial measures, such as the proclamation of martial law. Eradicating the cancer at the point where it was first detected does not necessarily mean that it has been contained. There is still the possibility that it has also spread undetected to some other parts, for which continuing measures would have to be undertaken. The same way with rebellion. There is a need to root out the problem, which is not as simple as defeating the rebels who tried to take over a particular locality. Otherwise, the government may win the battle, but would eventually lose the war because it stopped at merely defeating its enemies where it first found them.

ACCORDINGLY, based on the foregoing, I vote to DISMISS the petitions and DECLARE Resolution of Both Houses No. 6 as CONSTITUTIONAL.

SEPARATE CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur in the result.

Again, before the Court are consolidated petitions[1] assailing the sufficiency of the factual basis of Resolution of Both Houses

[1] There are four (4) petitions filed assailing the martial law extension. The Petition in G.R. No. 243522 was filed on January 4, 2019 (an Amended Petition was filed on January 17, 2019), while the Petition in G.R. No. 243677 was filed on January 16, 2019. The Petition in G.R. No. 243745 was filed on January 18, 2019, while the Petition in G.R. No. 243797 was filed on January 23, 2019.

No. 6[2] dated December 12, 2018,[3] which grants a third extension to the effectivity of Proclamation No. 216,[4] entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao," for another year, or from January 1, 2019 to December 31, 2019. The pertinent portions of this Resolution read:

WHEREAS, the President nevertheless pointed out that notwithstanding these gains, there are certain essential facts proving that rebellion still persists in the whole of Mindanao and that public safety requires the continuation of Martial Law, among others: (a) the Abu Sayyaf Group, Bangsamoro Islamic Freedom Fighters, Daulah Islamiyah (DI), and other terrorist groups collectively labeled as LTGs which seek to promote global rebellion, continue to defy the government by perpetrating hostile activities during the extended period of Martial Law that at least four (4) bombing incidents had been cited in the AFP report: (1) the Lamitan City bombing on July 31, 2018 that killed eleven (11) individuals and wounded ten (10) others; (2) the Isulan, Sultan Kudarat improvised explosive device (IED) explosion on August 28 and September 2, 2018 that killed five (5) individuals and wounded forty-five (45) others; and (3) the Barangay Apopong IED explosion that left eight (8) individuals wounded; (b) the DI forces also continue to pursue their rebellion against the government by furthering the conduct of their radicalization activities and continuing to recruit new members especially in vulnerable Muslim communities; and (c) the CTG, which publicly declared its intention to seize political power through violent means and supplant the country's democratic form of government with communist rule which posed serious security concerns;

WHEREAS, the President also reported that at least three hundred forty-two (342) violent incidents, ranging from harassments against

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[2] Entitled "RESOLUTION OF BOTH HOUSES FURTHER EXTENDING PROCLAMATION NO. 216, SERIES OF 2017, ENTITLED 'DECLARING A STATE OF MARTIAL LAW AND SUSPENDING THE PRIVILEGE OF THE WRIT OF *HABEAS CORPUS* IN THE WHOLE OF MINDANAO' FOR ANOTHER PERIOD OF ONE (1) YEAR FROM JANUARY 1, 2019 TO DECEMBER 31, 2019."

[3] See Annex "B" of Petition in Lagman; *rollo* (G.R. No. 243522), Vol. I, pp. 56-58.

[4] Issued on May 23, 2017.

government installations, liquidation operations and arson attacks occurred in Mindanao, killing eighty-seven (87) military personnel and wounding four hundred eight (408) others and causing One hundred fifty-six million pesos (₱156,000,000.00) worth of property damages;

WHEREAS, the Senate and the House of Representatives are one in the belief that the security assessment submitted by the AFP and the PNP to the President indubitably confirms the continuing rebellion in Mindanao which compels further extension of the implementation of Martial Law and the suspension of the privilege of the writ of *habeas corpus* for a period of one (1) year, from January 1, 2019 to December 31, 2019, to enable the AFP, the PNP, and all other law enforcement agencies, to finally put an end to the ongoing rebellion and to continue to prevent the same from escalating in other parts of the country;

x x x x x x x x x

Resolved by the Senate and the House of Representatives in a Joint Session assembled, To further extend Proclamation No. 216, series of 2017, entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao" for another period of one (1) year from January 1, 2019 to December 31, 2019.

As I have discussed in my Separate Concurring Opinion in Representatives *Edcel C. Lagman, et al. v. Senate President Aquilino Pimentel III, et al.*, G.R. Nos. 235935, 236061, 236145, and 236155 (*Lagman v. Pimentel III*),[5] in cases involving the examination of a martial law extension, the Court's task is to determine whether or not there is sufficient factual basis to show that: (*a*) the invasion or rebellion still persists; and (*b*) public safety requires the extension.[6] Pursuant to Section 18, Article VII of the 1987 Constitution,[7] these two (2) requirements

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[5] See Decision in *Lagman v. Pimentel III*, G.R. Nos. 235935, 236061, 236145, and 236155, February 6, 2018. The motion for reconsideration is still pending consideration by the Court.

[6] See my Separate Concurring Opinion in *Lagman v. Pimentel III*, *id*.

[7] Section 18. x x x.

x x x x x x x x x

ought to be satisfied by Congress before it may properly decree another martial law extension.

The first point of analysis is on the persistence of rebellion. As I have also explained in my previous Opinions,[8] "a rebellion, **because of its peculiar conceptual features, survives in legal existence up until the rebellious movement stops**, such as when the rebels have **already surrendered** or that they are **caught by government operatives**. As it may, however, be impractical, if not impossible, to accurately ascertain if all the members of a rebel movement have surrendered or have been killed or captured at a certain point in time, then **a satisfactory showing of the rebel movement's substantial inactivity or loss of capability to mount a public uprising would reasonably suffice**."[9]

Based on the evidence presented by respondents in these cases, there is no sufficient indication that the rebellion spearheaded by the Maute-Hapilon group — who was primarily responsible for the infamous Marawi siege — has been substantially inactive or has lost the capability to mount a public uprising. Although the President's most recent letter-request[10] to Congress highlighted the threats of the so-called "local terrorist groups" (LTG) and "communist terrorist groups" (CTG), it remains that the remnants of the Maute-Hapilon group are still actively resisting the military as evidenced by the armed

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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.

x x x x x x x x x (Emphases and underscoring supplied)

[8] See my Separate Opinion in *Lagman v. Medialdea*, G.R. Nos. 231658, 231771, and 231774, July 4, 2017, 829 SCRA 1; and my Separate Concurring Opinion in *Lagman v. Pimentel III*, *supra* note 5.

[9] *Lagman v. Pimentel III*, *id*.; emphases supplied. See also *Lagman v. Medialdea*, *id*. at 470-471.

[10] See letter dated December 6, 2018; Annex A of the Petition of Lagman; *rollo* (G.R. No. 243522), Vol. I, pp. 51-55.

encounter in Sultan Dumalongdong, Lanao del Norte last September 7, 2018.[11]

Moreover, as respondents have noted, the other DAESH/ISIS-linked rebel groups, which include the Abu Sayyaf Group (ASG) and the Bangsamoro Islamic Freedom Fighters (BIFF), are still continuously conducting their radicalization and recruitment activities in Mindanao.[12] These rebel groups are still actively contending with the military and the police through the numerous violent incidents indicated in their reports,[13] and the bombing incidents throughout Mindanao,[14] most notably, the twin blasts on a church in Jolo, Sulu.[15] To note, despite the lack of specification, the President did mention the activities of "other rebel groups" as a moving consideration for Proclamation No. 216. As such, it can be reasonably inferred that the identification of the Maute-Hapilon group was not intended to be exclusive.[16]

As I previously ratiocinated, a grant of an extension of martial law may be justified by "**supervening events [which] not only pertain to the regrouping efforts of the x x x rebel 'remnants' but also the inclusion of other rebel groups, x x x, whose rebellious activities during the supervening period may have amplified — if not, complicated — the situation**. As the Constitution reads, the persistence of an invasion or rebellion (together with the public requirement) is sufficient for an

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[11] See Implementation of Martial Law in Mindanao Monthly Reports 2018 for the period from September 1 to 30, 2018.

[12] See Respondent's Memorandum dated February 4, 2019; *rollo* (G.R. No. 243522), Vol. II, p. 833.

[13] See Implementation of Martial Law in Mindanao Monthly Reports 2018.

[14] See Letter of the Armed Forces of the Philippines to the President attached to the cover letter of the Department of National Defense, dated December 4, 2018; Annex "1" of the Comment to the Petitions; *rollo* (G.R. No. 243522), Vol. I, pp. 201-202.

[15] Oral Arguments, TSN, January 22, 2019, p. 16.

[16] See my Separate Concurring Opinion in *Lagman v. Pimentel III*, *supra* note 5.

extension to be decreed. Nowhere has it been required that the extension should solely relate to the supervening activities of the same rebel group covered by the initial proclamation."[17]

Notably, it has been argued[18] that the "violent incidents" of these rebel groups have not been substantiated enough by respondents owing to the incomplete entries, non-identification of perpetrators, unstated motives, and inclusion of incidents that are unrelated to rebellion, in the reports. However, to my mind, the existence of minor inconsistencies or the hiatus of information on certain attending details is not entirely fatal to respondents' cause. As the latter advanced, these reports are a "complete record of all violent incidents x x x attributed to a specific threat group or any of its members."[19] These constitute a compilation of several "spot reports" made on the ground by the AFP units which are prepared under exigent — and oftentimes, time-sensitive - constraints. In my view, absent any palpable indication of any falsity, ill motive, or unreasonableness on the part of the government, due deference should be accorded to the institutional capabilities of our military, which have gained enough experience on the ground to make critical decisions regarding the safety of our country. Verily, one should be cognizant that the military is, after all, a human institution which is not expected to be completely infallible; thus, the recommending officers may altogether make strategic calculations based on "imperfect" disclosures. As the old adage goes, "incomplete information is better than one that is complete but too late to be used."[20]

In the same light, the fact that respondents have not specifically identified the perpetrators or have unstated motives for a *limited* number of incidents should not detract from the overall veracity

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[17] See *id*.; emphasis supplied.

[18] See Opinion of Associate Justice Alfredo Benjamin S. Caguioa (Justice Caguioa).

[19] See Respondents' Memorandum dated February 4, 2019; *rollo* (G.R. No. 243522), Vol. II, p. 838.

[20] *Id*. at 838-839.

of the above-said reports. Requiring the military to adduce more detailed information with regard to these incidents may be tantamount to demanding more than "adequate proof of compliance with the constitutional requisites."[21] More so, respondents cannot be completely faulted for failing to clearly establish the motive of these groups *corresponding to each of these incidents*. Motive, as a state of mind, is difficult to prove with exactitude, much more on an isolated basis. One must have a holistic appreciation of the circumstances relevant to the said action to ascertain such a motive. In this regard and keeping in mind the *sui generis* nature of this proceeding,[22] respondents should not be expected to be able to prove motive in the same way that one would prove motive in a criminal proceeding. It should suffice that based on the circumstances observed on the ground, there exists reasonable factual basis that the armed encounters are driven by motives anchored on rebellion. At the risk of belaboring the point, respondents' assertion that these incidents are committed in furtherance of a rebellion was borne from the military's "years of experience on the ground, their expertise in military strategy, and their capacity to make split-second decisions."[23] Accordingly, based on the evidence presented, and absent any compelling reason to hold otherwise, I am inclined to conclude that there exists adequate proof on the persistence of the rebellion contemplated under Proclamation No. 216, which means that the same has not been rendered *functus officio*.[24]

As to the requirement of public safety, the following circumstances demonstrate the exigencies which support the third extension of martial law over Mindanao:

a. No less than 181 persons in the martial law Arrest Orders have remained at large;

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[21] See my Separate Concurring Opinion in *Lagman v. Pimentel III*, *supra* note 5.

[22] See my Separate Opinion *Lagman v. Medialdea*, *supra* note 8, at 455.

[23] See my Separate Concurring Opinion in *Lagman v. Pimentel III*, *supra* note 5.

[24] See Opinion of Justice Caguioa.

b. Despite the dwindling strength and capabilities of the local terrorist rebel groups, the recent bombings that transpired in Mindanao that collectively killed 16 people and injured 63 others in less than 2 months is a testament on how lethal and ingenious terrorist attacks have become.

x x x x x x x x x

d. The DI continues to conduct radicalization activities in vulnerable Muslim communities and recruitment of new members, targeting relatives and orphans of killed DI members. Its presence in these areas immensely disrupted the government's delivery of basic services and clearly needs military intervention.

e. Major ASG factions in Sulu and Basilan have fully embraced the DAESH ideology and continue their express kidnappings. As of December 6, 2018, there are still seven (7) remaining kidnap victims under captivity.

f. Despite the downward trend of insurgency parameters, Mindanao remains to be the hotbed of communist rebel insurgency in the country. Eight (8) out of the 14 active provinces in terms of communist rebel insurgency are in Mindanao.

g. The Communist Terrorist Rebel Group in Mindanao continues its hostile activities while conducting its organization, consolidation and recruitment. In fact, from January to November 2018, the number of Ideological Political and Organizational (IPO) efforts of this group amounted to 1,420, which indicates their continuing recruitment of new members. Moreover, it is in Mindanao where the most violent incidents initiated by this group transpire. Particularly, government security forces and business establishments are being subjected to harassment, arson and liquidations when they defy their extortion demands.

h. The [Communist Terrorist Rebel Group's] exploitation of indigenous people is so rampant that Lumad schools are being used as recruiting and training grounds for their armed rebellion and anti-government propaganda. On November 28, 2018, Satur Ocampo and 18 others were intercepted by the Talaingod PNP checkpoint in Davao del Norte for unlawfully taking into custody 14 minors who are students of a learning school in Sitio Dulyan, Palma Gil in Talaingod town. Cases were filed against Ocampo's camp for violations of Republic Act (R.A.) No. 10364, in relation to R.A. No. 7610, as well as violation

of Article 270 of the Revised Penal Code (RPC), due to the [PNP's] reasonable belief that the school is being used to manipulate the minds of the students' rebellious ideas against the government.[25]

Petitioners failed to disprove the occurrence of the foregoing circumstances and events. On the other hand, the intelligence reports clearly demonstrate the continuing threat to public safety. There also appears to be no patent unreasonableness in the amount of time requested for the extension to meet the public safety concerns wrought by the rebellion. As I mentioned in my opinion in *Lagman v. Pimentel III*, "if the President's estimation does not appear to be implausible or farfetched, then this Court should defer to his plan of action, especially so since Congress has further given its assent."[26]

Thus, considering that there exists sufficient factual basis to show that the rebellion still persists and that public safety requires the extension of martial law under the terms stated in Resolution of Both Houses No. 6 dated December 12, 2018, I vote to **DISMISS** the consolidated petitions.

CONCURRING OPINION

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

As to purpose, martial, law is known in the west as the dramatic solution to a violent situation — to quell a riot, to suppress anarchy, to overcome rebellion. Here in the Philippines, this primary purpose remains, but it has been enlarged to embrace also the extirpation of the ills and conditions which spawned the riot, the anarchy, and the rebellion.[1]

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[25] See Respondent's Memorandum dated February 4, 2019; *rollo* (G.R. No. 243522), Vol. II, pp. 832-833.

[26] See my Separate Concurring Opinion in *Lagman v. Pimentel III*, *supra* note 5.

[1] Bernas, J., *The 1987 Constitution of the Philippines: A Commentary* (2009 ed.) p. 912.

Chief Justice Fred Ruiz Castro's Speech during the 8th World Peace Through Law Conference held in Manila

Martial law has been a tempestuous issue in the Philippines since its imposition in 1972. Many correlate the same to being a mere tool for the vesting of unlimited and unchecked powers to a then sitting President.

This phenomenon, while understandable, has unfortunately shunted to the side the good that legitimate martial law can bring: the efficiency in combating grave crises, the boon to a state and its citizens' safety and security, and the promise of peace. This, especially when operating within the overall rule of law, subject to certain and specific constitutional constraints.[2] These restraints have been immortalized in the 1987 Constitution, known to have been drafted and promulgated with the intent of permitting martial law only when public order and safety will it.

While martial law is an exercise of the President, as aided by the military, and in place "of certain governmental agencies which for the time being are unable to cope with existing conditions in a locality which remains subject to the sovereignty,"[3] the present Constitution has limited the exercise of this discretion of the President and put it under the review powers of Congress and of the Supreme Court. Under the 1987 Constitution: "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 or the extension thereof, and must promulgate its decision thereon within thirty days from its filing,"[4] *to wit*:

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[2] Reynolds, John Emplire, *Emergency, and the Law* (last published May 27, 2014), p. 88.

[3] Bernas, J., *The 1987 Constitution of the Philippines: A Commentary* (2009 ed.) p. 916.

[4] *Id*. at p. 917.

The next text gives to the Supreme Court the power not just to determine executive arbitrariness in the manner of arriving at the suspension but also the power to determine the sufficiency of the factual basis of the suspension. Hence, the Court is empowered to determine whether in fact actual invasion and rebellion exists and whether public safety requires the suspension. Thus, quite obviously too, since the Court will have to rely on the fact-finding capabilities of the executive department, the executive department, if the President wants his suspension sustained, will have to open whatever findings the department might have to the scrutiny of the Supreme Court.

It is thus clear that it is the Supreme Court's specific mandate to determine the fact of actual rebellion and the need for public safety. While not supplanting the discretion of the President, the Court must nonetheless rule as to whether the power granted to the President was arbitrarily exercised, and if such was used to the detriment of the affected populace. A reluctance to do so adequately would amount to shirking the Court's responsibility to utilize its review power, while a failure to do so would cause great prejudice to the State. A proper exercise of the same would gain ground in turning the existence of martial law as a remnant of the abusive legacy, into a tool that is used to uphold peace and prosperity when the need calls for it.

The Court's power of judicial review over extensions to martial law and suspensions of the privilege of the writ of habeas corpus is limited to the determination of whether there is "sufficient factual basis."

Section 18, Article VII of the 1987 Constitution[5] vests upon the Court the authority to review the factual basis of the

[5] **Section 18.** The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President

President's declaration of martial law and suspension of the privilege of the writ of *habeas corpus* or to any extension thereof. This authority has been expressly recognized as *sui generis* and in *Lagman v. Pimentel III*,[6] it has been opined that if invoked, it allows the Court to act as champions of the Constitution.[7]

However, in order to properly exercise this special power of judicial review, the Court must be mindful of its boundaries and limitations. As pronounced by the Court in *Lagman v. Medialdea*,[8] and subsequently affirmed in *Lagman v. Pimentel III*,[9] the scope of the Court's power to review under Section 18, Article VII should be confined to the determination of whether the President's exercise of his powers as Commander-in-Chief under said provision, or in this case, the extension of the imposition of martial law and the suspension of the writ of *habeas corpus*, has "sufficient factual basis."

Probable cause is the standard of proof required in establishing sufficiency of the factual basis.

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shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.

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 or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

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[6] G.R. Nos. 235935, 236061, 236145 & 236155, February 6, 2018.

[7] *Id*.

[8] G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1, 176-177.

[9] G.R. Nos. 235935, 236061, 236145 & 236155, February 6, 2018.

With that being said, the Court has been unequivocal in ruling that "sufficient factual basis" necessarily connotes that the President has probable cause to believe that: (1) that there exists an actual invasion or rebellion; and (2) that public safety so requires the imposition of martial law or the suspension of privilege of the writ of *habeas corpus* or the extension thereof.[10]

The Court has already clarified in the past that it is axiomatically the probable cause standard, and none other, that should guide the President to establish the existence of the above-mentioned conditions. *Probable cause* here means such evidence which would lead a reasonable man, making use of common sense, to believe that more likely than not, there is actual rebellion or invasion. This point has been extensively elucidated on by the Court in *Lagman v. Medialdea*,[11] *to wit:*

> In determining the existence of rebellion, the President only needs to convince himself that there is probable cause or evidence showing that more likely than not a rebellion was committed or is being committed. x x x Along this line, Justice Carpio, in his Dissent in *Fortun v. President Macapagal-Arroyo*, **concluded that the President needs only to satisfy probable cause as the standard of proof in determining the existence of either invasion or rebellion for purposes of declaring martial law, and that probable cause is the most reasonable, most practical and most expedient standard by which the President can fully ascertain the existence or non-existence of rebellion necessary for a declaration of martial law or suspension of the writ**. This is because unlike other standards of proof, which, in order to be met, would require much from the President and therefore unduly restrain his exercise of emergency powers, the requirement of probable cause is much simpler. **It merely necessitates an "average man [to weigh] the facts and circumstances without resorting to the calibration of the rules of evidence of which he has no technical knowledge.** He [merely] relies on common sense [and] x x x needs only to rest on evidence showing that, more likely

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[10] See *Lagman v. Pimentel III* (2018) & *Lagman v. Medialdea* (2017).

[11] *Lagman v. Medialdea*, G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1.

than not, a crime has been committed x x x by the accused.[12] (Citations omitted and Emphasis supplied)

The President found probable cause for the extension of martial law and the suspension of the writ of habeas corpus.

As his Letter[13] dated December 6, 2018 to both Houses of Congress would show, the President was thoroughly convinced of the existence of rebellion in Mindanao and that the extension of martial law was necessary to maintain public safety, *to wit*:

Notwithstanding these gains, the security assessment submitted by the AFP and PNP highlights certain essential facts which indicate that rebellion still persists in Mindanao and that public safety requires the continuation of Martial Law in the whole of Mindanao.

The Abu Sayyaf Group, Bangsamoro Islamic Freedom Fighters, Daulah Islamiyah (DI), and other terrorist groups (collectively labelled as LTG) which seek to promote global rebellion, continue to defy the government by perpetrating hostile activities during the extended period of Martial Law. At least four (4) bombings/ Improvised Explosive Device (IED) explosions had been cited in the AFP report. The Lamitan City bombing on 31 July 2018 that killed eleven (11) individuals and wounded ten (10) others, the Isulan, Sultan Kudarat IED explosion on 28 August and 02 September 2018 that killed five (5) individuals and wounded forty-five (45) others, and the Barangay Apopong IED explosion that left eight (8) individuals wounded.

The DI forces continue to pursue their rebellion against the government by furthering the conduct of their radicalization activities, and continuing to recruit new members, especially in vulnerable Muslim communities.

While the government was preoccupied in addressing the challenges posed by said groups, the CTG which has publicly declared its intention to seize political power through violent means and supplant the country's democratic form of government with Communist rule x x x.

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[12] *Id*. at p. 184.

[13] *Rollo* (G.R. No. 243522), Vol. 1, pp. 51-55.

On the part of the military, the atrocities resulted in the killing of eighty-seven (87) military personnel and wounding of four hundred eight (408) others.

Apart from these, major Abu Sayyaf Group factions in Sulu continue to pursue kidnap for ransom activities to finance their operations x x x.

The foregoing merely illustrates in general terms the continuing rebellion in Mindanao. x x x.

A further extension of the implementation of Martial Law and suspension of the privilege of the writ of *habeas corpus* in Mindanao will enable the AFP, the PNP, and all other law enforcement agencies to finally put an end to the on-going rebellion in Mindanao and continue to prevent the same from escalating in other parts of the country. We cannot afford to give the rebels any further breathing room to regroup and strengthen their forces. **Public safety indubitably requires such further extension in order to avoid the further loss of lives and physical harm, not only to our soldiers and the police, but also to our civilians. Such extension will also enable the government and the people of Mindanao to sustain the gains we have achieved thus far, ensure the complete rehabilitation of the most affected areas therein, and preserve the socio-economic growth and development now happening in Mindanao.**

For all of the foregoing reasons, **I implore the Congress of the Philippines to further extend the proclamation of Martial Law and the suspension of the privilege of the writ of *habeas corpus* in the whole of Mindanao for a period of one (1) more year** from 1 January 2019 to 31 December 2019, or for such other period of time as the Congress may determine, in accordance with Section 18, Article VII of the 1987 Philippine Constitution.[14] (Emphasis supplied)

In fact, the records readily display the numerous reports[15] which were submitted to the President prior to the extension of martial law. These reports described violent incidents, disturbances, and skirmishes carried out by the the Abu Sayyaf Group (ASG), the Bangsamoro Islamic Freedom Fighters (BIFF),

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[14] *Id*. at 108-112.

[15] *Rollo* (G.R. No. 243522), Vol. 1, pp. 214-289.

the Dawlah Islamiyah (DI), and other Local Terrorist Groups (LTGs) covering the period of January 1, 2018 to December 31, 2018.

One of the reports submitted summarized *ASG*-initiated violent incidences in Mindanao. It exhibited data revealing a total of sixty-six (66) incidents, among which were sixteen (16) harassment operations, eighteen (18) kidnappings, five (5) ambuscades, and eight (8) IED explosion related incidents. Consequently, a total of thirty-three (33) persons were killed while thirty-six (36) were wounded.[16]

Another report detailed *BIFF*-initiated violent incidences. The report revealed that a total of seventy-four (74) incidents were recorded which led to the death of twenty-four (24) people and the wounding of thirty (30). The report also indicated that out of said incidents, forty (40) were harassment operations while twenty one (21) were connected to IED and roadside bombings.[17]

Additionally, the report which summarized *DI*-initiated violent incidents revealed that these incidences resulted in the injuring of ninety-three (93) individuals and the death of seven (7).[18]

Finally, the report which dealt with *NPA*-initiated violent incidences in Mindanao displayed a staggering one hundred and ninety three (193) incidents occurring during the period of January 1, 2018 up until December 31, 2018. Among these incidents, one hundred and thirty (130) were reported to be guerilla operations while the other sixty three (63) were attributed to terrorist acts.[19]

The Philippine National Police (PNP), through Police Director Ma. O. Aplasca, submitted a Letter[20] which supplemented the

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[16] *Id*. at 215-245.

[17] *Id*. at 246-282.

[18] *Id*. at 283-288.

[19] *Id*. at 289.

[20] *Rollo* (G.R. No. 243522), Vol. 2, pp. 860-881.

above-mentioned reports. More specifically, the supplemental data was able to identify various LTGs as the perpetrators of different kidnappings, bombings, and harassment operations against the government and civilians alike.

In line with the above-mentioned reports, respondents were able to indicate the following circumstances which took place in Mindanao during the second extension of martial law covering the period of January 1, 2018 to December 31, 2018:

a. No less than 181 persons in the martial law Arrest Orders have remained at large.

b. Despite the dwindling strength and capabilities of the local terrorist rebel groups, the recent bombings that transpired in Mindanao that collectively killed 16 people and injured 63 others in less than 2 months is a testament on how lethal and ingenious terrorist attacks have become.

c. On October 5, 2018, agents from the Philippine Drug Enforcement Agency (PDEA) who conducted an anti-drug symposium in Tagoloan II, Lanao del Sur, were brutally ambushed, in which five (5) were killed and two (2) were wounded.

d. The DI continues to conduct radicalization activities in vulnerable Muslim communities and recruitment of new members, targeting relatives and orphans of killed DI members. Its presence in these areas immensely disrupted the government's delivery of basic services and clearly needs military intervention.

e. Major ASG factions in Sulu and Basilan have fully embraced the DAESH ideology and continue their express kidnappings. As of December 6, 2018, there are still seven (7) remaining kidnap victims under captivity.

f. Despite the downward trend of insurgency parameters, Mindanao remains to be the hotbed of communist rebel insurgency in the country. Eight (8) out of the 14 active provinces in terms of communist rebel insurgency are in Mindanao.

g. The Communist Terrorist Rebel Group in Mindanao continues its hostile activities while conducting its organization,

consolidation and recruitment. In fact, from January to November 2018, the number of Ideological, Political and Organizational (IPO) efforts of this group amounted to 1,420, which indicates their continuing recruitment of new members. Moreover, it is in Mindanao where the most violent incidents initiated by this group transpire. Particularly, government security forces and business establishments are being subjected to harassment, arson and liquidations when they defy their extortion demands.

h. The CTRG's exploitation of indigenous people is so rampant that Lumad schools are being used as recruiting and training grounds for their armed rebellion and anti-government propaganda. On November 28, 2018, Satur Ocampo and 18 others were intercepted by the Talaingod PNP checkpoint in Davao del Norte for unlawfully taking into custody 14 minors who are students of a learning school in Sitio Dulyan, Palma Gil, in Talaingod town. Cases were filed against Ocampo's camp for violations of Republic Act (R.A.) No. 10364, in relation to R.A. No. 7610, as well as violation of Article 270 of the Revised Penal Code (RPC), due to the Philippine National Police's (PNP) reasonable belief that the school is being used to manipulate the minds of the student's rebellious ideas against the government.[21]

These incidences, taken altogether, showcase the insurgents' overall purpose of furthering rebellion in Mindanao. To further shed light on the connection between the aforementioned acts of harassment, kidnapping, arson, and other violent acts to rebellion, the AFP, through Major General Pablo M. Lorenzo, submitted a Letter[22] to the Court clarifying the same, *to wit*:

The word "harassment" is a military term for a type of armed attack whether the perpetrators fire at a stationary military personnel, auxiliaries, or installations for a relatively short period of time (as opposed to a full armed attack) for the purpose of inflicting casualties, as diversionary effort to deflect attention from another tactical undertaking, or to project presence in the area. x x x This is a common tactic employed by the Communist Terrorist Group, the ASG, DI,

[21] *Id*. at 832-833.

[22] *Id*. at 847-859.

and BIFF. On the other hand, kidnapping is undertaken particularly by the ASG to finance its operational and administrative expenses in waging rebellion. x x x With regard to arson, the tactic is commonly used by the same rebel groups for various purposes such as intimidating people who are supportive of the government, as punitive action for those who refuse to give in to extortion demands, or simply to terrorize the populace into submission. **All these activities are undoubtedly undertaken in furtherance of rebellion.** x x x. But as mentioned earlier, the events in the lists were not selected but rather constitute the complete record of all violent incidents that occurred in 2018 that are attributed to a specific threat group or any of its members. **The argument advanced is that these incidents should be viewed in their totality and not as unrelated, isolated events. These violent incidents, when combined with the recorded armed encounters or clashes between government troops and rebel groups, and taking into account the substantial casualties resulting from these combined events, show a consistent pattern of armed uprising or rebellion in Mindanao.**[23] (Emphasis supplied)

Unsurprisingly, a quick run-through of the offenses included in the reports from the AFP will show a stark and disturbing similarity with the actions used as basis for the initial proclamation of martial law and its subsequent second extension.

In *Lagman v. Medialdea*,[24] the military reports therein contained intelligence data detailing numerous acts of violence perpetrated by the Maute Group, alongside other Local Terrorist Groups (LTGs), against civilians and government authorities. Among these acts of violence committed by the LTGs were bombings of government and civilian establishments, armed hostilities against government troops, kidnappings and ransoming, and recruitment of members.[25] Specifically, the following formed the probable cause basis for the President to declare a state of martial law and suspend the privilege of the writ of *habeas corpus*:

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[23] *Id*. at 853-854.

[24] G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1.

[25] *Id*. at 128-130.

(1) Attacks on various government and privately owned facilities.
At 1400H members of the Maute Group and ASG, along with their sympathizers, commenced their attack on various facilities - government and privately owned - in the City of Marawi; Other educational institutions were also burned, namely, Senator Ninoy Aquino College Foundation and the Marawi Central Elementary Pilot School; The Maute Group also attacked Amai Pakpak Hospital and hoisted the DAESH flag there, among other several locations. As of 0600H of [24 May] 2017, members of the Maute Group were seen guarding the entry gates of Amai Pakpak Hospital. They held hostage the employees of the Hospital and took over the PhilHealth office located thereat; The groups likewise laid siege to another hospital, Filipino-Libyan Friendship Hospital, which they later set ablaze; Lawless armed groups likewise ransacked the Landbank of Philippines and commandeered one of its armored vehicles.[26]

(2) Forcible entry and assaults on personnel.
At 1600H around fifty (50) armed criminals assaulted Marawi City Jail being manage by the Bureau of Jail Management and Penology (BJMP); The Maute Group forcibly entered the jail facilities, destroyed its main gate, and assaulted on-duty personnel. BJMP personnel were disarmed, tied, and/or locked inside the cells; The group took cellphones, personnel-issued firearms, and vehicles (*i.e.*, two [2] prisoner vans and private vehicles).[27]

(3) Facilitating inmate escapes.
The Maute Group facilitated the escape of at least sixty-eight (68) inmates of the City Jail.[28]

(4) Interruption/blackouts of energy supplies.
By 1630H, the supply of power into Marawi City had been interrupted, and sporadic gunfights were heard and felt everywhere. By evening, the power outage had spread citywide. (As of 24 May 2017, Marawi City's electric supply was still cut off, plunging the city into total black-out.)[29]

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[26] *Id*.

[27] *Id.*

[28] *Id.*

[29] *Id.*

(5) Illegal/aggressive occupation of territories.
As of 2222H, persons connected with the Maute Group had occupied several areas in Marawi City, including Naga Street, Bangolo Street, Mapandi, and Camp Keithly, as well as the following barangays: Basak Malutlot, Mapandi, Saduc, Lilod Maday, Bangon, Saber, Bubong, Marantao, Caloocan, Banggolo, Barionaga, and Abubakar; These lawless armed groups had likewise set up road blockades and checkpoints at the Iligan City-Marawi City junction.[30]

(6) Ambushes/ambuscades.
From 1800H to 1900H, the same members of the Maute Group ambushed and burned the Marawi Police Station. A patrol car of the Police Station was also taken.[31]

(7) Bomb threats.
By evening of 23 May 2017, at least three (3) bridges in Lanao del Sur, namely, Lilod, Bangulo, and Sauiaran, fell under the control of these groups. They threatened to bomb the bridges to pre-empt military reinforcement.[32]

(8) Kidnapping/taking of hostages.
Later in the evening, the Maute Group burned Dansalan College Foundation, Cathedral of Maria Auxiliadora, the nun's quarters in the church, and the Shia Masjid Moncado Colony. Hostages were taken from the church.[33]

(9) Forcible recruitment.
They are also preventing Maranaos from leaving their homes and forcing young male Muslims to join their groups.[34]

(10) Murders.
A member of the Provincial Drug Enforcement Unit was killed during the takeover of the Marawi City Jail; About five (5) faculty members of Dansalan College Foundation had been reportedly killed by the lawless groups; Latest information indicates that about seventy-five percent (75%) of Marawi City

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[30] *Id*.

[31] *Id*.

[32] *Id*.

[33] *Id*.

[34] *Id*.

> has been infiltrated by lawless armed groups composed of members of the Maute Group and the ASG. As of the time of this Report, eleven (11) members of the Armed Forces and the Philippine National Police have been killed in action, while thirty-five (35) others have been seriously wounded; There are reports that these lawless armed groups are searching for Christian communities in Marawi City to execute Christians.[35]

On the other hand, in *Lagman v. Pimentel III*,[36] the President based his request for the second extension of martial law on reports which indicated that various LTGs: (1) continuously offered armed resistance against the government, (2) actively recruited and trained new members, and (3) executed retaliatory attacks and bombings.[37] The following excerpts from the report emphasize the serious threat these various LTGs posed to our country's liberty, *viz*:

> (q) Mindanao remains the hotbed of communist rebellion considering that 47% of its manpower, 48% of its firearms, 51% of its controlled barangays and 45% of its guerrilla fronts are in this region. Of the 14 provinces with active communist insurgency, 10 are in Mindanao. Furthermore, the communist rebels' Komisyon Mindanao (KOMMID) is now capable of sending augmentation forces, particularly "Party Cadres," in Northern Luzon.
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> (r) The hostilities initiated by the communist rebels have risen by 65% from 2016 to 2017 despite the peace talks. **In 2017 alone, they perpetrated 422 atrocities in Mindanao, including ambush, raids, attacks, kidnapping, robbery, bombing, liquidation, land mine/ IED attacks, arson, and sabotage, that resulted in the death of 47 government forces and 31 civilians.** An ambush in Bukidnon in November 2017 killed one PNP personnel, two civilians and a four-month old baby. [Fifty-nine] (59) incidents of arson committed by the Communist rebels against business establishments in Mindanao last year alone destroyed ₱2.378 billion worth of properties. Moreover, the amount they extorted from private individuals and business

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[35] *Id*.

[36] G.R. Nos. 235935, 236061, 236145 & 236155, February 6, 2018.

[37] *Id*.

establishments from 2015 to the first semester of 2017 has been estimated at ₱2.6 billion.[38] (Citations omitted and Emphasis supplied)

It is readily observable that, with only minor deviation, the facts alleged by respondents in their reports show a clear and bothersome parallel with those presented as findings of fact in the previous two cases.[39] The similarities of the factual circumstances between the initial proclamation, the second extension, and the herein third extension only bolster the latter's validity.

For petitioners' part, they argue that there is no longer any rebellion in Mindanao endangering public safety. They advocate that the dated letters and reports of the military, particularly the letter dated December 6, 2018, do not contain any tangible proof of acts constituting and actually related to rebellion, but instead contain mere acts of lawlessness and terrorism by so-called remnants of terrorist groups and by the communist insurgents.[40] It is further alleged that respondents failed to alleviate doubts as to the veracity of the incidents of violence as stated in the reports, even when given the opportunity to explain the numerous inconsistencies and gaps in the same, especially as to the connection of the acts to the atmosphere of rebellion in the region.

Moreover, petitioners claim that the failure of respondents to properly substantiate the reports bolsters the former's point that there is an absence of an actual and physical rebellion consisting of an armed uprising against the government for the purpose of removing Mindanao or a portion thereof from allegiance to the Republic of the Philippines.[41]

I humbly disagree.

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[38] *Id*.

[39] *Lagman v. Medialdea*, G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1.

[40] *Rollo* (G.R. No. 243522), Vol. 1, pp. 20-21.

[41] *Rollo* (G.R. No. 243522), Vol. 1, pp. 11-12.

The totality of the evidence presented is enough to convince the President that a state of rebellion continues to exist.

In making an assessment, the Court should consider the totality of the information constituting the "factual basis" of the declaration or extension. All the pieces of evidence should be appraised and evaluated in their entirety, and not on a piecemeal or individual basis. Taken altogether, the information must be sufficient to convince an ordinary man of ordinary intelligence that there is an on-going rebellion.[42]

Whether the said reports, taken as a whole, constitute sufficient basis for the President to conclude that more likely than not, actual rebellion exists, is entirely the latter's prerogative. This point was emphasized in *Lagman v. Medialdea*,[43] *to wit*:

> To be sure, the facts mentioned in the Proclamation and the Report are far from being exhaustive or all-encompassing. At this juncture, it may not be amiss to state that as Commander-in-Chief, the President has possession of documents and information classified as "confidential", the contents of which cannot be included in the Proclamation or Report for reasons of national security. These documents may contain information detailing the position of government troops and rebels, stock of firearms or ammunitions, ground commands and operations, names of suspects and sympathizers, etc. In fact, during the closed door session held by the Court, some information came to light, although not mentioned in the Proclamation or Report. But then again, the discretion whether to include the same in the Proclamation or Report is the judgment call of the President. In fact, petitioners concede to this. During the oral argument, petitioner Lagman admitted that the assertion of facts [in the Proclamation and Report] is the call of the President.
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> It is beyond cavil that the President can rely on intelligence reports and classified documents. "**It is for the President as [C]ommander-in-[C]hief of the Armed Forces to appraise these [classified evidence**

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[42] *Lagman v. Medialdea*, G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1, 179.

[43] G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1.

or documents reports] and be satisfied that the public safety demands the suspension of the writ." Significantly, respect to these so-called classified documents is accorded even "when [the] authors of or witnesses to these documents may not be revealed.[44] (Citations omitted and emphasis supplied)

Furthermore, as explained emphatically in *Lagman v. Medialdea*,[45] the mere 'presence of inconsistencies and ambiguities in the reports should not operate to detract from the bigger picture these reports are painting. After all, the determination of the absolute correctness, accuracy, or precision of the facts which were made the basis of the imposition of martial law or its extension is not within the power of this Court to ascertain.[46]

More simply put, the determination of whether all the information presented, taken as a whole, in spite of inherent obscurities and inconsistencies, is enough to portray that a state of rebellion exists and that the further extension of martial law is required to protect public safety, is entirely the judgment call of the President.[47]

Identifying rebellion.

By its nature and through a perusal of the elements that make up the offense, rebellion can be properly termed as a crime of the masses or multitudes involving crowd action done in furtherance of a political end.[48] Rebellion is committed by rising publicly and taking arms against the government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or other armed forces, or depriving

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[44] *Id*. at 200-201.

[45] G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1.

[46] *Id*. at 179.

[47] *Id*. at 178.

[48] *Ladlad v. Velasco*, G.R. No. 172070, June 1, 2007, 523 SCRA 318, 336.

the President or the Legislature, wholly or partially, of any of their powers or prerogatives.[49]

For a finding of rebellion to prosper, the following elements must be present:[50]

1. That there be a (a) public uprising and (b) taking arms against the Government; and
2. That the purpose of the uprising or movement is either
   (a) to remove from the allegiance to said Government or its laws: (1) the territory of the Philippines or any part thereof; or (2) any body of land, naval, or other armed forces; or
   (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives.

The crime of rebellion is complete the very moment a group rises publicly and takes up arms against the Government, for the purpose of overthrowing the latter by force. The Revised Penal Code (RPC) speaks of the intent or purpose to overthrow the Government as the subjective element, while the acts of rising publicly and taking arms against the Government, which is milder than the more aggressive phrase "levies war" used in the definition of treason under the RPC,[51] is the normative element of the offense,[52] *i.e.* related to the norms or standards given.

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[49] Section 2 of R.A. No. 6968, Article. 134. *Rebellion or insurrection. - How committed.* - The crime of rebellion or insurrection is committed by rising publicly and taking arms against the government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or other armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.

[50] *Ladlad v. Senior State Prosecutor*, G.R. Nos. 172070-72, June 1, 2007, 523 SCRA 318, 336.

[51] Ateneo Law Journal, Judge Jesus P. Morfe, Rebellion May Be Simple or Complex, pp. 164-175, p. 165.

[52] Reyes, *The Revised Penal Code Book Two*, 18th Ed. 2012, p. 87, citing *People v. Cube*, C.A. 46 O.G. 4412; *People v. Perez*, C.A., G.R. No. 8186-R, June 30, 1954.

Justice Montemayor in his separate opinion in *People v. Geronimo*,[53] offers a guide in identifying these norms for the overt acts constitutive of the crime of rebellion, to wit:

> One of the means by which rebellion may be committed, in the words of said article 135, is by "engaging in war against the forces of the government" and 'committing serious violence' in the prosecution of said 'war'. **These expressions imply everything that war connotes, namely: resort to arms, requisition of property and services, collection of taxes and contributions, restraint of liberty, damage to property, physical injuries and loss of life, and the hunger, illness and unhappiness that war carries in its wake — except that, very often, it is worse than war in the international sense, for it involves internal struggle, a fight between brothers, with a bitterness and passion or ruthlessness seldom found in a contest between strangers.** Being within the purview of "engaging in war" and 'committing serious violence', said resort to arms, with the resulting impairment or destruction of life and property, constitutes not two or more offenses, but only one crime — that of rebellion plain and simple
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> **Now that we find that what article 135 provides is not engaging in war, but merely engaging in combat**, and knowing the vast difference between war and mere combat, there is the possibility that some of the considerations and conclusions made in that majority resolution in the Hernandez case may be affected or enervated. In other words, our law in rebellion contemplates on only armed clashes, skirmishes, ambuscade, and raids, not the whole scale conflict of civil war like that between the Union and Confederate forces in the American Civil War, where the rebels were given the status of belligerency under the laws of war, and consequently, were accorded much leeway and exemption in the destruction of life and property and the violation of personal liberty and security committed during the war.

In the consolidated petition,[54] with respect to the "hostile activities during the extended period of martial law" committed or attributed to the ASG, the BIFF, the DI, and other terrorist groups, petitioners alleged that both the military and the President

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[53] G.R. No. L-8936, October 23, 1956, 100 Phil. 90 (1956).

[54] *Rollo* (G.R. No. 243522), Vol. 1, p. 131.

failed to connect these "hostile activities" to rebellion. Petitioners mentioned that the reported acts, among others, either lack clarification, lack some or all of the elements of rebellion, or are even completely unrelated or do not constitute the offense. Some of these incidents cited as questionable in relation to the finding of rebellion include, among others, four bombings/IED explosions, radicalization and recruitment activities, acts of harassment against government installations, liquidation operations and arson attacks as part of extortion schemes, kidnap-for-ransom activities of major ASF factions in Sulu.

However, it is opined that the various acts of violence presented by respondents as basis for the extension are part and parcel of the already existing state of rebellion in Mindanao, and in fact cannot be deemed or considered separate from the same. It is not necessary that said rebels succeed in overthrowing the government, nor is an actual clash with the forces of the Government absolutely necessary,[55] especially as we need to take into context the understanding of modern warfare that oftentimes wars are fought without set rules, that they may be fought psychologically, in the air, or on the ground. Many ascribe images of well-organized, uniformed armies marching in close formation in the midst of exploding shells when picturing armed conflict,[56] in actuality, however, the real image differs from depictions of conflicts in countries such as Vietnam, Iraq, or Afghanistan,[57] which can be characterized more by irregular or guerilla tactics.

Of particular and relevant note is that military conflicts which are motivated by potentially borderless ideological, criminal, religious, or economic goals instead of mere defense of territory,

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[55] Reyes, *The Revised Penal Code Book Two*, 18th Ed. 2012, p. 86, citing *People v. Cube*, C.A. 46 O.G. 4412; *People v. Perez*, C.A., G.R. No. 8186-R, June 30, 1954.

[56] N. Kalyvas, Stathis & Balcells, Laia. (2010). International System and Technologies of Rebellion: How the End of the Cold War Shaped Internal Conflict. American Political Science Review. 104. 415 - 429. 10.1017/S0003055410000286.

[57] *Id*.

are on the rise.[58] Today, the monopoly on violence and the prevention of the same has been fractured on multiple levels, as "governments from Mexico and Venezuela to Pakistan and to here in the Philippines have lost control of swathes of national territory used by armed groups as the base for military activities that often support cross-border ambitions or enterprises."[59]

A modern state of rebellion highlights the prevalent idea that rebels have the military capacity to challenge and harass the state, but lack the capacity to confront it in a direct and frontal way,[60] and oftentimes, a devastating, proactive response on the part of a government to a direct armed challenge will ensure that the rebels' only option is to fight asymmetrically.[61]As in several in-country wars such as those which occurred in El Salvador (1979-92), Peru (1980-96), and Nepal (1996-2006), the rebel groups therein tended to "hover just below the military horizon," hiding and relying on harassment and surprise, stealth, and raiding.[62] Despite the utilization of these unconventional methods, the rebel forces are frequently still able to establish territorial control in crucial and strategic areas,[63] to the vast detriment of the innocent civilians residing in the region.

The violent incidences have unveiled the new nature of the conflict between the government and insurgency, one that the military is behooved to respect otherwise they will quickly lose control of the situation and subsequently the region. This includes the modern tactics and tools the insurgents have utilized to threaten the government to adhere to their philosophy. IEDs for instance have become one of the most devastating weapons in military conflicts in the past few years,[64] and a look at the

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[58] *Id.* at 113.

[59] *Id*. at 115.

[60] *Id*.

[61] *Id*.

[62] *Id*.

[63] *Id.*

[64] Moises Naim, *The End of Power: From Boardrooms to Battlefields and Churches to States, Why Being in Charge Isn't What it Used to Be,* 2014, 19.

incidences of violence as reported will show that the rebel factions have not hesitated to rely on the same to strike the region's citizenry and infrastructure. The IED devices are small, easy to camouflage, come in multiple types with many combinations of munitions and detonating systems. They can often and easily be assembled from easily obtainable ingredients such as agricultural supplies or chemicals from a factory or drugstore.[65] The ease that they may be put together and used are buoyed by the fact that they require no complicated supply chain or time-consuming deployment, and instructions for manufacturing are simple and circulated all over the internet.[66] It has in fact been opined that the sheer contrast between the homemade quality of IEDs and the usual technological superiority of the state forces that they undermine go a long way in promoting propaganda such as David-versus-Goliath narratives, helping in public relations and inspiring more insurgents to join the cause to combat the government.[67]

Aside from weaponized individual bombers and the internet, the latter used at the frontier of cyberwar and hacking civilian and military infrastructure, what these tools and techniques have in common is their ease of access.[68] These not only improve the chances of rebel forces when it comes to direct clashes, but also have deleterious indirect effects, such as the "constellation of online militant voices that amplify hostile messages, spread propaganda materials and threats, and attract new recruits to their cause."[69]

Therefore, it is incorrect for petitioners to state that public safety is not imperiled and martial law does not necessitate a third extension because of the absence of an "actual rebellion consisting of an armed uprising."[70] While petitioners have used

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[65] *Id*.

[66] *Id*.

[67] *Id*.

[68] *Id*. at 121.

[69] *Id*. at 120.

[70] *Rollo* (G.R. No. 243522), Vol. 1, p. 12.

the continuous and consistent incidences of violence as reported by the government to declare that there is no rebellion taking place in the region, for purposes of erring on the side of pragmatism one must adhere to an opposite standard of thinking which is to take the problem of political violence as one aggravated by each and every violent act committed within the rebellion zone.

As for the other indispensable element, the facts show that the political purpose for the uprising remains extant. I draw attention to the fact that the crimes cited were perpetrated by groups previously recognized by the Court as rebel groups in *Lagman v. Medialdea* and *Lagman v. Pimentel III*. The purpose of the acts committed, a fundamental element of the crime of rebellion, was identified as present in those cases, for the purposes of removing Mindanao — starting with the City of Marawi, Lanao del Sur — from its allegiance to the Government and its laws and depriving the Chief Executive of his powers and prerogatives to enforce the laws of the land and to maintain public order and safety in Mindanao, to the great damage, prejudice, and detriment of the people therein and the nation as a whole,[71] to clearly establish an Islamic State and a seat of power in the region for a planned establishment of a DAESH wilayat or province covering the entire Mindanao.

The Court in fact found in *Lagman v. Pimentel III* that while there may be ideological differences between the different groups (the NPA and the DAESH/ISIS-inspired rebels, among others), they have the shared purpose of overthrowing the duly constituted government.[72] The political purpose, then, is determined not individually, but in its totality, and is hereby present in this case.

Again, at the risk of being repetitive, the reports showing the presence of numerous violent acts, which as previously

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[71] G.R. Nos. 231658, 231771, 231774, July 4, 2017, 829 SCRA 1, 190, citing Report, p. 1, 1st par.

[72] G.R. Nos. 235935, 236061, 236145 & 236155, February 6, 2018.

highlighted have been correctly found valid and adequate by the President himself utilizing the probable cause standard.

Rebellion has not ceased; public safety continues to be imperiled.

The finding that the incidences of violence are recurring are a logical and alarming consequence of rebellion's characterization as continuous and supportive of the stance to extend martial law. As expanded upon in the case of *Umil v. Ramos*:

> The crimes of rebellion, subversion, conspiracy or proposal to commit such crimes, and crimes or offenses committed in furtherance thereof or in connection therewith constitute direct assaults against the State and are in the nature of **continuing crimes**.
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> From the facts as above-narrated, the claim of the petitioners that they were initially arrested illegally is, therefore, without basis in law and in fact. The crimes of insurrection or rebellion, subversion, conspiracy or proposal to commit such crimes, and other crimes and offenses committed in the furtherance, on the occasion thereof, or incident thereto, or in connection therewith under Presidential Proclamation No. 2045, are all in the nature of continuing offenses which set them apart from the common offenses, aside from their essentially involving a massive conspiracy of nationwide magnitude. Clearly then, the arrest of the herein detainees was well within the bounds of the law and existing jurisprudence in our jurisdiction.[73]

The continuance and lingering effects of rebellion can be seen from the tangible incidents still attendant even at this later juncture. As mentioned earlier, the letter[74] of Major General Pablo M. Lorenzo to Solicitor-General Jose C. Calida showed the enumeration of a high number of violent incidences. These reported acts constitute the public uprising and a show of force against the government that would indicate that the rebellion has yet to be quelled. Martial law will be beneficial and not prejudicial in bringing safety and security to the Mindanao region, especially as already manifested by the respondents, there have been orders issued during both the proclamation of martial law

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[73] *Id.*

[74] *Rollo* (G.R. No. 243522), Vol. 2, pp. 847-859.

in Mindanao and the subsequent extension, which have not yet completed the implementation phase.

In conclusion, in *Lagman v. Medialdea*, the Supreme Court aptly held that in determining the probable cause used as basis of the declaration and/or the suspension, the Court should look into the full complement or totality of the factual basis, and not piecemeal or individually. There is no reason to deviate from this finding of the Court in the aforestated case. This is especially poignant considering the need to preserve the public's safety in the affected areas. Public safety, which is another component element for the declaration of martial law, "involves the prevention of and protection from events that could endanger the safety of the general public from significant danger, injury/harm, or damage, such as crimes or disasters,"[75] and the continuing and even escalating violence and threats to public safety dictate that this Court finds in favor of the executive's prerogative to move forward with the extension of martial law.

There are sufficient mechanisms to safeguard against any abuse of martial law.

Furthermore, I find that the concerns of petitioners that there may be a usurpation of functions and a violation of rights to be unfounded. Aside from failing to properly substantiate that any abuse was attendant, any allegation is misplaced in a petition to question the validity of extending martial law. As the Court already conclusively settled in *Lagman*, alleged human rights violations committed during the implementation of martial law or the suspension of the privilege of the writ of *habeas corpus* should be resolved in a separate proceeding.

The staunch fears of petitioners that abuse is rampant in Mindanao as a result of the state of martial law, or with another extension, are unfounded. While it is beyond the review power of this Court to examine allegations of human rights violations, it has been observed that the current implementation on the

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[75] *Lagman v. Medialdea*, G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1, 207.

part of the Executive has been effective thus far in suppressing the threat caused by the insurgents. Especially with the midterm elections about to take place, it is advised that martial law in the Mindanao region be seen for what it has represented, which is the upholding of safety and security of the region. This, instead of being seen as an opportunity for abuse on the part of the government, which as highlighted has no basis in fact or law.

To recall, the Constitution itself already expressly, clearly, and indubitably provides strict safeguards against any potential abuse by the President. Justice Carpio's dissenting opinion in *Fortun v. Macapagal-Arroyo*[76] aptly explains, to wit:

> The Constitution now expressly declares, "A state of martial law does not suspend the operation of the Constitution." Neither does a state of martial law supplant the functioning of the civil courts or legislative assemblies. Nor does it authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, or automatically suspend the writ. **There is therefore no dispute that the constitutional guarantees under the Bill of Rights remain fully operative and continue to accord the people its mantle of protection during a state of martial law.**In case the writ is also suspended, the suspension applies only to those judicially charged for rebellion or offenses directly connected with invasion. (Emphasis supplied)

In *Pequet v. Tangonan*,[77] the Supreme Court highlighted the call to the military to exercise care and prudence to avoid incidents involving illegal and involuntary restraint, and that martial law was precisely provided to assure the country's citizenry that the State is not powerless to cope with invasion, insurrection or rebellion or any imminent danger of its occurrence. When resort to it is therefore justified, as in the case at bar, it is precisely in accordance with and not in defiance of the fundamental law.[78] In fact, this is even more reason then for the rule of the law to be followed.[79]

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[76] G.R. No. 190293, March 20, 2012, 668 SCRA 504, 561-562.

[77] G.R. No. L-40970, August 21, 1975, 66 SCRA 216.

[78] *Id*. at 219.

[79] *Id*.

The fear that human rights are set aside and abuse will grow rampant have no basis. In the absence of any substantiated proof that the extension of martial law is an origination or extension of human rights violations by the government, this Court is behooved to respect and provide the President with sufficient discretion to exercise its powers.

One cannot turn a blind eye to the fact that political conflicts between the government and the various rebel groups in Mindanao have continued up to the present to devastate the region's economy as well as hampered its development,[80] and the incidences of violence reported to the President only highlight the hostile and tense atmosphere and state of rebellion in Mindanao. John Abbink of the Department of Social and Cultural Anthropology at Vrije Universiteit Amsterdam[81] in fact notes, "violent actions are much more meaningful and rule bound than reports about them lead us to believe."[82] As seen, the plethora of incidents, especially those involving the regular bombings, actually aggravate the existing state of rebellion to the point that they are subsumed by it. Authorities have in fact opined that this phenomenon frequently occurs in areas where government or a central authority is weak and in areas where there is a perceived lack of justice and security.[83]

While the government has been able to show that security has been improved and that the measures taken have stymied insurgent efforts to forcibly separate Mindanao from the Republic, it must continue to exercise vigilance until these threats

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[80] Survey of Feuding Families and Clans in Selected Provinces in Mindanao, Jamail A. Malian MSU-Institute of Technology. P. 36 (Rido: Clan Feuding and Conflict Management in Mindanao — Wilfredo Magno Torres III, Editor, 2007 The Asia Foundation.

[81] https://www.researchgate.net/profile/Jon_Abbink2 (last accessed: February 16, 2019).

[82] Big War, Small Wars: The Interplay of Large-scale and Community Armed Conflicts in Five Central Mindanao Communities, Jose Jowel Canuday, p. 256.

[83] *Id*.

have been eradicated and peace once again reigns in the Philippines south. The executive department through the President is merely fulfilling its Constitutional mandate to affect police power for the overall welfare of the state and performing its duty to protect its citizens from threats of harm and violence.

As a final note, the Court cannot simply turn a blind eye to the unceasing threats and acts of violence which plague the everyday lives of those in Mindanao. One of the primordial duties of the Court is to protect the State in its entirety and secure the public's safety. Given the overwhelming evidence presented, the Court is convinced that there is sufficient factual basis for the extension of martial law and the suspension of the writ of *habeas corpus*. To rule otherwise would be to court danger to our sovereignty.

ACCORDINGLY, in view of the foregoing, I vote to **DISMISS** the petitions and grant the President's request for extension of the period covered by Proclamation No. 216 series of 2017 and Congress' Resolution of Both Houses No. 6 issued on December 12, 2018.

SEPARATE CONCURRING OPINION

GESMUNDO, *J.*:

Again, before the Court are several petitions assailing the extension of the period of martial law and the suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao for one (1) more year, *i.e.* from January 1 to December 31, 2019 granted by Congress upon the request of the President.

As the Constitution remains supreme and ultimate, the Court will fervently abide by its duty to review the sufficiency of the factual basis for the extension of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus*. Time and again, the Court will serve as the penultimate safeguard on the powers of the two other co-equal branches of government.

For reasons discussed below, I vote to dismiss the petitions.

The Constitutional power to extend the period of martial law and suspension of privilege of writ of habeas corpus

The 1987 Constitution grants the Congress of the Philippines (*Congress, for brevity*) the power to shorten or extend the President's proclamation of martial law or suspension of the privilege of the writ of *habeas corpus*. Section 18, Article VII of the 1987 Constitution, in pertinent part, states:

Section 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. **Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.**

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.

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 or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.[1] (emphasis supplied)

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[1] 1987 CONSTITUTION, Art. VII, Sec. 18.

As discussed in *Lagman v. Pimentel III*,[2] Congress is given the constitutional authority to extend the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*. The provision does not specify the number of times Congress is allowed to approve an extension of such proclamation or suspension. Neither does the provision fix the period of the extension of the proclamation and suspension. It clearly gives Congress the authority to decide on its duration; thus, the provision stating that the extension shall be "for a period to be determined by the Congress."[3]

Further, when approved by Congress, the extension of the proclamation or suspension, as described during the deliberations on the 1987 Constitution, becomes a "joint executive and legislative act" or a "collective judgment" of the President and Congress.[4]

Nevertheless, Sec. 18, Art. VII specifically establishes the limitations in the exercise of the congressional authority to extend such proclamation or suspension, to wit:

1. That the extension should be upon the President's initiative;

2. That it should be grounded on the persistence of the invasion or rebellion and the demands of public safety; and

3. That it is subject to the Court's review of the sufficiency of its factual basis upon the petition of any citizen.[5]

Hence, these three (3) limitations must be present in any extension of the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus*. Failure to comply

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[2] G.R. Nos. 235935, 236061, 236145 & 236155, February 6, 2018.

[3] *Id*.

[4] *Id*.

[5] *Id.*

with any of these limitations shall result to the invalidity and nullity of the extension of such proclamation and suspension.

The President initiated the extension

In this case, the extension of the proclamation and suspension was upon the initiative of the President. On December 4, 2018, Secretary Delfin Lorenzana of the Department of National Defense wrote a Letter[6] addressed to President Rodrigo Duterte recommending the extension of Proclamation No. 216 from January 1, 2019 to December 31, 2019. Also, Armed Forces of the Philippines (*AFP*) Chief of Staff Carlito G. Galvez, Jr. (*Galvez*), wrote a similar Letter[7] addressed to the President recommending the extension of said proclamation and suspension for another year.

In another Joint Letter[8] issued by the AFP and the Philippine National Police (*PNP*), through AFP Chief Galvez and PNP Chief Oscar D. Albayalde, they recommended to the President another one-year extension of such proclamation and suspension citing compelling reasons based on the current security assessment.

Acting on those recommendation, on December 6, 2018, the President wrote a Letter[9] addressed to both Houses of Congress, requesting that Congress initiate the further extension of such proclamation and suspension in Mindanao from January 1, 2019 to December 31, 2019. According to the President, "the security assessment submitted by the AFP and PNP highlights certain essential facts which indicate that rebellion still persists in Mindanao and that public safety requires the continuation of Martial Law in the whole of Mindanao."[10] It was also stated

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[6] *Rollo*, G.R. No. 243522, Vol. 1, pp. 201-202.

[7] *Id*. at 203-207.

[8] *Id*. at 208-213.

[9] *Id*. at 51-55.

[10] *Id.* at 53.

therein that several incidents support the assertion of the persisting and continuing rebellion in Mindanao.

The first limitation of the extension of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* has been complied with because the President initiated such extension when he wrote the December 6, 2018 letter to both Houses of Congress.

The extension of the proclamation and suspension is subject to the Court's review; probable cause as the quantum of proof

The third limitation is also complied with because the extension of such proclamation and suspension is currently the subject of the Court's review for the sufficiency of its factual basis.

Further, in *Lagman v. Medialdea*[11] it was explained that in determining the sufficiency of the factual basis in such petitions, the Court should consider whether the President is convinced that there is **probable cause** or evidence showing that, more likely than not, a rebellion was committed or is being committed, to wit:

> In determining the existence of rebellion, the President only needs to convince himself that there is **probable cause or evidence showing that more likely than not a rebellion was committed or is being** committed. To require him to satisfy a higher standard of proof would restrict the exercise of his emergency powers. Along this line, Justice Carpio, in his Dissent in *Fortun v. President Macapagal-Arroyo*, concluded that the President needs only to satisfy probable cause as the standard of proof in determining the existence of either invasion or rebellion for purposes of declaring martial law, and that probable cause is the most reasonable, most practical and most expedient standard by which the President can fully ascertain the existence or non-existence of rebellion necessary for a declaration of martial law or suspension of the writ. This is because unlike other standards of proof, which, in order to be met, would require much from the President and therefore unduly restrain his exercise of emergency powers, the

[11] G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1.

requirement of probable cause is much simpler. It merely necessitates an "average man [to weigh] the facts and circumstances without resorting to the calibration of the rules of evidence of which he has no technical knowledge. He [merely] relies on common sense [and] x x x needs only to rest on evidence showing that, more likely than not, a crime has been committed x x x by the accused."[12] (emphasis supplied)

Verily, in reviewing the present petitions, the Court must always bear in mind that it must determine whether or not the President is convinced based on the quantum of proof of probable cause that, more likely than not, a rebellion was committed or is being committed.

Likewise, it was stated in *Lagman v. Medialdea* that while the Court's power is independent from Congress, its power is limited to the review of the sufficiency of factual basis.[13] The Court considers only the information and data available to the President prior to or at the time of the declaration; it is not allowed to "undertake an independent investigation beyond the pleadings." On the other hand, Congress may take into consideration not only data available prior to, but likewise events supervening the declaration. Also, Congress could probe deeper and further; it can delve into the accuracy of the facts presented before it.[14]

In addition, the Court cannot require the absolute correctness of the facts relied on by the President due to the urgency of the situation, to wit:

In determining the sufficiency of the factual basis of the declaration and/or the suspension, the Court should look into the full complement or totality of the factual basis, and not piecemeal or individually. Neither should the Court expect absolute correctness of the facts stated in the proclamation and in the written Report as the President could not be expected to verify the accuracy and veracity of all facts

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[12] *Id.* at 184.

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

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

reported to him due to the urgency of the situation. To require precision in the President's appreciation of facts would unduly burden him and therefore impede the process of his decision-making. Such a requirement will practically necessitate the President to be on the ground to confirm the correctness of the reports submitted to him within a period that only the circumstances obtaining would be able to dictate. Such a scenario, of course, would not only place the President in peril but would also defeat the very purpose of the grant of emergency powers upon him, that is, to borrow the words of Justice Antonio T. Carpio in *Fortun*, to "immediately put an end to the root cause of the emergency." Possibly, by the time the President is satisfied with the correctness of the facts in his possession, it would be too late in the day as the invasion or rebellion could have already escalated to a level that is hard, if not impossible, to curtail.[15]

In any case, the compliance with the second limitation under Sec. 18 of Art. VII — whether the extension of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* is grounded on the persistence of an invasion or rebellion and the demands of public safety — is the primordial issue that must be determined by the Court.

Concept of rebellion

Art. 134 of the Revised Penal Code (*RPC*) defines the crime of rebellion, *viz*:

Art. 134. *Rebellion or insurrection; How committed*. — The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof, of any body of land, naval or other armed forces, depriving the Chief Executive or the Legislature, wholly or partially, of tiny of their powers or prerogatives.

Thus, the elements of the crime of rebellion are as follows:

1. That there be (a) public uprising, and (b) taking up arms against the Government; and

2. That the purpose of the uprising or movement is either: (a) to remove from the allegiance to said Government or its laws, the territory

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

of the Philippines or any part thereof, or any body of land, naval or other armed forces or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers or prerogatives.[16]

On the other hand, Art. 135 of the RPC, as amended by Republic Act (*R.A.*) No. 6968,[17] states the following means to commit the crime of rebellion and the penalties for different participations thereof:

Art. 135. *Penalty for rebellion, insurrection or coup d'etat.* — Any person who promotes, maintains, or heads rebellion or insurrection shall suffer the penalty of reclusion perpetua.

Any person merely participating or executing the commands of others in a rebellion shall suffer the penalty of reclusion temporal.

Any person who leads or in any manner directs or commands others to undertake a *coup d'etat* shall suffer the penalty of reclusion perpetua.

Any person in the government service who participates, or executes directions or commands of others in undertaking a *coup d'etat* shall suffer the penalty of prision mayor in its maximum period.

Any person not in the government service who participates, or in any manner supports, finances, abets or aids in undertaking a *coup d'etat* shall suffer the penalty of reclusion temporal in its maximum period.

When the rebellion, insurrection, or *coup d'etat* shall be under the command of unknown leaders, any person who in fact directed the others, spoke for them, signed receipts and other documents issued in their name, as performed similar acts, on behalf or the rebels shall be deemed a leader of such a rebellion, insurrection, or *coup d'etat*.

In *People v. Hernandez, et al.*,[18] the Court explained that in the crime of rebellion, there may be several acts committed such as: resort to arms, requisition of property and services,

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[16] REVISED PENAL CODE, Art. 134.

[17] An Act Punishing the Crime of *Coup D' etat* by Amending Articles 134, 135 And 136 of Chapter One, Title Three of Act Numbered Thirty-Eight Hundred and Fifteen, Otherwise Known as the Revised Penal Code, and for Other Purposes, October 24, 1990.

[18] 99 Phil. 515 (1956).

collection of taxes and contributions, restraint of liberty, damage to property, physical injuries and loss of life, in furtherance of the internal struggle. Nonetheless, there is only one crime of rebellion because said several acts were committed in furtherance of the purpose of rebellion, to wit:

> One of the means by which rebellion may be committed, in the words of said Article 135, is by "engaging in war against the forces of the government" and "committing serious violence" in the prosecution of said "war". These expressions imply everything that war connotes, namely; resort to arms, requisition of property and services, collection of taxes and contributions, restraint of liberty, damage to property, physical injuries and loss of life, and the hunger, illness and unhappiness that war leaves in its wake — except that, very often, it is worse than war in the international sense, for it involves internal struggle, a fight between brothers, with a bitterness and passion or ruthlessness seldom found in a contest between strangers. Being within the purview of "engaging in war" and "committing serious violence", **said resort to arms, with the resulting impairment or destruction of life and property, constitutes not two or more offense, but only *one* crime — that of rebellion plain and simple**. Thus, for instance, it has been held that "the crime of treason may be committed by executing *either a single or similar intentional overt acts*, different or similar but distinct, and *for that reason, it way be considered one single continuous offense*.
>
> **Inasmuch as the acts specified in said Article 135 constitute, we repeat, *one single* crime**, it follows necessarily that said acts offer no occasion for the application of Article 48, which requires therefor the commission of, at least, two crimes. Hence, this court has *never* in the past, convicted any person of the "complex crime of rebellion with murder". What is more, it appears that in *every one* of the cases of rebellion published in the Philippine Reports, the defendants were convicted of *simple* rebellion, *although they had killed several persons*, sometimes peace officers.[19] (emphases supplied and citations omitted)

Based on the purpose of the crime of rebellion — which is to remove from the allegiance to Government or its laws, the territory of the Philippines or any part thereof, or any body of

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[19] *Id*. at 520-521.

land, naval or other armed forces - several acts may be committed necessarily in furtherance of the rebellion. But, even though several acts were committed, these acts still constitute as one crime of rebellion as long as they were committed in furtherance of their secessionist goal.

Further, in *Umil v. Ramos*,[20] the Court emphasized that rebellion is a continuing offense and all crimes committed in furtherance of the ideological bases are absorbed therein, to wit:

> The Court's decision of 9 July 1990 rules that the arrest of *Rolando Dural (G.R. No. 81567) without warrant* is justified as it can be said that, within the contemplation of *Section 5(a), Rule 113*, he (Dural) was committing an offense, when arrested, because Dural was arrested for being a member of the New People's Army, an outlawed organization, where membership is penalized, and for subversion which, like rebellion is, under the doctrine of Garcia vs. Enrile, a continuing offense, thus:
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> > "The crimes of insurrection or rebellion, subversion, conspiracy or proposal to commit such crimes, and other crimes and offenses committed in the furtherance (sic) on the occasion thereof, or incident thereto, or in connection therewith under Presidential Proclamation No. 2045, are all in the **nature of continuing offenses which set them apart from the common offenses, aside from their essentially involving a massive conspiracy of nationwide magnitude** x x x."
>
> Given the ideological content of membership in the CPP/NPA which includes armed struggle for the overthrow of organized government, Dural did not cease to be, or became less of a subversive, FOR PURPOSES OF ARREST, simply because he was, at the time of arrest, confined in the St. Agnes Hospital. Dural was identified as one of several persons who the day before his arrest, without warrant, at the St. Agnes Hospital, held shot two (2) CAPCOM policemen in their patrol car. That Dural had shot the two (2) policemen in Caloocan City as part of his mission as a "sparrow" (NPA member) did not end there and then. Dural, given another opportunity, would have shot or would shoot other policemen anywhere as agents or representatives of organized government. It is in this sense that

[20] 279 Phil. 266 (1991).

subversion like rebellion (or insurrection) is perceived here as a *continuing offense*. **Unlike other so-called "common" offenses, *i.e.* adultery, murder, arson, *etc.*, which generally end upon their commission, subversion and rebellion are anchored on an *ideological base* which compels the repetition of the same acts of lawlessness and violence until the overriding objective of overthrowing organized government is attained.**[21] (emphases supplied)

Likewise, the rebellion contemplated under the Constitution for the declaration or extension of the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus* is not confined to the traditional concept of armed struggle or in the theater of war. As early as *United States v. Lagnason*[22] the Court ruled that there may be a state of rebellion not amounting to a state of war.

More importantly, during the deliberations of the present Constitution, the framers discussed the possibility of modern tactics in rebellion or invasion, to wit:

MR. DE LOS REYES. I ask that question because I think **modern rebellion can be carried out nowadays in a more sophisticated manner because of the advance of technology, mass media and others**. Let us consider this for example: There is an obvious synchronized or orchestrated strike in all industrial firms, then there is a strike of drivers so that employees and students cannot attend school nor go to their places of work, practically paralyzing the government. Then in some remote barrios, there are ambushes by so-called subversives, so that the scene is that there is an orchestrated attempt to destabilize the government and ultimately supplant the constitutional government. Would the Committee call that an actual rebellion, or is it an imminent rebellion?

MR. REGALADO: At the early stages, where there was just an attempt to paralyze the government or some sporadic incidents in other areas but without armed public uprising, that would only amount to sedition under Article 138, or it can only be considered as a tumultuous disturbance.

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[21] *Id*. at 294-295.

[22] 3 Phil. 472 (1904).

MR. DE LOS REYES: The public uprising are not concentrated in one place, which used to be the concept of rebellion before.

MR. REGALADO: No.

MR. DE LOS REYES: But the public uprisings consists of isolated attacks in several places — for example in one camp here; another in the province of Quezon; then in another camp in Laguna; no attack in Malacanang — but there is complete paralysis of the industry of the whole country. If we place these things together, the impression is clear — there is an attempt to destabilize the government in order to supplant it with a new government.

MR. REGALADO: **It becomes a matter of factual appreciation and evaluation.** The magnitude is to be taken into account when we talk about tumultuous disturbance, to sedition, then graduating to rebellion. All these things are variances of magnitude and scope. **So, the President determines, based on the circumstances, if there is presence of rebellion.**[23] (emphases supplied)

The Constitutional framers had the astute foresight to consider the possibility that modern rebellion would involve a more sophisticated manner of execution with the use of advanced technology and even mass media. They discussed the possibility that rebels may conduct isolated attacks in different places orchestrated to paralyze the country and destabilize the government. **In such case, Justice Regalado suggested it would be a matter of factual appreciation and evaluation of the President, based on the circumstances, in determining if rebellion exists.** Thus, the traditional concept of rebellion, where there is actual use of weapons concentrated in a single place, is not the sole concept of actual rebellion envisioned under the 1987 Constitution.

While there may be several acts committed separately in a particular region, these predicate acts would still be included in one crime of rebellion. These isolated attacks in different

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[23] Record of the Constitutional Commission Proceedings and Debates, Vol. II, pp. 412-413.

places must be examined on whether they were orchestrated to paralyze the country and destabilize the government. In other words, these attacks should not be considered in isolation in a particular area; rather, these must be considered in the totality of the armed struggle of the perpetrators. Also, the Court must consider a broader scope of rebellion, to include modern tactics which do not contemplate traditional armed struggle. With this complete picture of the concept of rebellion, the Court can judiciously determine the persistence of actual rebellion in Mindanao based on the probable cause or delivered by the President.

Actual rebellion in Mindanao persists

In *Lagman v. Medialdea* and *Lagman v. Pimentel III*, the Court ruled that in determining the existence or persistence of actual rebellion, the President may rely on a wide array of reports and documents that are available to him as the Commander-in-Chief, to wit:

> The magnitude of the atrocities already perpetrated by these rebel groups reveals their capacity to continue inflicting serious harm and injury, both to life and property. The sinister plans of attack, as uncovered by the AFP, confirm this real and imminent threat. The manpower and armaments these groups possess, the continued radicalization and recruitment of new rebels, the financial and logistical build-up cited by the President, and more importantly, the groups' manifest determination to overthrow the government through force, violence and terrorism, present a significant danger to public safety.

In *Lagman*, the Court recognized that **the President, as Commander-in-Chief, has possession of intelligence reports, classified documents and other vital information which he can rely on to properly assess the actual conditions on the ground**, thus:

> It is beyond cavil that the President can rely on intelligence reports and classified documents. "It is for the President as [C]ommander-in-[C]hief of the Armed Forces to appraise these [classified evidence or documents] reports and be satisfied that the public safety demands the suspension of the writ." Significantly, respect to these so-called classified documents is accorded even "when [the] authors of or witnesses to these documents may not be revealed."

> **In fine, not only does the President have a wide array of information before him, he also has the right, prerogative, and the means to access vital, relevant, and confidential data, concomitant with his position as Commander-in-Chief of the Armed Forces.**[24] (emphases supplied)

In this case, the President relied on several military and classified reports and documents, particularly, the report provided by the Deputy Chief of Staff for Intelligence, OJ2, AFP. The detailed and extensive AFP report presents the violent incidents committed by Abu Sayyaf Group (*ASG*), the Bangsamoro Islamic Freedom Fighters (*BIFF*), and the Dawlah Islamiyah (*DI*), and other such violent incidents committed by threat groups. These violent acts cover the period between January 1 to December 31, 2018, to wit:

a. The ASG-Initiated Violent Incidents resulted to: (a) 17 soldiers and 19 civilians wounded in action; (b) 3 civilians missing; and (c) 9 soldiers, 22 civilians, and 2 ASG killed.[25] The following are the specific incidents divided by province:

i. Basilan: 4 ambuscades, 1 arson, 1 grenade throwing, 2 harassments, 3 IED land mining/explosions, 1 attempted kidnapping, 3 liquidations, and 3 murders.
ii. Sulu: 1 ambuscade, 1 carnapping, 14 harassments, 5 IED landmining/explosions, 1 attempted kidnapping, 15 kidnappings, 3 liquidations, and 3 shootings.
iii. Tawi-Tawi: 1 murder.
iv. Zamboanga Peninsula: 1 kidnapping and 1 shooting.
v. Other Provinces: 2 kidnappings.

b. The BIFF-Initiated Violent Incidents resulted in: (a) 21 soldiers, 2 CAA, 5 civilians, and 2 BIFF wounded in action; (b) 2 civilians missing; and (c) 4 soldiers, 3 CAA, 8 civilians, and 9 BIFF killed.[26]

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[24] *Supra* note 2.

[25] *Rollo*, G.R. No. 243522, Vol. I, p. 215; see Table of ASG-Initiated Violent Incidents (01 January to 31 December 2018), attached as Annex "4" of the Comment of Respondents.

[26] *Id*. at 246; see Table of BIFF-Initiated Violent Incidents (01 January to 31 December 2018), attached as Annex "5" of the Comment of Respondents.

The following are the specific incidents divided between North Cotabato and Maguindanao:

i. North Cotabato: 1 ambuscade, 1 firefight/attack, 9 harassments, 2 IED land mining/roadside bombings, and 1 liquidation.
ii. Maguindanao: 2 arsons, 3 firefights/attacks, 3 grenade throwing, 31 harassments, 19 IED landmining/roadside bombings, 1 kidnapping, 1 murder, 1 shooting, and 1 liquidation.

c. The DI-Initiated Violent Incidents resulted in: (a) 2 soldiers and 91 civilians wounded in action; (b) 1 civilian missing; and (c) 7 civilians killed.[27] The following are the specific incidents for each DI faction:

i. DI-Maute: 1 firefight/attack, 1 kidnapping, 1 liquidation, 1 shooting, and 1 strafing.
ii. DI-Maguid: 1 IED landmining/explosion.
iii. DI-Turaifie: 1 firefight/attack and 3 IED land mining/explosions.[28]

The report shows that violent attacks still persist in Mindanao and these are committed by the very same groups that committed rebellion in *Lagman v. Medialdea* and *Lagman v. Pimentel III*. In its Letter[29] dated February 1, 2019, even the PNP confirmed that these groups continuously commit atrocities in Mindanao.

As stated in *Lagman v. Pimentel III*, the DI is the Daesh-affiliate organization in the Philippines responsible for the Marawi Siege. It is comprised of several local terrorist groups that pledged allegiance to Daesh leader Abu Bakr Al-Baghdadi. On the other hand, the ASG in Basilan, Sulu, Tawi-Tawi, and the Zamboanga Peninsula remain a serious security concern. Also, the BIFF continues to defy the government by perpetrating violent incidents during the martial law period. Further, the Court recognizes that these ISIS-linked rebel groups have formed

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[27] *Id*. at 283; see Table of DI-Initiated Violent Incidents (01 January to 31 December 2018), attached as Annex "6" of the Comment of Respondents.

[28] *Id*. at 165-167; Comment of the Respondents, pp. 15-17.

[29] *Rollo*, G.R. No. 243522, Vol. II, p. 860. Annex "2", Memorandum of the Respondents.

an alliance for the unified mission of establishing a Daesh/ ISIS territory in Mindanao. Verily, the purpose of these groups to create a separate Daesh/ISIS territory in Mindanao is an act of rebellion against the government.

In addition, the New People's Army continues to perpetrate violent attacks in Mindanao. The Court in numerous instances has recognized that the purpose of their group is to overthrow the organized government.[30]

Evidently, in spite of the extension of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus*, the violent attacks of these groups persist in major areas of Mindanao. The DND enumerated the numerous attacks perpetrated by these rebels even though martial law had been in effect from January 1, 2018 to December 31, 2018, to wit:

Type of Incident	Number of Incidents
Ambuscade	6
Arson	2
Firefighting/Attack	4
Grenade Throwing	4
Harassment	54
IED/Landmining Explosion	31
Attempted Kidnapping	1
Kidnapping	19
Liquidation	9
Murder	4
Shooting	3
TOTAL	137[31]

In the same reference material, the DND reports the following violent incidents for the period January 1 to November 30, 2018 relative to the continuing rebellion being conducted by the communist groups:

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[30] *Id*. at 830; see Memorandum of the Respondents, pp. 36-37.

[31] *Id*. at 826; Memorandum of the Respondents, p. 33.

Type of Incident	Number of Incidents
Ambush	15
Raid	4
Nuisance Harassment	41
Harassment	29
Disarming	5
Landmining	8
SPARU Operations	18
Liquidation	23
Kidnapping	5
Robbery/Hold-Up	1
Bombing	1
Arson	27
TOTAL	177[32]

The AFP explained how the violent attacks of these rebel groups were committed in furtherance of rebellion, as follows:

> The word "harassment" is a military term for a type of armed attack where the perpetrators fire at stationary military personnel, auxiliaries, or installations for a relatively short period of time (as opposed to a full armed attack) for the purpose of inflicting casualties, as a diversionary effort to deflect attention from another tactical undertaking, or to project presence in the area. At times, like in the case of the November 10, 2018 incident in Marogong, Lanao del Sur, harassments or attacks are directed against the MILF or any group perceived to be an ally or is supportive to the government. Harassments are undertaken not in isolation but as part of a bigger military strategy. This is a common tactic employed by the Communist Terrorist Group, the ASG, DI, and BIFF. On the other hand, kidnapping is undertaken particularly by the ASG to finance its operational and administrative expenses in waging rebellion. As shown in the presentation during the oral arguments, the ASG has amassed an estimated Php41.9 million in ransom proceeds for 2018 alone. With regard to arson, the tactic is commonly used by the same rebel groups for various purposes such as intimidating people who are supportive of the government, as punitive action for those who refuse to give

[32] *Id.* at 826-827; Memorandum of the Respondents.

in to extortion demands, or simply to terrorize the populace into submission. **All these activities arc undoubtedly undertaken in furtherance of rebellion.**[33] (emphasis supplied)

Indeed, harassment, kidnapping for ransom, extortion, and arson are contemporary tactics within the definition of the armed struggle in rebellion. As stated earlier, the Constitutional framers already envisioned that modern rebellion would involve a more sophisticated manner of execution and the possibility that rebels may conduct isolated attacks in different places orchestrated to paralyze the country and destabilize the government. These separate acts of violence should be woven and taken together in furtherance of the rebel groups' purpose of seceding from the State.

Reliability of the military information

During the oral arguments, the Court sought clarification as to the reliability of information received from the OJ2 to determine the sufficiency of the factual basis in extending such proclamation.[34] In its Letter,[35] the AFP Office of Deputy Chief of Staff for Intelligence explained the reliability and credibility of the reports they submitted to the President, as follows:

> The office of the Deputy Chief of Staff for Intelligence, AFP (OJ2) is the depository of all information collected by various AFP units on the activities of groups that threaten national security. These AFP units obtain information through formal (reports of government agencies performing security and law enforcement functions) as well as informal channels (information networks in areas of interest and informants who are members of the threat groups). **The information through these sources are collected to gain situational awareness particularly on enemy intentions and capabilities that become the basis of military operations and policy making. x x x.**
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> Nevertheless, the information gathered by various AFP units are expected to have undergone validation before being forwarded to

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[33] *Id*. at 853-854; Annex "1" of the Memorandum of the Respondents.

[34] Transcript of the Oral Arguments, January 29, 2019, pp. 61-64.

[35] *Supra* note 33.

OJ2 although there are instances where reports come from a single source, i.e., they come from a single informant and there is no way to validate the accuracy and veracity of its contents. **It is for this reason that the AFP has a method of assessing the reliability of its informants based on their track record.**

When it comes to violent incidents as well as armed clashes or encounters with threat groups, AFP units are required to submit reports as soon as possible. Called "spot reports," they contain information that are only available at that given reporting time window. This practice is anchored on the theory that an incomplete information is better than a complete information that is too late to be used. Subsequent developments are communicated through "progress reports" and detailed "special reports."[36] (emphases supplied)

Manifestly, the information provided by the AFP is not merely raw data from their sources; rather, they are validated through different methods. Also, the OJ2 or the AFP Office of the Deputy Chief of Staff for Intelligence is tasked with the duty to ensure that these data are consolidated and verified. While there may be some minor discrepancies on these data, as some are sourced from spot reports, these data are subsequently validated through progress reports and detailed special reports.

Thus, when these pieces of information were delivered to the President, he made a detailed and well-founded conclusion based on the **totality of evidence** that there is probable cause that actual rebellion persists in Mindanao. This is evident from his letter to both Houses of Congress dated December 6, 2018, *viz*:

[T]he security assessment submitted by the AFP and PNP highlights certain essential facts which indicate that rebellion still persists in Mindanao and that public safety requires the continuation of Martial Law in the whole of Mindanao.

The Abu Sayyaf Group, Bangsamoro Islamic Freedom Fighters, Daulah Islamiyah (DI), and other terrorist groups (collectively labeled as LTG) which seek to promote global rebellion, continue to defy the government by perpetrating hostile activities during the extended period of Martial Law...

[36] *Id*. at 847-848.

The DI forces continue to pursue their rebellion against the government by furthering the conduct of their radicalization activities, and continuing to recruit new members, especially in vulnerable Muslim communities.

While the government was preoccupied in addressing the challenges posed by said groups, the CTG, which has publicly declared its intention to seize political power through violent means and supplant the country's democratic form of government with Communist rule, took advantage and likewise posed serious security concerns...

Apart from these, major Abu Sayyaf Group factions in Sulu continue to pursue kidnap for ransom activities to finance their operations...

The foregoing merely illustrates in general terms the continuing rebellion in Mindanao.[37]

Likewise, as to the fact that there was no criminal case of rebellion filed in Mindanao from January 1 to December 31, 2018, suffice it to state that this does not diminish the existence of actual rebellion therein because: *first*, there is nothing in the constitutional provision that requires there be criminal cases filed in court to prove actual rebellion. As discussed in *Lagman v. Medialdea*, it is only required that the President has probable cause to believe that an actual rebellion persists. *Second*, even as there was no rebellion case filed during the existence of martial law and yet the aimed conflict continues, this demonstrates that the rebellion had not ceased and the perpetrators were still on the loose. It was reported by the Office of the Solicitor General (*OSG*) that a total of 181 persons in the martial law arrest orders have remained at large.[38]

Indeed, with these factual bases, the military needs to intensify their efforts against these terrorist groups through the continued imposition of martial law. Lifting martial law would remove the leverage of the military against these terror groups during their on-going operations and would weaken the rigorous

[37] *Rollo*, G.R. No. 243522, Vol. I, pp. 53-54; see Annex "A" of the Lagman Petition.

[38] *Rollo*, G.R. No. 243522, Vol. II, p. 832; *Memorandum* of the Respondents.

campaign against them and allow them to continuously threaten the civilian population.[39]

Public safety requires the extension

The overriding and paramount concern of martial law is the protection of the security of the nation and the good and safety of the public. Indeed, martial law and the suspension of the privilege of the writ of *habeas corpus* are necessary for the protection of the security of the nation; suspension of the privilege of the writ of *habeas corpus* is precautionary, and although it might curtail certain rights of individuals, it is for the purpose of defending and protecting the security of the state or the entire country and our sovereign people.[40]

In this case, after determining that actual rebellion exists based on probable cause, the President also found that the extension of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* are necessary for ensuring the public safety of the people in Mindanao.

As discussed by the OSG, there are several circumstances which show that the persisting actual rebellion in Mindanao is a threat to the public's safety therein, *viz*:

a. No less than 181 persons in the martial law Arrest Orders have remained at large.

b. Despite the dwindling strength and capabilities of the local terrorist rebel groups, the recent bombings that transpired in Mindanao that collectively killed 16 people and injured 63 others in less than 2 months is a testament on how lethal and ingenious terrorist attacks have become.

c. On October 5, 2018, agents from the Philippine Drug Enforcement Agency (PDEA) who conducted an anti-drug symposium in Tagoloan II, Lanao del Sur, were brutally ambushed, in which five (5) were killed and two (2) were wounded.

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[39] See concurring opinion of Justice Alexander G. Gesmundo in *Lagman v. Pimentel III*.

[40] *Supra* note 10.

d. The DI continues to conduct radicalization activities in vulnerable Muslim communities and recruitment of new members, targeting relatives and orphans of killed DI members. Its presence in these areas immensely disrupted the government's delivery of basic services and clearly needs military intervention.

e. Major ASG factions in Sulu and Basilan have fully embraced the DAESH ideology and continue their express kidnappings. As of December 6, 2018, there are still seven (7) remaining kidnap victims under captivity.

f. Despite the downward trend of insurgency parameters, Mindanao remains to be the hotbed of communist rebel insurgency in the country. Eight (8) out of the 14 active provinces in terms of communist rebel insurgency are in Mindanao...[41]

During the oral arguments, it was affirmed that rebellion persists in Mindanao and that the armed struggle of the rebel groups threatens public safety, to wit:

ASSOCIATE JUSTICE BERNABE:
Or based on current developments, can you say that the situation contemplated in Proclamation 216 has already changed?

SOLICITOR GENERAL CALIDA:
There is still a need, Your Honor, to extend the martial law because of the on-going threat to public safety, Your Honor, and the rebellion waged by the, not only by the communist terrorist groups but as well as the local terrorist groups, especially those groups that were DAESH-inspired, Your Honor.

ASSOCIATE JUSTICE BERNABE:
Except of course that the leadership of Hapilon and the Maute brothers have already changed?

SOLICITOR GENERAL CALIDA:
Yes, Your Honor.

ASSOCIATE JUSTICE BERNABE:
Now, in the Comment, respondents reference that December 8,

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[41] *Rollo*, G.R. No. 243522, Vol. II, pp. 832-833; Memorandum of the Respondents, pp. 39-40.

2017 letter of the President which justified the second extension by saying that, I quote: "Despite the death of Hapilon and the Maute brothers, the remnants of their groups have continued to rebuild their organization." Are the activities of the Maute Hapilon group still a consideration now for the third extension?

SOLICITOR GENERAL CALIDA:

Well, because of their recruitment, Your Honor, their strength is again, they have recruited more members, Your Honor. In fact, the Jolo bombing incident yesterday is in Jolo, Your Honor, and this is the hotbet of ASG insurgency, Your Honor.

ASSOCIATE JUSTICE BERNABE:

All right. Now, can you give us specifics such as an estimate of how many of these remnants are left or report of what activities were recently conducted? You can probably just state this in the memorandum.

SOLICITOR GENERAL CALIDA:

Yes, Your Honor, we will do that.

ASSOCIATE JUSTICE BERNABE:

Okay. Now, under the Revised Penal Code you have the purpose of the uprising or movement to be considered as a rebellion and you have to remove from the allegiance to the government the territory of the Philippines, or deprive the Chief Executive or Congress of any of their powers and prerogatives, is that correct?

SOLICITOR GENERAL CALIDA:

That's correct, Your Honor.

ASSOCIATE JUSTICE BERNABE:

Now, based on the long history of the CNT, ASG and BIFF in Mindanao, do you believe that their purpose is to remove allegiance from the government, or deprived the Chief Executive and Congress of their powers and prerogatives? Or are these activities based on social and political ideologies?

SOLICITOR GENERAL CALIDA:

You were correct in saying, Your Honor, that these atrocities deprived not only the President and Congress of their powers and prerogatives in the areas where they control, Your Honor. x x x.[42] (emphasis supplied)

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[42] Transcript of the Oral Arguments, January 29, 2019, pp. 47-48.

The magnitude of the atrocities continuously perpetrated by these rebel groups reveals their capacity to continue inflicting serious harm and injury, both to life and property. The sinister plans of attack, as uncovered by the AFP, confirm this real and imminent threat. The manpower and armaments these groups possess, the continued radicalization and recruitment of new rebels, the financial and logistical build-up cited by the President, and more importantly, the groups' manifest determination to overthrow the government through force, violence and terrorism, present a significant danger to public safety.[43]

Proper exercise of the joint executive and legislative act; coordinate powers of review

Based on the foregoing, these facts and circumstances are sufficient for the Court to conclude that actual rebellion in Mindanao puts the public's safety in peril. The President and the Congress properly exercised their joint executive and legislative act in extending the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus*.

As discussed above, unlike the power of the Court, Congress has a broad power of review under Sec. 18, Art. VII. In *Lagman v. Medialdea*, it was explained that:

> The Court may strike down the presidential proclamation in an appropriate proceeding filed by any citizen on the ground of lack of sufficient factual basis. On the other hand, Congress may revoke the proclamation or suspension, which revocation shall not be set aside by the President.
>
> In reviewing the sufficiency of the factual basis of the proclamation or suspension, the Court considers only the information and data available to the President prior to or at the time of the declaration; it is not allowed to "undertake an independent investigation beyond the pleadings." On the other hand, Congress may take into consideration not only data available prior to, but likewise events supervening the declaration. Unlike the Court which does not look into the absolute correctness of the factual basis as will be discussed below, Congress

[43] *Supra* note 2.

could probe deeper and further; it can delve into the accuracy of the facts presented before it.

In addition, the Court's review power is passive; it is only initiated by the filing of a petition "in an appropriate proceeding" by a citizen. On the other hand, Congress' review mechanism is automatic in the sense that it may be activated by Congress itself at any time after the proclamation or suspension was made.

Thus, the power to review by the Court and the power to revoke by Congress are not only totally different but likewise independent from each other although concededly, they have the same trajectory, which is, the nullification of the presidential proclamation. Needless to say, the power of the Court to review can be exercised independently from the power of revocation of Congress.[44]

Consequently, when Congress approved the extension of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* initiated by the President, which resulted into a joint executive and legislative act, Congress exercised its broad power of review. It had the power to take into consideration not only data available prior to, but likewise events supervening the declaration, and it could delve into the accuracy of the facts presented before it. In spite of the rigorous review undertaken by the legislative branch, the President's request for the extension of such proclamation and suspension was approved by Congress.

Nevertheless, while the Court and Congress' powers of review are independent and distinct, these powers should, at the very least, be coordinate with each other in determining the validity of the extension of the such proclamation and suspension. As held in the landmark case of *Angara v. Electoral Commission*:[45]

The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has

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[44] *Supra* note 11 at 154-155.

[45] 63 Phil. 139(1936).

exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. **But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government...** And the judiciary in turn, with the Supreme Court as the final arbiter, effectively checks the other departments in the exercise of its power to determine the law, and hence to declare executive and legislative acts void if violative of the Constitution.[46] (emphasis supplied)

Indeed, the three co-equal branches of the government, while acting independently, must give utmost respect to the findings of each other. When there is a clear insufficiency of factual basis, the Court must effectively nullify the extension of such proclamation or suspension for violating the Constitution; otherwise, the joint executive and legislative act must be upheld and recognized.

Pursuant to the Court's review of sufficiency of factual basis, the extension of such proclamation and suspension, which was approved by the overwhelming majority of Congress, passed the arduous requirements imposed by Sec. 18, Art. VII of the Constitution. Thus, the extension of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* is constitutionally justified.

Defanged Martial Law

While I vote to dismiss the petitions, I must emphasize my position in my Concurring Opinion in *Lagman v. Pimentel III* that martial law has been defanged under the 1987 Constitution. Martial law, while it has no precise definition, is employed to authorize the military to act vigorously for the maintenance of an orderly civil government and for the defense of the State against actual rebellion or invasion.[47]

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[46] *Id*. at 156-157.

[47] See concurring opinion of Justice Alexander G. Gesmundo in *Lagman v. Pimentel III*.

When the framers of the present Constitution discussed the power of the President to declare martial law and suspend the privilege of the writ of *habeas corpus*, they ensured that such abuses would not be repeated. Commissioner Monsod even noted that the martial law of then President Marcos was an aberration in history and that the grounds for the imposition of martial law and suspension of the privilege were reduced, and that **should a second Marcos arise, there would be enough safeguards in the new Constitution to take care of such eventuality**. Accordingly, the following safeguards are now in place to limit the Chief Executive's power to declare martial law:

1. The initial declaration of martial law has a time limit of sixty (60) days;
2. The President is required to submit a report in person or in writing to the Congress to substantiate his declaration of martial law;
3. There is a process for its review and possible revocation of Congress;
4. There is also a review and possible nullification by the Supreme Court based on the sufficiency of factual basis;
5. The removal of the phrases "imminent danger thereof and "insurrection" as grounds for declaring martial law;
6. A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function. Thus, during the martial law, the President can neither promulgate proclamations, orders and decrees when legislative assemblies are functioning nor create military courts to try civilians when the civil courts are open.
7. The declaration of martial law does not automatically suspend the privilege of the writ of *habeas corpus*;
8. During the suspension of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.
9. The extension of the declaration of martial law initiated by the President shall only take effect when approved by Congress for a period reasonably determined by it.

Hence, as long as the safeguards of the Constitution are observed and the Court diligently exercises its mandate to review any declaration or extension of the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, then the citizenry of the State, particularly in Mindanao, can rest assured that their primordial constitutional rights shall be upheld and respected.

As there is sufficient factual basis to extend the proclamation of martial law and suspension of the privilege of the writ of *habeas corpus* in Mindanao, I vote to **DISMISS** the petitions.

SEPARATE CONCURRING OPINION

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

President Rodrigo Roa Duterte sent a Letter dated December 6, 2018, requesting for a third extension of Proclamation No. 216 to the Congress. This was issued on the basis of the letters-recommendation sent by the Department of National Defense Secretary Delfin Lorenzana and then AFP Chief Carlito Galvez, Jr.

In said letter, President Duterte mentioned that although there were gains during the period of extension of Martial Law in 2018, the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP) highlighted certain essential facts indicating that rebellion still exists in Mindanao. He emphasized that several bombings with the use of Improvised Explosive Devices were committed by various terrorist groups. President Duterte also cited various kidnapping incidents by major Abu Sayyaf Group (ASG) factions in Sulu and perpetrations of at least 243 violent incidents by the Communist Terrorist Groups. All of which were in furtherance of its public declaration to seize political power and supplant the nation's democratic form of government with communism.

In the Joint Resolution No. 6 entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao for Another Period of One

Year from January 1, 2019 to December 31, 2019," both Houses of Congress approved the President's request.

In response, some members of the Congress, teachers, and residents of some parts of Mindanao filed their respective petitions, essentially questioning the third extension of Martial Law and the suspension of the privilege of the writ of *habeas corpus*, under the third paragraph of Section 18, Article VII of the Constitution.

On this matter, I concur with the *ponencia* in ruling that (1) there was sufficient factual basis for the extension of Martial Law and the suspension of the privilege of the writ of *habeas corpus*; and (2) the basis for which the martial law was initially proclaimed, *i.e.*, Proclamation No. 216, has not become *functus officio* with the cessation of the Marawi siege.

Sufficiency of factual basis for the extension of Martial Law and the Suspension of the Privilege of the Writ of Habeas Corpus

On rebellion

This Court had already definitively addressed the issue on the determination of the presence of rebellion and its relation to the supposed inaccuracies in reports in the case of *Lagman v. Medialdea*.[1] In said case, this Court considered it imperative to review the factual circumstances in all respects and not independently, to wit:

> In determining the sufficiency of the factual basis of the declaration and/or the suspension, the Court should look into the full complement or totality of the factual basis, and not piecemeal or individually. Neither should the Court expect absolute correctness of the facts stated in the proclamation and in the written Report as the President could not be expected to verify the accuracy and veracity of all facts reported to him due to the urgency of the situation.

Undoubtedly, this calls for the survey of the reports in its entirety.

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[1] G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1, 179.

While during oral arguments, some members of this Court pointed out inaccuracies and irregularities in the submitted reports by the AFP and PNP, it must be considered that such inconsistencies do not necessarily negate the truth; for these inaccuracies do not essentially capture the factual circumstances which called for the extension. Admittedly, these violent incidents prove that rebellion persists in Mindanao. The Letter dated December 6, 2018 as well as the reports of the AFP evince that the ASG, the Bangsamoro Islamic Freedom Fighters (BIFF), the Daulah Islamiyah (DI) and the other rebel groups continue to perpetrate hostile activities in Mindanao. The bombings, violent incidents and other related crimes cannot be discounted as many were killed and injured. Similarly, the recruitment of new members must be noted. All these events were executed in furtherance of the rebel groups' purpose of seizing parts of Mindanao and depriving the government of its power over the same.

Moreover, it is worthy to emphasize that it is unlikely to acknowledge rebellion as being committed by *identified* groups of men engaging in an armed conflict with the government in the case of *Lagman v. Pimentel III*,[2] thus:

> Rarely is rebellion now committed by a large group of identified men engaging the government in an all-out conventional war in accordance with the Geneva Conventions. It would then be simply naive to dismiss, as the petitioners have, the remaining armed groups in Mindanao as but "phantom remnants" of the defeated terrorists and rebels. **The fact that they do exist and still continue fighting is by itself proof of the subsistence of the condition that compelled the administration to proclaim Martial Law in Mindanao.** (Emphasis supplied)

On the requirement of public safety

In *Lagman v. Medialdea*,[3] this Court highlighted that rebellion is not confined within predetermined bounds; and for the crime of rebellion to be consummated, it is not required that all armed

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[2] G.R. Nos. 235935, 236061, 236145 and 236155, February 6, 2018.

[3] *Lagman v. Medialdea*, *supra* note 1, at 205-206.

participants should congregate in one place and publicly rise in arms against the government for the attainment of their culpable purpose. Alternatively put, the fact that reported violent incidents occurred in certain areas does not negate their advancement in other parts of Mindanao. In *Lagman v. Pimentel III*,[4] this Court reasoned:

> We held that the grounds on which the armed public uprising actually took place should not be the measure of the extent, scope or range of the actual rebellion when there are other rebels positioned elsewhere, whose participation did not necessarily involve the publicity aspect of rebellion, as they may also be considered as engaged in the crime of rebellion.

For this matter, there is an imperative need to consider the Resolutions issued by several Regional Peace and Order Councils in Region XI (Davao City), Region XIII (Caraga), Agusan Del Norte, Agusan Del Sur, and Dinagat Islands in Mindanao wherein the *Whereas Clauses* provide: (a) their intention to extend the period of Martial Law so that developments and growth that the region achieved can be sustained (Davao City); (b) they support the extension of Martial Law in pursuit of lasting peace, order, and security (Caraga); and (c) they appreciated the proclamation of Martial Law because they could feel the security in their jurisdictions against lawless elements due to the presence and efforts of AFP and PNP (Agusan Del Norte, Agusan Del Sur, and Dinagat Islands).

Notably, these councils have the obligation to focus on coordination and orchestration of measures to ensure the safety of the people within their own jurisdictions. The duties and functions of these councils are enshrined in Executive Order No. 773 (Further Reorganizing the Peace and Order Council), *viz.*:

> **Sec. 3.** ***Duties and Functions of Sub-National Councils.*** — The RPOCs, PPOCs, CPOCs, and MPOCs shall have the following duties and functions:

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[4] *Supra* note 2.

(a) Provide a forum for dialogue and deliberation of major issues and problems affecting peace and order, including insurgency;

(b) Recommend measures which will improve or enhance peace and order and public safety in their respective areas of responsibility, including anti-insurgency measures;

(c) Recommend measures to converge and orchestrate internal security operations efforts of civil authorities and agencies, military and police.

x x x x x x x x x

Clearly from the foregoing, it is apparent that such councils are tasked with communicating with the people matters regarding peace, security, and public order within their respective jurisdictions. As such, they can be regarded as medium of the people in declaring their apprehensions. These councils also have the recommendatory functions to secure institutive action for peace and order. The issuance of these Resolutions, which are reflective of the voice of their constituents, strengthens the proposition that public safety necessitates the continued implementation of Martial Law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao.

Proclamation No. 216 was not rendered functus officio by the cessation of the Marawi Siege

The acts committed by the rebel groups, aside from the Maute group, cannot simply be avoided. The halting of the armed combat in Marawi did not automatically amount to an absence of rebellion. As discussed above, rebellion in Mindanao is still subsisting. It is worthy to emphasize that in the two *Lagman* cases, this Court already accepted that rebellion cannot be characterized in isolation. Significantly, the perpetration by the local terrorist groups and other communist terrorist groups, as indicated in Proclamation No. 216, should be unquestioned. To reiterate, absolute precision cannot be expected from the President who would have to act quickly given the urgency of the situation.[5] It would be more dangerous to require the President

[5] G.R. Nos. 235935, 236061, 236145 and 236155, February 6, 2018.

to classify and tag rebel groups with rigor before deciding on the need to implement the extension of Martial Law and the suspension of the privilege of the writ of *habeas corpus*, precisely because the actual rebellion and attack, more than the exact identity of all its perpetrators, would be his utmost concern.[6]

Within constitutional bounds, the government has the prime duty of serving and protecting the people.[7] To this end, our government actively pursues its constitutional mandate by administering measures which not only keep and reserve its power and authority but likewise uphold the safety of the citizenry against peril and adversities.

In this view, I vote to **DISMISS** the petitions in G.R. Nos. 243522, 243677, 243745, and 243797.

SEPARATE CONCURRING OPINION

HERNANDO, *J.*:

THE CASE

These consolidated petitions challenge the constitutionality of Resolution of Both Houses (RBH) No. 6 issued by the Senate of the Philippines and the House of Representatives approving the extension, for the period of January 1, 2019 until December 31, 2019, of Proclamation No. 216 entitled, "Declaring a State of Martial Law and Suspending the Privilege of Writ of *Habeas Corpus* in the whole of Mindanao" issued by President Rodrigo Roa Duterte (President Duterte).

FACTUAL ANTECEDENTS

On May 23, 2017, President Duterte issued Proclamation No. 216 for a period not exceeding sixty (60) days. The Senate and the House of Representatives respectively issued Senate

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[6] *Id*.

[7] CONSTITUTION (1987), Art. II, Sec. 4.

Resolution No. 388 and House Resolution No. 1050, supporting Proclamation No. 216 and finding no cause to revoke the same. Forthwith, a constitutional challenge was mounted before the Supreme Court against Proclamation No. 216. This was rejected in *Lagman v. Medialdea*,[1] where the High Court categorically pronounced that there was sufficient factual basis for the issuance of Proclamation No. 216 and thus decreed it as constitutional.

In a course of action without precedent, President Duterte requested Congress to extend the effectivity of Proclamation No. 216. On July 22, 2017, in a Special Joint Session, the Congress adopted RBH No. 2 extending for the first time Proclamation No. 216 until December 31, 2017.

Thereafter, in a letter dated December 7, 2017, President Duterte requested for a second extension of Proclamation No. 216 for the period of January 1, 2018 to December 31, 2018 or for such period as may be determined by Congress.

On December 13, 2017, the Senate and the House of Representatives, in joint session, adopted RBH No. 4 further extending Proclamation No. 216 from January 1, 2018 to December 31, 2018. Significantly, this second extension was contested before this Court anchored on the absence of rebellion in Mindanao, specifically the end of the *Marawi* siege, and the requirement of public safety. However, this opposition was again spurned in *Lagman v. Pimentel III*[2] where the Court found sufficient factual basis for the further extension of Proclamation No. 216.

When the second extension was about to expire, Secretary of National Defense Delfin N. Lorenzana (Secretary Lorenzana) wrote to President Duterte on December 5, 2018 where he recommended a further extension of Proclamation No. 216 from January 1, 2019 to December 31, 2019. And, in a joint letter[3]

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[1] G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1.

[2] G.R. Nos. 235935, 236061, 236145 & 236155, February 6, 2018.

[3] *Rollo*, G.R. No. 243522, Vol. 1, pp. 208-213. Joint Letter of AFP Chief of Staff Carlito G. Galvez, Jr. and PNP Chief of Staff Oscar D. Albayalde to President Rodrigo R. Duterte.

to the President, both the Armed Forces of the Philippines (AFP) Chief of Staff and the Philippine National Police (PNP) Director General echoed Secretary Lorenzana's advocacy for the extension of martial law for another 12 months based on: (1) the Islamic State's (IS) fundamental shift in operational methodology, from caliphate-building to waging a global insurgency and rebellion; and (2) the mid-year recognition by the IS of the East Asia *Wilayat*, with the Philippines at its epicenter.[4] The letter likewise cited four bombing incidents in Mindanao which killed 16 people and injured 63 others in a span of two months.[5]

Acting on, and spurred by, the foregoing advice of his top brass in the military and police establishments, President Duterte, in a letter dated December 6, 2018, requested Congress for a third extension of Proclamation No. 216 from January 1, 2019 to December 31, 2019, specifying various bombing incidents in Mindanao, such as:

a. The Lamitan Bombing on July 31, 2018 that killed eleven (11) individuals and wounded ten (10) others;

b. The two (2) Isulan, Sultan Kudarat IED explosions on August 28, 2018 and September 2, 2018 which collectively left five (5) casualties and wounded forty-five (45) individuals; and

c. The Barangay Apopong, General Santos City IED explosion on September 16, 2018 that left eight (8) individuals, including a three-year old child, wounded.[6]

In his letter, President Duterte likewise adverted to the following events: (a) kidnapping incidents staged by Abu Sayyaf Group (ASG) factions in Sulu involving a Dutch, a Vietnamese, two Indonesians, and four Filipinos; (b) at least 342 violent

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[4] *Id.*, Vol. 2, p. 798. Memorandum for Respondents through the Office of the Solicitor General, p. 5.

[5] *Supra* note 3. Joint Letter of AFP Chief of Staff Carlito G. Galvez, Jr. and PNP Chief of Staff Oscar D. Albayalde to President Rodrigo R. Duterte.

[6] *Supra* note 4 at p. 799, Memorandum for Respondents through the Office of the Solicitor General.

incidents, such as harassment, attacks against government installations, liquidation operations, and various arson attacks, perpetrated by communists mostly in Eastern Mindanao from January 1, 2018 to November 30, 2018 in furtherance of their public declaration to seize political power and overthrow the government; (c) twenty-three recorded arson incidents which destroyed properties approximately valued at one hundred fifty-six million pesos (PhPl56,000,000.00); and (d) atrocities which resulted in the killing of 87 military personnel and wounding of 408 others.[7]

On December 12, 2018, Congress issued RBH No. 6 entitled, "Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao for Another Period of One (1) Year from January 1, 2019 to December 31, 2019" which approved the Commander-in-Chief's supplication for the third extension of Martial Law in Mindanao.

Hence, these petitions, all of which commonly assail the factual basis of the third extension of Martial Law in Mindanao, were lodged before the Court by: (a) Congressmen Edcel C. Lagman, Tomasito S. Villarin, Teddy Brawner Baguilat, Jr., Edgar R. Erice, Gary C. Alejano, Jose Christopher Y. Belmonte, and Arlene "Kaka" J. Bag-ao docketed as G.R. No. 243522 (Lagman Petition); (b) Bayan Muna Partylist Representative Carlos Isagani T. Zarate, *et al.*, docketed as G.R. No. 243677 (Bayan Muna Petition); (c) Christian Monsod, *et al.*, docketed as G.R. No. 243745 (Monsod Petition); and (d) Rius Valle, *et al.*, docketed as G.R. No. 243797 (Lumad Petition).

THE PETITIONS SUBMITTED BEFORE THE COURT

G.R. No. 243522 (Lagman Petition)[8]

The *Lagman Petition* posits that the Supreme Court must make an independent and critical assessment of the President's

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[7] *Id.*

[8] *Id.* at pp. 753-788. Filed by Representatives Edcel C. Lagman, Tomasito S. Villarin, Teddy Brawner Baguilat, Jr., Edgar R. Erice, Gary C. Alejano, Jose Christopher Y. Belmonte, and Arlene "Kaka" Bag-Ao.

factual submission pertaining to the third extension of martial law.[9] Moreover, actual rebellion does not exist in Mindanao which would warrant a third extension of Proclamation No. 216. Even the President, in his letter dated December 6, 2018 to Congress, merely expressed in general terms the state of the supposed continuing rebellion in Mindanao.[10] Additionally, the President failed to submit a detailed report to substantiate his claim that rebellion persists in Mindanao; thus, there is no sufficient factual basis to further extend the proclamation of Martial Law. [11] Even the military admitted that no one was arrested or charged with rebellion during the second extension of Martial Law in Mindanao. More significant, the purported reported violent incidents were never connected to rebellion.[12]

Said petition maintains that the alleged public clamor for the extension of martial law, as well as the claimed economic growth brought about by the imposition of martial law, cannot be considered as a valid ground for the extension thereof.[13] In the same vein, it points out that public safety is not imperiled.[14]

The *Lagman Petition* also argues that acts of terrorism such as the bombings in different places of Mindanao, which were perpetrated during the effectivity of Martial Law in the island, were not equivalent to rebellion because there were differences in motive, target and scope. In evaluating such acts of terrorism, it advances the argument that the President can instead exercise his calling out power and not declare a state of martial law.[15] The previous rulings in *Lagman v. Medialdea*[16] and *Lagman v.*

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[9] *Id.* at pp. 756-757. Memorandum of the Petitioners Lagman, *et al.*

[10] *Id.*, Vol. 1, at pp. 26-27. Petition of the Petitioners Lagman, *et al.*

[11] *Id.* at pp. 27-28.

[12] *Id.* at pp. 11-22; *supra* note 4, pp. 757-760, Memorandum of the Petitioners Lagman, *et al.*

[13] *Id.* at pp. 34-36.

[14] *Id.* at p. 37.

[15] *Supra* note 4, pp. 771-772, 761-764, Memorandum of the Petitioners Lagman, *et al.*

[16] *Supra* note 1.

Pimentel III[17] should not be accorded blind adherence just because these cases were the precedents of the cases at bench. The circumstances surrounding the third extension differed from the situation when Martial Law was initially declared.[18] Since public safety is no longer imperiled, there is no longer a need for a third extension.[19]

What is more, Proclamation No. 216 cannot be extended because it has become *functus officio*. The so-called rebellion of the Maute Group and the Abu Sayyaf Group (ASG), which was the basis for the declaration of Martial Law, has been vanquished with the killing of the respective groups' leaders, together with the President's declaration that Marawi City has been liberated. In other words, the purpose and mission of Proclamation No. 216 had been accomplished. A third extension also violates the limited period envisioned in the Constitution. Congress does not have the discretion to determine the duration of the extension of martial law and the suspension of the privilege of the writ.

The *Lagman Petition* exhorts that Section 18, Article VII should be read in its entirety and interpreted as a restriction and limitation on the declaration of martial law and the suspension of the privilege of the writ.[20] It stated that the "little flexibility" for the Congress to determine the length of the extension must be consistent with the intent of the Constitution to limit the duration of the extension of the original period of martial law with a benchmark of not exceeding sixty (60) days. Such "limited flexibility" must similarly not be abused by the President and Congress.[21]

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[17] *Supra* note 2.

[18] *Supra* note 4, pp. 765-768. Memorandum of the Petitioners Lagman, *et al.*, pp. 13-15.

[19] *Id.* at pp. 768-771.

[20] *Id.* at pp. 775-786.

[21] *Supra* note 3 at pp. 41-44, Petition of the Petitioners Lagman, *et al.*; *Supra* note 4, p. 781, Memorandum of the Petitioners Lagman, *et al.*

The *Lagman Petition* avers that Congress granted the extension with inordinate haste by the supermajority allies of the President because the periods to interpellate and to explain votes were restricted.[22] The imposition of Martial Law only emboldened the military and the police to violate the rights of the citizens of Mindanao, citing the recent arrest of former Representative Satur Ocampo and incumbent Representative Francis Castro during a humanitarian mission to rescue the Lumads.[23]

Said petition further argues that the 1987 Constitution removed the declaration of martial law, the suspension of the privilege of the writ, or the extension thereof from the purview of the doctrine of "political question."[24] It opines that the Court's power to review the sufficiency of factual basis does not require a prior finding of grave abuse of discretion on the part of the President and Congress.[25] In any case, it asserts that the imposition and extension of martial law and the suspension of the privilege of the writ are undue restrictions on the citizens' rights.[26]

Finally, the petition prays for the issuance of a Temporary Restraining Order (TRO) or a Writ of Preliminary Injunction (WPI) to stop the implementation of the third extension of Martial Law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao, as well as the disbursement of funds to finance the said declaration.[27]

On January 17, 2019, the *Lagman Petition* was amended to implead the House of Representatives and the Senate of the Philippines for approving RBH No. 6 dated December 12, 2018.[28]

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[22] *Id.* at pp. 44-45.

[23] *Id.* at pp. 45-46.

[24] *Supra* note 4 at p. 782, Memorandum of the Petitioners Lagman, *et al.*

[25] *Id.* at pp. 783-784.

[26] *Id.* at p. 783.

[27] *Supra* note 3 at pp. 46-47, Petition of the Petitioners Lagman, *et al.*

[28] *Supra* note 3 at pp. 308-309, Amended Petition of the Petitioners Lagman, *et al.*

G.R. No. 243677 (Bayan Muna Petition)[29]

The *Bayan Muna Petition* contends that there is no actual rebellion that exists and persists in Mindanao. President Duterte's letter to Congress asking for a third extension of Proclamation No. 216 merely enumerated the isolated incidents committed by various groups. These incidents did not point to a clear political purpose of rebellion as defined under the Revised Penal Code (RPC). The radicalization and recruitment activities allegedly being spearheaded by the Daulah Islamiya (DI) forces cannot be categorized as actual rebellion as there is no public uprising yet. In addition, the various reported incidents failed to (a) positively identify the perpetrators; (b) show basis for attributing said incidents to a particular rebel group; and (c) state or identify the motive for the commission of the said offenses.[30]

Moreover, in the December 4, 2018 letter of Defense Secretary Lorenzana, as well as in the undated joint letter of AFP Chief of Staff Galvez, Jr. and PNP Chief Albayalde to President Duterte, it was mentioned that the number of atrocities and degradation of capacities of the identified rebel groups significantly decreased by virtue of the implementation of Martial Law in Mindanao. These reported gains brought about by Martial Law in Mindanao negate the presence of a threat to public safety and militates against the further extension of Proclamation No. 216 from January 1, 2019 to December 31, 2019.[31]

The *Bayan Muna Petition* further posits that the factual bases alleged and relied upon by the respondents to further extend Proclamation No. 216 are merely generic threats to public safety which are consequences of and inherent damage or injury

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[29] *Rollo*, G.R. No. 243677, pp. 3-41; Filed by Bayan Muna Partylist Representative Carlos Isagani T. Zarate, Gabriela Women's Party Representatives Emerenciana A. De Jesus and Arlene D. Brosas, Anakpawis Representative Ariel B. Casilao, ACT Teachers Representatives Antonio L. Tinio and France L. Castro, and Kabataan Partylist Representative Sarah Jane I. Elago.

[30] *Id.* at p. 127, Memorandum for Petitioner Bayan Muna, *et al.*

[31] *Id.* at pp. 263-266.

resulting from, any rebellion. The threat to public safety referred to in Section 18, Article VII that would require the imposition or extension of martial law must have risen to the level where the government cannot sufficiently or effectively govern, as exemplified by the closure of courts or government bodies, or at least the extreme difficulty of courts, the local government and other government services to perform their functions. Thus, if the threat to public safety in a rebellion has not risen to a level that would necessitate the imposition of martial law, this Court should intervene in case the President implores the implementation of Martial Law instead of exercising his calling-out powers.[32]

Furthermore, the *Bayan Muna Petition* maintains that Proclamation No. 216 has become *functus officio* with the cessation of the *Marawi* siege. Thus, considering that the actual rebellion for which Proclamation No. 216 was issued has ceased, there is no longer any basis for its further extension as there is no persisting actual rebellion in Mindanao.[33] During the joint session of Congress for the third extension, Secretary Lorenzana made a material misrepresentation when he testified that a kidnapping case was filed against Bayan Muna Party-List Representatives Satur Ocampo and petitioner Castro, and sixteen (16) teachers, pastors and other delegates of a humanitarian and rescue mission in Talaingod Davao del Norte, when in fact none was filed because the prosecution found no probable cause. This incident was, however, listed and considered as one of the bases for the extension of Proclamation No. 216.[34]

Lastly, the petition cites various sources, namely: (a) human rights monitor Karapatan; (b) International Fact Finding and Solidarity Mission (IFFSM); and (c) the Association of Southeast Asian Nations (ASEAN) Parliamentarians for Human Rights, which documented human rights violations by reason of the implementation of Martial Law in Mindanao. The petition argues

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[32] *Id.* at p. 272.

[33] *Id.* at pp. 278-280, Memorandum for Petitioner Bayan Muna, *et al.*

[34] *Id.* at pp. 282-284.

that this Court has the duty to consider the human rights situation in Mindanao in the determination of the sufficiency of the factual basis for the extension of Proclamation No. 216 from January 1, 2019 to December 31, 2019.[35]

G.R. No. 243745 (Monsod Petition)[36]

The *Monsod* Petition argues that the extension of Martial Law is null and void for lack of sufficient factual basis. It asserts that the present factual situation does not call for the extension of martial law and the suspension of the privilege of the writ as the so-called rebellion existing in Mindanao is not sufficient to warrant an extension.[37] The rebellion which warrants the imposition of martial law when public safety requires it refers to the rebellion as defined under Article 134 of the RPC.[38]

In this case, the present public safety situation in Mindanao does not call for the extension of martial law and the suspension of the privilege of the writ; if at all, the President can resort to his extraordinary power to call out the armed forces when it becomes necessary.[39] In any case, respondents have not shown that the supposed rebellion in Mindanao is of such an intensity that would render the civilian government incapable of functioning.[40] It emphasizes that the further extension of martial law and the suspension of the privilege of the writ are not necessary to meet the situation in Mindanao, given that the factual circumstances in the region have drastically improved.[41]

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[35] *Id.* at pp. 288-292.

[36] *Rollo* , G.R. No. 243745, pp. 3-31, Filed by Christian S. Monsod, Ray Paolo J. Santiago, Nolasco Ritz Lee B. Santos III, Marie Hazel E. Lavitoria, Dominic Amon R. Ladeza, and Xamantha Xofia A. Santos.

[37] *Id.* at pp. 14-25, Petition of the Petitioners Monsod, *et al.*, *Id*. at p. 290, Memorandum of the Petitioners Monsod, *et al.*

[38] *Id.* at pp. 291-295, Memorandum of the Petitioners Monsod, *et al.*

[39] *Id.* at pp. 295-301.

[40] *Id.* at p. 303.

[41] *Id.* at pp. 303-305.

The *Monsod Petition* avers that while the Constitution does not expressly state a specific duration for the allowable extension of martial law and the suspension of the privilege of the writ, any extension should be supported by sufficient factual basis. As such, the number of extensions is limited by the existence of invasion or rebellion, and the requirement of public safety, as supported by sufficient factual basis.[42] The current factual situation renders Proclamation No. 216 *functus officio* considering the cessation of the *Marawi* siege. Public safety no longer requires it, and the civilian government is able to exercise its functions.[43]

Said petition points out that the postponement of the *Barangay* and *Sangguniang Kabataan* (SK) Elections by the Commission on Elections (COMELEC) in Mindanao in 2017 and the subsequent conduct of the elections in 2018 after it was determined that conditions are conducive for the conduct of the elections amidst the existence of Martial Law shows that the basis for martial law no longer exists in Mindanao.[44]

Along the same lines, the *Monsod Petition* contends that martial law has a transitory nature and that the President's exercise of martial law and suspension powers is temporary in nature and was never meant to be the status quo.[45]

Moreover, this Court has the power and constitutional mandate to independently determine the sufficiency of the factual basis for the further extension of Proclamation No. 216. It should independently determine the factual basis and should not confine itself to the data presented by the Executive and Legislative branches of government. The intent of the framers of the Constitution was for the Court's review to be transitory in nature and responsive to the factual situation and changes thereafter.[46]

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[42] *Id.* at pp. 305-307.

[43] *Id.* at pp. 307-308.

[44] *Id.* at pp. 27-28, Petition of the Petitioners Monsod, *et al.*

[45] *Id.* at pp. 308-309, Memorandum of the Petitioners Monsod, *et al.*

[46] *Id.* at pp. 23-27, Petition of the Petitioners Monsod, *et al.*; *Id.* at pp. 309-310, Memorandum of the Petitioners Monsod, *et al.*

The *Monsod Petition* further asserts that while Congress has the power to determine the manner in which to approve the extension of martial law, it must also meet the requirement of sufficient factual basis. The same standard should likewise apply as regards the Congress' discretion to respond to the President's request for an extension.[47] All the same, it calls upon the Court to consider that the Constitution provides that the sufficiency of the factual circumstances be weighed by the court of law and not on whether the President was satisfied or not with his or her assessment of the circumstances to declare martial law.[48] It should not be hindered from exercising its expanded jurisdiction under Section 1, Article VIII of the Constitution, which includes the review of the actions of other branches of government, *i.e.*, its power to determine the factual basis for the proclamation and extension of martial law.[49] In doing so, the totality of factual circumstances will determine if there is adequate ground to warrant a nullification of the extension of martial law.[50]

Said petition emphasizes that the burden of proof is upon the Executive and the Legislative Departments to show that there is sufficient factual basis for the declaration and extension of martial law, in light of the factual milieu existing in Mindanao.[51]

In view of these, the *Monsod Petition* sought the issuance of a TRO or injunction in order to enjoin the respondents from further implementing Proclamation No. 216, as there is a possibility of abuse of rights.[52]

G.R. No. 243797 (Lumad Petition)[53]

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[47] *Id.* at p. 311, Memorandum of the Petitioners Monsod, *et al.*

[48] *Id.* at p. 30, Petition of the Petitioners Monsod, *et al.*

[49] *Id.* at pp. 312-313, Memorandum of the Petitioners Monsod, *et al.*

[50] *Id.* at pp. 313-314.

[51] *Id.* at p. 316.

[52] *Id.* at p. 30, Petition of the Petitioners Monsod, *et al.*; *Id.* at pp. 314-315, Memorandum of the Petitioners Monsod, *et al.*

[53] *Rollo*, G.R. No. 243797, pp. 7-18, Filed by Rius Valle, Jhosa Mae Palomo, Lito Kalubag, Junjun Gambang, Jeany Rose Hayahay, and the Integrated Bar of the Philippines.

The *Lumad Petition* contends that the Court may take judicial notice that the original factual basis for the issuance of Proclamation No. 216 no longer exists and that the same proclamation has already been rendered *functus officio*. Because of this, the third extension no longer has factual basis due to the President's declaration that Marawi City has been liberated.[54] The President's reasons for requesting an extension from Congress are inadequate since the President's own report indicated that the situation has improved.[55] Congress did not effectively review the factual basis for the request for extension which amounted to grave abuse of discretion. Moreover, Congress should not have considered "terrorism" as a ground for the proclamation of martial law, much more for its extension. In the same vein, the Legislature's failure to ascertain the change in the factual basis relied upon by the President led to its being remiss in its duty to review Proclamation No. 216.[56]

Likewise, the *Lumad Petition* argues that the respondents failed to justify the need for a third extension as well as the sufficiency of its factual basis.[57] In line with this, current events such as the bombing in Jolo, Sulu, do not retroactively justify the continued existence of martial law.[58] Neither can the ongoing rebellion by the New People's Army (NPA) justify the extension of Proclamation No. 216, as this should be covered by a new proclamation.[59] Said Proclamation grants powers that are overbroad and undefined which suspend and curtail other rights, rendering an effective legislative or judicial review impossible. This includes General Order No. 1[60] which implements martial law.[61]

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[54] *Id.* at pp. 10-11, Petition of the Lumad Petitioners; *Id.* at pp. 299-306, Memorandum of the Lumad Petitioners, *et al.*

[55] *Id.* at pp. 11-12; *Id.* at p. 300.

[56] *Id.* at p. 12; *Id.* at pp. 300-304.

[57] *Id.* at pp. 304-305, Memorandum of the Lumad Petitioners, *et al.*

[58] *Id.* at p. 306.

[59] *Id.* at pp. 306-307.

[60] Section 3, General Order No. 1.

Relevantly, the *Lumad Petition* argues that the wholesale extension of martial law and the suspension of the privilege of the writ has resulted in an environment of continued impunity directed against *Lumad* schools which have been intimidated, harassed, and "red tagged." In support of this argument, it narrated the first-hand experiences of the petitioners therein.[62]

Notably, the *Lumad Petition* likewise asked for the issuance of an injunctive relief.[63]

Respondents, through the Office of the Solicitor General (OSG)

Respondents, on the other hand, argue that there is sufficient factual basis for the extension of Proclamation No. 216. Contrary to the *Monsod Petition* which demands that this Court should independently determine the sufficiency of the factual basis for extension of Proclamation No. 216. It is impossible for the Court to conduct an independent factual inquiry as its review is limited to the information given to the President by the AFP and the PNP. In fact, in *Lagman v. Medialdea*,[64] this Court acknowledged that it does not have the same resources available to the President; hence, its determination of the sufficiency of factual basis must be limited only to the facts and information mentioned in the Report and Proclamation. This Court must then rely on the fact-finding capabilities of the executive department. Also, respondents contend that the Constitution

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Section 3. **Scope and Authority.** The Armed Forces of the Philippines shall undertake all measures to prevent and suppress all acts of rebellion and lawless violence in the whole of Mindanao, including any and all acts in relation thereto, in connection therewith, or in furtherance thereof, to ensure national integrity and continuous exercise by the Chief Executive of his powers and prerogatives to enforce the laws of the land and to maintain public order and safety.

[61] *Supra* note 53 at pp. 12-13, Petition of the Lumad Petitioners; *Id.* at pp. 307-308, Memorandum of the Lumad Petitioners, *et al.*

[62] *Id.* at pp. 13-17; *id*. at pp. 306-313.

[63] *Id.* at pp. 17-18, Petition of the Lumad Petitioners.

[64] *Supra* note 1.

does not authorize the Court to conduct an independent inquiry as it is not an inquisitorial tribunal.[65]

As regards the manner by which Congress deliberated on the President's request for the third extension of Proclamation No. 216, respondents posit that the same is not subject to judicial review pursuant to the Court's ruling in *Lagman v. Pimentel III*[66] wherein the Court ruled, that considering that martial law is a law of necessity and self-preservation mechanism of the State, its proclamation or extension must be deliberated with speed. Thus, as this Court held, it "*cannot engage in undue speculation that members of Congress did not review and study the President's request based on a bare allegation that the time allotted for deliberation was too short*."[67]

Respondents further point out that the *Lagman Petition* raised the same issue already resolved in *Lagman v. Pimentel III*,[68] that is, whether the Congress has the power to extend martial law and suspend the privilege of the writ of *habeas corpus*. The 1987 Constitution did not fix the period of extension which gives Congress a wider latitude in determining the period for the extension of martial law and the suspension of the privilege of the writ of *habeas corpus*. The Constitution is clear, plain and free from any ambiguity; thus it must be given its literal meaning and applied without any attempted interpretation. *Verba legis non est recedendum*, or from the words of the Constitution, there should be no departure. Hence, the period for which the Congress may extend martial law and suspend the privilege of the writ of *habeas corpus* is a matter that it can define by any predetermined length of time. The Congress is given the power to determine the period of extension for a limited duration as specifically mandated under Section 18, Article VII of the 1987 Constitution.[69]

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[65] *Supra* note 3 at pp. 121-123, Memorandum for Respondents.

[66] *Supra* note 2.

[67] *Supra* note 3 at pp. 124-125, Memorandum for Respondents.

[68] *Supra* note 2.

[69] *Supra* note 3 at pp. 126-132, Memorandum for Respondents.

As to the alleged human rights violations, respondents argue that such do not warrant the nullification of martial law and the suspension of the privilege of the writ of *habeas corpus*. Respondents assert that the issue of alleged human rights violations has been threshed out in *Lagman v. Medialdea*[70] where it was declared that "*any act committed under the said orders in violation of the Constitution and the laws, such as criminal acts or human rights violations, should be resolved in a separate proceeding*." In the case at bar, the Court is only tasked to determine the sufficiency of the factual basis for the extension of Proclamation No. 216 and not to rule on the veracity of the alleged human rights violations by reason of the implementation of martial law.[71]

Furthermore, respondents contend that the sufficiency of the factual basis for the extension of Proclamation No. 216 and the public safety requirement are fully supported and addressed by the Department of National Defense's (DND) "Reference Material, Joint Session on the Extension of Martial Law in Mindanao" which was presented during the joint session of Congress which showed that rebellion still persists in Mindanao on account of: (a) the Local Terrorist Rebel Groups (LTRG) which consists of Abu Sayyaf Group (ASG), Bangsamoro Islamic Freedom Fighters (BIFF), Daulah Islamiya, and other groups that have established affiliation with ISIS/DAESH; and (b) Communist Terrorist Rebel Groups (CTRG) which consists of the Communist Party of the Philippines (CPP), New People's Army (NPA), and the National Democratic Front (NDF).[72]

Respondents maintain that the ongoing rebellion committed by these rebel groups endangers public safety. They cited various events and factors which showed that the rebel groups posed a threat to public safety, such as: (a) 181 persons with martial law arrest warrants have remained at large; (b) recent bombings which collectively killed 16 people and injured 63 others in

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[70] *Supra* note 1 at p. 173.

[71] *Supra* note 3 at pp. 132-135, Memorandum for Respondents.

[72] *Id.* at pp. 135-138.

less than two months; (c) the ambush of Philippine Drug Enforcement Agency (PDEA) personnel who conducted an anti-drug symposium in Tagoloan II, Lanao del Sur on October 5, 2018 which killed five persons and wounded two others; (d) radicalization activities conducted in vulnerable Muslim communities as well as recruitment of new members; and (e) continued kidnappings by ASG factions in Sulu and Basilan with seven victims remaining in captivity.[73]

Considering these atrocities committed by the rebel groups, respondents contend that both the President and the Congress have probable cause to believe that rebellion exists in Mindanao and the same endangers public safety. The quantum of evidence required to determine the existence of rebellion is merely probable cause. Thus, the President and the Congress relying on the detailed reports submitted by the DND and the AFP inferred that: (a) there is an armed public uprising in Mindanao; (b) the purpose of which is to remove from the allegiance to the government or its laws, the territory of the Republic or any part thereof, or depriving the Chief Executive or the Legislature of any of their powers or prerogatives, and (c) public safety requires the extension of martial law and suspension of the privilege of the writ of *habeas corpus*.[74]

So too, notwithstanding the minor discrepancies in the reports as well as alleged inclusion of entries or events which were deemed not in furtherance of rebellion, the credibility of the reports cannot be doubted as these reports were duly validated and authenticated in accordance with military procedure which are akin to entries in official records by a public officer which, under the law, enjoy the presumption as *prima facie* evidence of the facts stated therein.[75]

Lastly, respondents avow that the Court is not authorized to issue an injunctive writ under Section 18, Article VII of the 1987 Constitution. The jurisdiction of the Court is limited only

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[73] *Id.* at pp. 138-151.

[74] *Id.* at pp. 151-154.

[75] *Id.*

to the determination of the sufficiency of factual basis of the extension of Proclamation No. 216. Even assuming that this Court has the power to issue an injunctive writ, respondents contend that petitioners failed to establish their right to a temporary restraining order or injunction. Simply put, petitioners have no clear and unmistakable legal right to prevent the extension of martial law in Mindanao. Petitioners also failed to prove that the alleged violations of their civil rights are directly attributed to the implementation and extension of Proclamation No. 216.

ISSUES

The Amended Advisory dated January 22, 2019 listed the following issues for resolution:

A. Whether there exists sufficient factual basis for the extension of martial law in Mindanao.

1. Whether rebellion exists and persists in Mindanao.
2. Whether public safety requires the extension of martial law in Mindanao.
3. Whether the further extension of martial law is not necessary to meet the situation in Mindanao.

B. Whether the Constitution limits the number of extensions and the duration for which Congress can extend the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus*.

C. Whether Proclamation No. 216 has become *functus officio* with the cessation of the Marawi siege that it may no longer be extended.

D. Whether the manner by which Congress approved the extension of martial law is a political question and is not reviewable by the Court *en banc*.

1. Whether Congress has the power to determine its own rules of proceedings in conducting the joint session under Section 18, Article VII of the Constitution.
2. Whether Congress has the discretion as to how it will respond to the President's request for the extension of martial law in Mindanao - including the length of the period of deliberation and interpellation of the executive branch's resource persons.

E. Whether the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* or extension thereof may be reversed by a finding of grave abuse of discretion on the part of Congress. If so, whether the extension of martial law was attended by grave abuse of discretion.

F. Whether a temporary restraining order or injunction should issue.

G. Whether a temporary restraining order or injunction should issue.[76]

Before delving further into the foregoing issues, it should be mentioned that some of these have already been resolved and discussed at length in *Lagman v. Medialdea*[77] and *Lagman v. Pimentel III*.[78] In particular, the issues taken up and settled by this Court in the mentioned cases are the following: a) the power of the Court to review the sufficiency of the factual basis of the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* and the extension thereof under Section 18, Article VII of the Constitution; b) the parameters for determining the sufficiency of the factual basis for the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* and the extension thereof; c) the determination of the sufficiency of the factual basis should be based on the full complement or totality of the factual basis and not on the absolute correctness of the facts stated in the Proclamation and the written report; d) the allowable standard of proof for the President, that is, probable cause; e) the power of the Congress to shorten or extend the President's proclamation of martial law or suspension of the privilege of the writ of *habeas corpus*; f) the manner in which the Congress deliberated on the President's request for extension is not subject to judicial review; g) the termination of armed combat in Marawi does not conclusively indicate that rebellion ceased to exist; h) alleged human rights violations committed during the implementation of martial law or the suspension of the privilege of the writ of

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[76] Amended Advisory of the Supreme Court.

[77] *Supra* note 1.

[78] *Supra* note 2.

habeas corpus should be resolved in a separate proceeding; and i) mere allegation of a constitutionally protected right does not automatically proceed to the issuance of an injunctive relief.

DISCUSSION

I concur with the *ponencia* in holding that RBH No. 6 extending Martial Law in the whole of Mindanao for the period of January 1, 2019 to December 31, 2019 has sufficient factual basis; that a rebellion persists in Mindanao; and public safety requires the extension of Proclamation No. 216 for another year.

The view that I embrace is anchored on Section 18, Article VII of the Constitution from which the Supreme Court's jurisdiction over the matter emanates:

> **Section 18.** The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.
>
> The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rales without need of a call.
>
> 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 or the extension thereof, and must promulgate its decision thereon within thirty days from its filing**.

A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.

The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.

During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released. (Emphasis supplied.)

Undoubtedly, the section obliges the Supreme Court to review the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ, or the extension thereof in an appropriate proceeding filed by any citizen. Consistent with the principle of checks and balances in our Constitution, the review we undertake herein is a check on the executive's and the legislative's separate but related powers to initiate and extend the declaration of Martial Law. This delineation of powers mapped out in Section 18 has already been settled and drawn by this Court in *Lagman v. Medialdea*[79] and enhanced further in *Lagman v. Pimentel* III.[80]

In *Lagman v. Medialdea*,[81] the Court firmly outlined the parameters in determining the sufficiency of the factual basis for the declaration of Martial Law: (a) actual rebellion or invasion; (b) public safety requires it; and (c) there is probable cause for the President to believe that there is actual rebellion or invasion. The Court further explained that in determining the sufficiency of the factual basis, it looks into the full complement or totality of such factual basis, thus:[82]

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[79] *Supra* note 1.

[80] *Supra* note 2.

[81] *Supra* note 1 at p. 184.

[82] *Id.* at pp. 179-180 citing the Dissenting Opinion of Justice Antonio T. Carpio in *Fortun v. President Macapagal-Arroyo*, 684 Phil. 526, 565-619 (2012).

In determining the sufficiency of the factual basis of the declaration and/or the suspension, the Court should look into the full complement or totality of the factual basis, and not piecemeal or individually. Neither should the Court expect absolute correctness of the facts stated in the proclamation and in the written Report as the President could not be expected to verify the accuracy and veracity of all facts reported to him due to the urgency of the situation. To require precision in the President's appreciation of facts would unduly burden him and therefore impede the process of his decision-making. Such a requirement will practically necessitate the President to be on the ground to confirm the correctness of the reports submitted to him within a period that only the circumstances obtaining would be able to dictate. Such a scenario, of course, would not only place the President in peril but would also defeat the very purpose of the grant of emergency powers upon him, that is, to borrow the words of Justice Antonio T. Carpio in *Fortun*, to "immediately put an end to the root cause of the emergency." Possibly, by the time the President is satisfied with the correctness of the facts in his possession, it would be too late in the day as the invasion or rebellion could have already escalated to a level that is hard, if not impossible, to curtail.

Besides, the framers of the 1987 Constitution considered intelligence reports of military officers as credible evidence that the President can appraise and to which he can anchor his judgment, as appears to be the case here. (Emphasis mine)

The central matter of contention in these cases is the propriety of the third extension of Martial Law from January 1, 2019 to December 31, 2019. Based on the letter of the President to Congress requesting for a third extension, and the accompanying letters of the Secretary of National Defense, the AFP Chief of Staff, and the PNP Director General addressed to the President, I find that respondents have sufficiently established the existence and persistence of an actual rebellion and that public safety requires the third extension of Proclamation No. 216.

Concededly, there were several inconsistencies and/or inaccuracies in the written reports submitted by the DND and the AFP to the President. Nevertheless, these statistical outliers are not enough to invalidate the extension of Proclamation No. 216 considering that there were other facts in the written reports

which support the conclusion that there is actual rebellion which persists and that public safety requires said extension. Besides, absolute accuracy or correctness of all the information in the written reports is not required in order for the President to extend Proclamation No. 216 for to do so would unduly hamper the President's power to respond to an urgent situation. Simply put, accuracy is not equivalent to sufficiency. As sensibly held in *Lagman v. Medialdea:*[83]

> Neither should the Court expect absolute correctness of the facts stated in the proclamation and in the written Report as the President could not be expected to verify the accuracy and veracity of all facts reported to him due to the urgency of the situation. To require precision in the President's appreciation of facts would unduly burden him and therefore impede the process of his decision-making. Such a requirement will practically necessitate the President to be on the ground to confirm the correctness of the reports submitted to him within a period that only the circumstances obtaining would be able to dictate. Such a scenario, of course, would not only place the President in peril but would also defeat the very purpose of the grant of emergency powers upon him, that is, to borrow the words of Justice Antonio T. Carpio in *Fortun*, to "immediately put an end to the root cause of the emergency." Possibly, by the time the President is satisfied with the correctness of the facts in his possession, it would be too late in the day as the invasion or rebellion could have already escalated to a level that is hard, if not impossible, to curtail.

This Court need not delve into the alleged inconsistencies and/or inaccuracies but on the totality of the factual basis which necessitates the extension of Proclamation No. 216. Notably, respondents cited the following incidents and/or factors for the extension of Martial Law: (a) the various bombing incidents committed by various terrorist groups that resulted in civilian casualties such as (1) the Lamitan Bombing on July 31, 2018 that killed 11 individuals and wounded 10 others, (2) the two Isulan, Sultan Kudarat IED explosions on August 28, 2018 and September 2, 2018 which collectively left five casualties and wounded 45 individuals, and (3) the Barangay Apopong, General

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[83] *Id.*

Santos City IED explosion on September 16, 2018 that left eight individuals, including a three-year old child, wounded; (b) the kidnapping incidents staged by Abu Sayyaf Group (ASG) factions in Sulu involving a Dutch, a Vietnamese, two Indonesians, and four Filipinos; (c) at least 342 violent incidents, such as harassment, attacks against government installations, liquidation operations, and various arson attacks, perpetrated by communists mostly in Eastern Mindanao from January 1, 2018 to November 30, 2018 in furtherance of their public declaration to seize political power and overthrow the government; (d) twenty-three recorded arson incidents which destroyed properties approximately valued at one hundred fifty-six million pesos (PhP 156,000,000.00); and (e) atrocities which resulted in the killing of 87 military personnel and wounding of 408 others. On the whole, I find these cited incidents more than sufficient factual bases for the President to request the Congress for the third extension of Proclamation No. 216, this time from January 1, 2019 to December 31, 2019.[84]

Relevantly, the intelligence division of the AFP (OJ2) explained the process of validation of information:

> The Office of the Deputy Chief of Staff for Intelligence, AFP (OJ2) is the depository of all information collected by various AFP units on the activities of groups that threaten national security. These AFP units obtain information through formal (reports of government agencies performing security and law enforcement functions) as well as informal channels (information networks in areas of interest and informants who are members of the threat groups). The information through these sources are collected to gain situational awareness particularly on enemy intentions and capabilities that become the basis of military operations and policy making. Since the information gathered from these sources are not meant to be used in criminal proceedings, the degree of documentation of the data obtained is not so rigid, especially since majority of the reports come from informants. It is for this reason that some reports are classified as secret since the release of such information could reveal the identities of informants embedded in various threat groups, or compromise an

[84] *Supra* note 3, pp. 114-115, 135-151, Memorandum for Respondents.

operational methodology employed by the military in gathering information.

Nevertheless, the information gathered by various AFP units are expected to have undergone validation before being forwarded to OJ2 although there are instances where reports come from a single source, *i.e.*, they come from a single informant and there is no way to validate the accuracy and veracity of its contents. It is for this reason that the AFP has a method of assessing the reliability of its informants based on their track record.

When it comes to violent incidents as well as armed clashes or encounters with threat groups, AFP units are required to submit reports as soon as possible. Called 'spot reports,' they contain information that are only available at that given reporting time window. This practice is anchored on the theory that an incomplete information is better than a complete information that is too late to be used. Subsequent developments are communicated through 'progress reports' and detailed 'special reports.'[85]

The foregoing explanation adequately answers the question, at least with regard to the process of validation of information pertaining to the recorded incidents in Mindanao during Martial Law in that island. To reiterate, and consistent with *Lagman v. Medialdea*,[86] accuracy is not required; neither is it equal to sufficiency.

In fact, during the plenary proceeding of the Joint Session of Congress regarding the third extension, figures were cited and actual experiences were described which fully bolstered respondents' position that the imposition of Martial Law in Mindanao ought to be extended. The following pertinent details were mentioned:

E.S. MEDIALDEA.

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[85] *Supra* note 4 at pp. 847-848, Letter of Major General Pablo M. Lorenzo, AFP (Deputy Chief of Staff for Intelligence, J2) to Solicitor General Jose C. Calida.

[86] *Supra* note 1 at p. 179.

The President, in calling upon the Congress to extend Proclamation No. 216 has observed, among others, the following:

The remnants of the local terrorist groups composed of the Abu Sayyaf group and Daulah Islamiya have continued with their political thrust of establishing a wilayah and the Philippines, as part of Daesh, pretended global caliphate.

On the other hand, the so called Bangsamoro Islamic Freedom Fighters have remained adamant in their pursuit of establishing an independent Islamic State. These complications are further worsened by the presence of other foreign terrorist elements who, despite differences in ideologies, share the same purpose of overthrowing our government.

x x x x x x x x x

The communist terrorist groups compose of the Communist Party of the Philippines, the National Democratic Front, and the New People's Army have carried on their armed struggle as part of their political elm to overthrow this government and supplant the same with communist rule. They commit armed hostilities against the people and displayed blatant, contiguous, and resolute defiance against the duly constituted government authorities.

x x x x x x x x x

LT. GEN. MADRIGAL. Your Honor, Sir, based on the current — our PSR, Sir, the number of the ASG at this point is — number is about 424, with 254 firearms; the BIFF 264, with 254 firearms; Daulah Islamiyah 111, with 91 firearms; and the communist terrorist group of 1,636 or a total of 2,435, Your Honor.

REP. LAGMAN. And what are the basis for those figures?

LT. GEN. MADRIGAL. It's the deliberation, Your Honor, by the joint intelligence community, Your Honor.

x x x x x x x x x

REP. CAGAS.

x x x x x x x x x

While there had been considerable progress in addressing rebellion in the region, as well as promoting its overall security and peace and

order situation, the threat of national security posed by rebel groups remain clear and present in the region. There had been bombings in Sultan Kudarat in August and in Basilan in July, and last month, armed men believed to be members of the communist New People's Army set fire to three dump trucks in a small village in my district. Those dump trucks had been used to work on a road project linking the municipality of Magsaysay to the town of Matanao.

The attack came barely a month after military officials said in a statement that the NPA forces in the province had already weakened. Clearly, the attack is NPA's way of sending the government a message that they are still a strong and brute force, and that they are not ready to back down.[87]

It is also worthy to note that the President, through his fact-finding capabilities, has access to confidential information which may be shared to and relied upon by the Court in determining the sufficiency of the factual basis for the extension of Proclamation No. 216. To be sure, this is not gossamer information. After all, such information underwent intelligence affirmation by the military outfit best equipped to filter the same, the Office of the Deputy Chief of Staff for Intelligence, J2. The President, however, is not expected to completely validate all the information he received before he can request for the extension of martial law. He needs only to convince himself that there is probable cause or evidence showing that more likely than not a rebellion was committed or is being committed.[88]

The quantum of evidence that the President needs to satisfy in order to declare martial law and suspend the privilege of the writ of *habeas corpus* and extend the same is probable cause. Probable cause does not require absolute truth.[89] It has been defined as a "*set of facts and circumstances as would lead a reasonably discreet and prudent man to believe that the offense*

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[87] Transcript of Plenary Proceedings of Joint Session of Congress on the extension of Martial Law in Mindanao from January 1, 2019 to December 31, 2019 dated December 12, 2018, pp. 14-15, 27 and 134.

[88] G.R. Nos. 231658, 231771 & 231774 (Resolution), December 5, 2017.

[89] *Id.*

charged in the Information or any offense included therein has been committed by the person sought to be arrested."[90] This Court's power to review, therefore, is limited only to the examination on whether the President acted within the bounds set by the Constitution, *i.e.*, whether or not the facts in his possession prior to and at the time of the declaration or suspension are sufficient for him to declare martial law or suspend the privilege of the writ.[91] In holding so, I should need only to point to the soundness and sensibility of our prior ruling in *Lagman v. Medialdea*[92] where it was held that the Court does not need to satisfy itself that the President's decision is correct, rather it only needs to determine whether the President acted arbitrarily.[93]

Moreover, I cannot agree to the proposition that certain fundamental precepts in administrative fact-finding are applicable in the cases at bar. Such a proposal confuses the parameters and scope of the investigatory powers of the military and police in determining threats to national security and public safety.

There is no dissension on my end as to the exposition of *Ang Tibay v. Court of Industrial Relations*,[94] relative to fundamental precepts in administrative fact-finding investigations or proceedings. However, these tenets cannot be made to apply to recommendations made by the military and the police to the President, in relation to its fact-finding inquiries which establishes the positive threat to national security and public safety posed in Mindanao. The investigating functions of the military and the police do not endow them with quasi-judicial powers requiring them to make a finding of substantial evidence in each of their investigations.

Thus, I cite again the AFP's clarification on certain discrepancies noted by some of my Colleagues with regard to

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[90] *Lagman v. Medialdea, supra* note 1 at p. 193.

[91] *Id.* at p. 182.

[92] *Id.*

[93] *Id.*

[94] 69 Phil. 635 (1940).

the data provided by the Office of the Deputy Chief of Staff for Intelligence, J2, and which were raised during the oral arguments:

> The information through these sources are collected to gain situational awareness particularly on enemy intentions and capabilities that become the basis of military operations and policy making. Since the information gathered from these sources are not meant to be used in criminal proceedings, the degree of documentation of the data obtained is not so rigid, especially since majority of the reports come from informants. It is for this reason that some reports are classified as secret since the release of such information could reveal the identities of informants embedded in various threat groups, or compromise an operational methodology employed by the military in gathering information.
>
> Nevertheless, the information gathered by various AFP units are expected to have undergone validation before being forwarded to OJ2 although there are instances where reports come from a single source, *i.e.*, they come from a single informant and there is no way to validate the accuracy and veracity of its contents. It is for this reason that the AFP has a method of assessing the reliability of its informants based on their track record.
>
> **When it comes to violent incidents as well as armed clashes or encounters with threat groups, AFP units are required to submit reports as soon as possible. Called "spot reports," they contain information that are only available at that given reporting time window. This practice is anchored on the theory that an incomplete information is better than a complete information that is too late to be used. Subsequent developments are communicated through "progress reports" and detailed "special reports."**[95] (Emphasis supplied.)

It is my view that the nature of the evidence that support the findings established out of this investigatory power, which is essentially the function of the military and police, is not substantial evidence, which is the norm in administrative cases.

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[95] *Supra* note 4 at pp. 847-848, Letter of Major General Pablo M. Lorenzo, AFP (Deputy Chief of Staff for Intelligence, J2) to Solicitor General Jose C. Calida.

Indeed, in a Section 18 review of the sufficiency of the factual basis for the declaration of martial law, the President need only find probable cause for the existence of rebellion (or invasion) and that the declaration of martial law is required by public safety.[96]

To emphasize the distinction, I refer to the ruling in *Subido Pagente Certeza Mendoza and Binay Law Offices v. Court of Appeals*[97] which distinguished between a purely investigative body as the Anti-Money Laundering Council (AMLC) and that bestowed with quasi-judicial powers. In that case, the Court ruled that the AMLC's initial determination of whether certain activities are constitutive of anti-money laundering offenses do not make it into a quasi-judicial body which must comply with the precepts of due process at that stage.

Here, the military and the police, performed their function of providing intelligence reports resulting from their investigations, to the President, the Commander-in-Chief. Although these reports may have contained discrepancies, the President, in his discretion, found probable cause to believe that the rebellion in Mindanao is ongoing and that public safety is endangered, thereby requiring him to request for the further extension of Martial Law in Mindanao for another year.

Thus, I find that the President's factual basis to further extend Proclamation No. 216 is grounded on validated confidential information which were lifted from ground level activities and intelligence reports gathered by the military. These validated incidents and circumstances encountered by the military in the area necessitate the extension of Proclamation No. 216 in Mindanao.

In exercising its power to review the sufficiency of the factual basis for the declaration and/or extension of Martial Law, this Court should use as a guide known and validated incident reports from the military and the police. It cannot, however, replace

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[96] *Lagman v. Pimentel III, supra* note 2.

[97] 802 Phil. 314 (2016).

with its own perceptions and recommendations the actual experiences and encounters of the military, especially for those on the ground or actually stationed in Mindanao where all the attacks or threats are taking place. It would be presumptuous for us to suggest otherwise given that we are not directly affected and do not see firsthand the threats and attacks against, not only to the government, but also the innocent civilians. Likewise, I cannot volunteer our own factual findings since this Court does not have the means nor resources to actually verify the details of each encounter or threat. In fact, the Court would still need to refer back to the military's intelligence reports as they are the primary source of information in the first place. It must be stressed that in the case of *Lagman v. Medialdea*,[98] this Court already held that even the framers of the 1987 Constitution considered intelligence reports of military officers as credible evidence that the President can appraise and to which he can anchor his judgment.[99]

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[98] *Supra* note 1.

[99] II RECORD, CONSTITUTIONAL COMMISSION 470-471 (July 30, 1986).

MR. NATIVIDAD. And the Commissioner said that in case of subversion, sedition or imminent danger of rebellion or invasion, that would be the *causus beli* for the suspension of the privilege of the writ of *habeas corpus*. But I wonder whether or not the Commissioner would consider intelligence reports of military officers as evidence of imminent danger of rebellion of invasion because this is usually the evidence presented.

MR. PADILLA. **Yes, as credible evidence, especially if they are based on actual reports and investigation of facts that might soon happen.**

MR. NATIVIDAD. Then the difficulty here is, of course, that the authors and the witnesses in intelligence reports may not be forthcoming under the rule of classified evidence of documents. Does the Commissioner still accept that as evidence?

MR. PADILLA. **It is for the President as commander-in-chief of the Armed Forces to appraise these reports and be satisfied that the public safety demands the suspension of the writ.** After all, this can also be raised before the Supreme Court as in the declaration of martial law because it will no longer be, as the former Solicitor General always contended, a political issue. It becomes now a justiciable issue. The Supreme Court may even investigate the factual background in support of the suspension of the writ or the declaration of martial law.

The continued threats to the country's security posed by the rebels, as supported by the data given by the military and evidenced by the recent bombings or attacks in different parts of Mindanao definitively establish that rebellion still persists. For instance, the bombing in Jolo, Sulu,[100] despite the declaration of martial law in the area, left a number of people dead and wounded. An incident like this, and everything and anything similar, simply cannot go unnoticed and not addressed. Plainly, in light of the threats and attacks, there is no doubt that public safety requires the continued implementation of martial law over the region. There is a real and imminent threat which needs to be addressed given that life and property are at stake.

Second. The extension of Proclamation No. 216 is categorically within the powers of Congress and is shorn up by the ruling in *Lagman v. Pimentel III*.[101]

We need not look beyond Section 18 which clearly grants unto Congress the power to shorten or extend the President's proclamation of Martial Law or suspension of the privilege of the writ of *habeas corpus*, the pertinent part of which provides that:

> The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension which revocation shall not be set aside by the President. **Upon the initiative of the President, the Congress**

MR. NATIVIDAD. As far as the Commissioner is concerned, would he respect the exercise of the right to, say, classified documents, and when authors of or witnesses to these documents may not be revealed?

MR. PADILLA. **Yes, because the President, in making this decision of suspending the writ, will have to base his judgment on the document** because after all, we are restricting the period to only 60 days and further we are giving the Congress or the Senate the right or the power to revoke, reduce, or extend its period.

[100] See: Twin Blasts Hit Jolo Cathedral; At Least 20 Dead, *available at:* https://news.mb.com.ph/2019/01/27/twin-blasts-hit-jolo-cathedral-at-least-20-dead/ (last accessed February 15, 2019).

[101] *Supra* note 2.

may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it. (Emphasis supplied.)

In *Lagman v. Pimentel III*,[102] the Court interpreted that provision of Section 18 and ruled that Congress has the power to approve any extension of the proclamation of martial law, as long as it is under the President's initiative, and falling within the set parameters as basis for the extension. *Lagman v. Pimentel III*[103] held that by approving the extension of martial law, Congress and the President performed a "joint executive and legislative act" or "collective judgment."

More importantly, the proviso which declares that "[U]pon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension *for a period to be determined by the Congress*, if the invasion or rebellion shall persist and public safety requires it" is silent on the number of times Congress may extend the effectivity of martial law as well as its duration. Evidently, Congress is vested with the discretion to determine the duration of and the number of extensions of the martial law.

The view that I take herein is limned by the deliberations of the Constitutional Commission on the 1987 Constitution which gave Congress the power to determine the frequency and duration of the extension for as long as the determinative factors, specifically, the invasion or rebellion persists and public safety requirement, are present, *viz.*:

MR. PADILLA. According to Commissioner Concepcion, our former Chief Justice, the declaration of martial law or the suspension of the privilege of the writ of habeas corpus is essentially an executive act. If that be so, and especially under the following clause: "if the invasion or rebellion shall persist and public safety requires it," I do not see why the period must be determined by the Congress. We are turning a purely executive act to a legislative act.

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[102] *Id.*

[103] *Id.*

FR. BERNAS. I would believe what the former Chief Justice said about the initiation being essentially an executive act, but what follows after the initiation is something that is participated in by Congress.

MR. CONCEPCION. If I may add a word. The one who will do the fighting is the executive but, of course, it is expected that if the Congress wants to extend, it will extend for the duration of the fighting. If the fighting goes on, I do not think it is fair to assume that the Congress will refuse to extend the period, especially since in this matter the Congress must act at the instance of the executive. He is the one who is supposed to know how long it will take him to fight. **Congress may reduce it, but that is without prejudice to his asking for another extension, if necessary.**[104] (Emphasis mine)

Clearly, the framers of the Constitution fitted Congress with enough flexibility to determine the duration of the extension without prejudice to the President's request for another extension. This is only logical and proper considering that the amount of time necessary to quell a rebellion cannot be measured with mathematical accuracy, definitiveness or even finality.

Third. This Court, in *Lagman v. Pimentel III*,[105] already ruled on the issue of the manner by which Congress deliberates on the President's request for extension, which issue is not subject to judicial review. Indeed, "the Court cannot review the rules promulgated by Congress in the absence of any constitutional violation."[106] Upon evaluation, the petitioners unfortunately failed to provide evidence in order to demonstrate to this Court how Congress conducted its joint session in a manner which contradicted the Constitution or its own rules.

Hence, there is no merit in petitioners' contention that the members of the Congress were given merely a short period of time to discuss and explain their arguments before the voting

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[104] *Lagman v. Pimentel III, id.* citing Record of the Constitutional Commission (1986), pp. 508-516.

[105] *Id.*

[106] *Id.* citing *Pimentel, Jr. v. Senate Committee of the Whole*, 660 Phil. 202 (2011) and *Arroyo v. De Venecia*, 343 Phil. 42 (1997).

to extend Proclamation No. 216. The motivations of each member of Congress and the duration on which they deliberated on the President's request for a third extension are political questions which the Court need not rule on. Simply put, Congress, as a body, performed its functions within the ambit of the Constitution and the authority granted therein.

Fourth. Despite the cessation of the *Marawi* siege, Proclamation No. 216 has not become *functus officio*.

This Court declared in *Lagman v. Pimentel III*[107] that the termination of armed combat in Marawi does not conclusively indicate that the rebellion has ceased to exist. It bears stressing that the situation in Mindanao involves that of an asymmetric war which is defined as a "*warfare between two opposing forces which differ greatly in military power and which typically involves the use of unconventional weapons and tactics, such as but not limited to hit-and-run ambush and bombings to inflict casualties while minimizing their own risks*."[108]

During the oral arguments, General Benjamin R. Madrigal, Jr, the AFP Chief of Staff, expounded on the concept of an asymmetric war, to wit:

ASSOCIATE JUSTICE HERNANDO:

I'm jumping off from what Justice Jardeleza has started from and this is on the basis of the statement of Secretary Lorenzana before Congress that there is a need to at least degrade the extent of combat that's taking place thirty percent before PNP as a law enforcement agency can come into the picture. I just want to ask this just for my perspective to be validated. I think that that thirty percent degradation is from the view point of a war that is asymmetric because what government is waging against these rebels is not a general or a conventional war rather it's an asymmetric war. And that is because we have a standing army that numbers 98,000 as of last count with 120,000 as reservists. And when we compare that number to the rebels, I'm very sure that their number is very much less than that

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[107] *Id.*

[108] Asymmetric Warfare, *available at* https://www.merriam-webster.com/dictionary/asymmetric%20warfare (last accessed February 15, 2019).

and which is why I say that what government is waging against these rebels is an asymmetric war, not a symmetrical or conventional war. So that thirty percent, General Madrigal, is from the prospective of an asymmetric war?

GENERAL MADRIGAL:

Your Honor, that's why we have included as part of the parameters the level of influence specially on the affected barangays because the number we are referring to, the 1,600 or so regulars are still supported by the support system. We call it the underground mass organization; they call it the *Sangay ng Partido sa Lokalidad* or party members in the locality and *Demolisyon Bayan* or the armed militias in the barangay. So these are all part of the overall enemy capability as far as the CPP-NPA that we are addressing, not only the regular armed groups but also the support system. In fact we focus so much on the support system in the firm belief that it will be very easy to address armed groups if they do not have the support of the community.[109]

Plainly, even with the end of the Marawi siege, rebellion persists as confirmed by the various validated reported incidents submitted by the military such as bombing incidents, kidnapping episodes and other atrocities. In addition, modern day rebellion need not take place in the battlefield of the parties' own choosing. It may also include underground propaganda, recruitment, procurement of arms and raising of funds which are conducted far from the battle fronts. As held in *Aquino, Jr. v. Ponce Enrile:*[110]

In the first place I am convinced (as are the other Justices), without need of receiving evidence as in an ordinary adversary court proceeding, that a state of rebellion existed in the country when Proclamation No. 1081 was issued. It was a matter of contemporary history within the cognizance not only of the courts but of all observant people residing here at the time. Many of the facts and events recited in detail in the different 'Whereases' of the proclamation are of common knowledge. The state of rebellion continues up to the present. **The**

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[109] Transcript of Stenographic Notes taken during the hearing of the case at bench on January 29, 2019, pp. 90-91.

[110] 158-A Phil. 1, 48-49 (1974).

argument that while armed hostilities go on in several provinces in Mindanao there are none in other regions except in isolated pockets in Luzon, and that therefore there is no need to maintain martial law all over the country, ignores the sophisticated nature and ramifications of rebellion in a modern setting. It does not consist simply of armed clashes between organized and identifiable groups on fields of their own choosing. It includes subversion of the most subtle kind, necessarily clandestine and operating precisely where there is no actual lighting. Underground propaganda, through printed news sheets or rumors disseminated in whispers; recruitment of armed and ideological adherents, raising of funds, procurement of arms and materiel, fifth-column activities including sabotage and intelligence — all these are part of the rebellion which by their nature are usually conducted far from the battle fronts. They cannot be counteracted effectively unless recognized and dealt with in that context. (Emphasis supplied.)

The *Lagman* and *Bayan Muna* petitions also raised the argument that the rebel group identified to be behind the rebellion in the initial proclamation of Martial Law should be the same rebel group that is foisting the rebellion for which the third extension is being sought by the Commander-in-Chief. This is unfounded. For one, this is tantamount to imposing a limitation which is not found in Section 18, Article VII or envisioned by the framers of the Constitution. To be sure, Section 18, Article VII did not in any manner require the President to identify or specify in the initial proclamation the particular rebel group that is mounting the rebellion. For another, this would result into an absurd situation wherein the President might as well be required to issue another proclamation or request for an extension, each time that a new rebel group is identified to be behind the rebellion, and which rebel group was not mentioned or included in the initial proclamation of the President.

Thus, I hasten to add that it is quite absurd to state that with the cessation of the *Marawi* siege and the so-called end of the Maute rebellion, Proclamation No. 216 has become *functus officio*. To put the issue in its proper perspective, Proclamation No. 216 indeed referred mainly to the Maute group. However, it must also be pointed out that Proclamation No. 216 did not

rest exclusively on the Maute rebellion. Proclamation No. 216 was so couched in such a way that the "violent acts committed by the Maute terrorist group" was only "**part of the reasons** for the issuance of Proclamation No. 55" which, in turn, referred to other "armed lawless groups," as well as "private armies and local warlords, bandits and criminal syndicates, terrorist groups and religious extremists."

In any event, the fact that the Maute group had been vanquished does not mean that the rebellion in Mindanao has been finally quelled; neither does it prohibit the extension of the initial or original proclamation of Martial Law. To my mind, as long as the rebellion persists and there is an undeniable threat to public safety, regardless of whoever or whichever group is waging the same, the original or initial declaration of martial law, or even its subsequent extension, would stand firmly on constitutional moorings. The lengthening of martial law should not depend on the particular group mentioned in the Proclamation; rather, it should rest on the fact that there is sufficient basis that rebellion still exists and that public safety requires the same. The qualifying factors must be the very existence of rebellion or invasion and threat to public safety. Significantly enough, Proclamation No. 216 did not exclusively refer to the Maute rebellion; "other rebel groups" were clearly referenced therein.

In fine, based on the present and existing factual milieu in Mindanao as verified by validated incident reports, I find that there is sufficient factual basis to extend the period of martial law and the suspension of the privilege of the writ of *habeas corpus* a third time, specifically from January 1, 2019 until December 31, 2019. The totality of the factual circumstances, coupled with Congress' power to determine the duration, necessitates in all respects the third extension of Martial Law in Mindanao.

ACCORDINGLY, I vote to **DISMISS** the petitions and **DECLARE CONSTITUTIONAL** Resolution of Both Houses No. 6.

DISSENTING OPINION

CARPIO, *J.*:

The Case

These consolidated petitions are filed under this Court's power to review the sufficiency of the factual basis of the extension of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* (writ) under paragraph 3, Section 18, Article VII of the 1987 Constitution. These petitions challenge the constitutionality of Joint Resolution No. 6 dated 12 December 2018 issued by the Senate and the House of Representatives which extended the proclamation of martial law and suspension of the privilege of the writ in the whole of Mindanao for another period of one (1) year from 1 January 2019 until 31 December 2019.

The Antecedent Facts

On 12 December 2018, the Senate and the House of Representatives, voting jointly, adopted Joint Resolution No. 6 which extended the period of martial law and the suspension of the privilege of the writ in the whole of Mindanao (under Proclamation No. 216) from 1 January 2019 to 31 December 2019. Joint Resolution No. 6 states:

x x x x

WHEREAS, on May 23, 2017, President Rodrigo Roa Duterte issued Proclamation No. 216, entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao", to address the rebellion launched by the Maute Group and elements of Abu Sayyaf Group in Marawi City, and to restore peace and order in Mindanao;

WHEREAS, on July 22, 2017, the Senate and the House of Representatives in a Special Joint Session adopted Resolution of Both Houses No. 2, extending the Proclamation of Martial Law and the suspension of the privilege of the writ of *habeas corpus* in the whole Mindanao until December 31, 2017;

WHEREAS, on December 13, 2017, upon the request of President Rodrigo Roa Duterte, the Senate and the House of Representatives in a Joint Session adopted Resolution of Both Houses No. 4, further extending the Proclamation of Martial Law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao until December 31, 2018;

WHEREAS, on December 10, 2018, the House of Representatives received a communication dated December 6, 2018 from President Rodrigo Roa Duterte, informing the Senate and the House of Representatives, that on December 5, 2018, he received a letter from Secretary of National Defense Delfin N. Lorenzana, as Martial Law Administrator, requesting for further extension of Martial Law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao up to December 31, 2019;

WHEREAS, in the same letter, the President cited the joint security report of the Armed Forces of the Philippines (AFP) Chief of Staff, General Carlito G. Galvez, Jr., and the Philippine National Police (PNP) Director-General, Oscar D. Albayalde, which highlighted the accomplishment owing to the implementation of Martial Law in Mindanao, particularly the reduction of the capabilities of different terrorist groups, the neutralization of six hundred eighty-five (685) members of the local terrorist groups (LTGs) and one thousand seventy-three (1,073) members of the communist terrorist group (CTG); dismantling of seven (7) guerilla fronts and weakening of nineteen (19) others; surrender of unprecedented number of loose firearms; nineteen percent (19%) reduction of atrocities committed by CTG in 2018 compared to those inflicted in 2017; twenty-nine percent (29%) reduction of terrorist acts committed by LTGs in 2018 compared to 2017; and substantial decrease in crime incidence;

WHEREAS, the President nevertheless pointed out that notwithstanding these gains, there are certain essential facts proving that rebellion still persists in the whole of Mindanao and that public safety requires the continuation of Martial Law, among others: (a) the Abu Sayyaf Group, Bangsamoro Islamic Freedom Fighters, Daulah Islamiyah (DI), and other terrorist groups, collectively labeled as LTGs which seek to promote global rebellion, continue to defy the government by perpetrating hostile activities during the extended period of Martial Law that at least four (4) bombing incidents had been cited in the AFP report: (1) the Lamitan City bombing on July 31, 2018 that killed eleven (11) individuals and wounded ten (10) others; (2) the Isulan, Sultan Kudarat improvised explosive device

(IED) explosion on August 28 and September 2, 2018 that killed five (5) individuals and wounded forty-five (45) others; and (3) the Barangay Apopong IED explosion that left eight (8) individuals wounded; (b) the DI forces also continue to pursue their rebellion against the government by furthering the conduct of their radicalization activities and continuing to recruit new members especially in vulnerable Muslim communities; and (c) the CTG, which publicly declared its intention to seize political power through violent means and supplant the country's democratic form of government with communist rule which posed serious security concerns;

WHEREAS, the President also reported that at least three hundred forty-two (342) violent incidents, ranging from harassments against government installations, liquidation operations and arson attacks occurred in Mindanao, killing eighty-seven (87) military personnel and wounding four hundred eight (408) others and causing One hundred fifty-six million pesos (₱156,000,000.00) worth of property damages;

WHEREAS, the Senate and the House of Representatives are one in the belief that the security assessment submitted by the AFP and the PNP to the President indubitably confirms the continuing rebellion in Mindanao which compels further extension of the implementation of Martial Law and the suspension of the privilege of the writ of *habeas corpus* for a period of one (1) year, from January 1, 2019 to December 31, 2019, to enable the AFP, the PNP, and all other law enforcement agencies, to finally put an end to the ongoing rebellion and to continue to prevent the same from escalating in other parts of the country;

WHEREAS, Section 18, Article VII of the 1987 Constitution authorizes the Congress of the Philippines to extend, at the initiative of the President, the proclamation or suspension of the privilege of the writ of *habeas corpus* for a period to be determined by the Congress of the Philippines, if the invasion or rebellion shall persist and public safety requires it;

WHEREAS, after thorough discussion and extensive debate, the Congress of the Philippines in a Joint Session, by two hundred thirty-five (235) affirmative votes comprising the majority of all its Members, has determined that rebellion and lawless violence still persist in Mindanao and public safety indubitably requires further extension of the Proclamation of Martial Law and the suspension of the privilege

of the writ of *habeas corpus* in the whole of Mindanao: Now, therefore, be it

Resolved by the Senate and the House of Representatives in a Joint Session assembled, To further extend Proclamation No. 216, series of 2017, entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao" for another period of one (1) year from January 1, 2019 to December 31, 2019.[1]

These consolidated petitions impugn the constitutionality of Joint Resolution No. 6.

Discussion

I vote to grant the petition on the ground that the **extension** of martial law and the suspension of the privilege of the writ under Joint Resolution No. 6 is unconstitutional.

First, martial law under Proclamation No. 216 can no longer be extended with the end of the Maute rebellion. The very basis for the proclamation of martial law and the suspension of the privilege of the writ under Proclamation No. 216 was the Maute rebellion. Since the actual rebellion of the Maute group in Marawi City has been admittedly quelled, the extension of Proclamation No. 216 is now clearly unconstitutional. *Second*, the government failed to discharge the burden of proof under paragraph 3, Section 18, Article VII of the 1987 Constitution that actual rebellion by the Maute group exists in the whole Mindanao group of islands.

I reiterate that the declaration of martial law on the ground of rebellion under paragraph 3, Section 18, Article VII of the 1987 Constitution requires the **existence of an *actual* rebellion**, not an *imminent danger* of rebellion or *threat* of rebellion.

In exercising his Commander-in-Chief power to declare martial law or suspend the privilege of the writ, the President is required by the 1987 Constitution to establish the following: **(1) the existence of rebellion or invasion**; and (2) public safety requires

[1] Annex "B" of Lagman Petition, *Rollo*, G.R. No. 243522 (Vol. 1), pp. 56-58.

the declaration of martial law or suspension of the privilege of the writ to suppress the rebellion or invasion. Needless to say, the absence of either element will not authorize the President, who is sworn to defend the Constitution, to exercise his Commander-in-Chief power to declare martial law or suspend the privilege of the writ.

Imminent danger or threat of rebellion is not sufficient. The 1987 Constitution requires the existence of **actual rebellion**. "Imminent danger" as a ground to declare martial law or suspend the privilege of the writ, which ground was present in both the 1935 and 1973 Constitutions, was intentionally removed in the 1987 Constitution. By the intentional deletion of the words "imminent danger" in the 1987 Constitution,[2] **actual rebellion** is now required and the President can no longer use imminent danger of rebellion as a ground to declare martial law or suspend the privilege of the writ. Thus, the President cannot proclaim martial law or suspend the privilege of the writ absent an **actual rebellion**. This is the clear, indisputable letter and intent of the 1987 Constitution.

This Court in *Lagman v. Medialdea*[3] held that the term "**rebellion**" in Section 18, Article VII of the 1987 Constitution refers to the crime of rebellion as defined by the Revised Penal Code, to wit:

> x x x. **Since the Constitution did not define the term "rebellion," it must be understood to have the same meaning as the crime of "rebellion" in the Revised Penal Code (RPC).**

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[2] During the deliberations of the Constitutional Commission, Fr. Bernas clarified:

> FR. BERNAS. Let me just say that when the Committee decided to remove that, it was for the reason that the phrase "OR IMMINENT DANGER THEREOF" could cover a multitude of sins and could be a tremendous amount of irresistible temptation. And so, to better protect the liberties of the people, we preferred to eliminate that. x x x (I RECORDS, CONSTITUTIONAL COMMISSION 773 (18 July 1986).

[3] G.R. No. 231658, 4 July 2017, 829 SCRA 1, 182-183.

During the July 29, 1986 deliberation of the Constitutional Commission of 1986, then Commissioner Florenz D. Regalado alluded to actual rebellion as one defined under Article 134 of the RPC:

> MR. DE LOS REYES. As I see it now, the Committee envisions actual rebellion and no longer imminent rebellion. Does the Committee mean that there should be actual shooting or actual attack on the legislature or Malacanang, for example? Let us take for example a contemporary event - this Manila Hotel incident, everybody knows what happened. Would the Committee consider that an actual act of rebellion?
>
> MR. REGALADO. If we consider the definition of rebellion under Articles 134 and 135 of the Revised Penal Code, that presupposes an actual assemblage of men in an armed public uprising for the purposes mentioned in Article 134 and by the means employed under Article 135. x x x.

Thus, rebellion as mentioned in the Constitution could only refer to rebellion as defined under Article 134 of the RPC. To give it a different definition would not only create confusion but would also give the President wide latitude of discretion, which may be abused - a situation that the Constitution seeks to prevent. (Emphasis supplied)

In fact, when the President declared martial law and suspended the privilege of the writ, he expressly cited the definition of rebellion under the Revised Penal Code. Proclamation No. 216 states:

> WHEREAS, **Article 134 of the Revised Penal Code, as amended by R.A. No. 6968, provides that "the crime of rebellion** or insurrection is committed by rising and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or other armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.(Emphasis supplied)

Based on its statutory definition in the Revised Penal Code, the crime of rebellion has the following elements: (1) there is a (a) public uprising and (b) taking arms against the Government; and (2) the purpose of the uprising is either (a) to remove from

the allegiance to the Government or its laws: (1) the territory of the Philippines or any part thereof; or (2) any body of land, naval, or other armed forces; or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives.[4]

By definition, Article 134 of the Revised Penal Code requires an actual rebellion for the crime of rebellion to exist. Since there is no longer an actual rebellion by the Maute group in Marawi City and there is no showing of an actual Maute rebellion in other parts of Mindanao, Joint Resolution No. 6, extending martial law and the suspension of the privilege of the writ, is therefore unconstitutional.

Proclamation No. 216 can no longer be extended with the liberation of Marawi City and the end of the Maute rebellion in Marawi City.

As I have stated in my previous dissenting opinions, the authority of Congress to extend the proclamation of martial law and the suspension of the privilege of the writ must be strictly confined to the actual rebellion cited by President Rodrigo Roa Duterte (President Duterte) in Proclamation No. 216. **The said proclamation clearly identifies the "Maute group" as the only rebel group subject of the proclamation, which specifically mentions the Maute group as rebelling by "rising (publicly) and taking arms against the [g]overnment for the purpose of removing from the allegiance to said [g]overnment" Marawi City.** The pertinent paragraphs of Proclamation No. 216 state:

x x x x x x x x x

WHEREAS, Section 18 Article VII of the Constitution provides that "x x x [i]n case of invasion or rebellion, when the public safety requires it, he (the President) may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law x x x";

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[4] *Ladlad v. Velasco*, 551 Phil. 313, 329 (2007).

WHEREAS, Article 134 of the Revised Penal Code, as amended by R.A. No. 6968, provides that "the crime of rebellion or insurrection is committed by rising and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or other aimed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives;

WHEREAS, **part of the reasons for the issuance of Proclamation No. 55 was the series of violent acts committed by the Maute terrorist group** such as the attack on the military outpost in Butig, Lanao del Sur in February 2016, killing and wounding several soldiers, and the mass jailbreak in Marawi City in August 2016, freeing their arrested comrades and other detainees;

WHEREAS, today, 23 May 2017, **the same Maute terrorist group has taken over a hospital in Marawi City, Lanao del Sur, established several checkpoints within the City, burned down certain government and private facilities and inflicted casualties on the part of Government forces**, and started flying the flag of the Islamic State of Iraq and Syria (ISIS) in several areas, thereby openly attempting to remove from the allegiance to the Philippine Government this part of Mindanao and deprive the Chief Executive of his powers and prerogatives to enforce the laws of the land and to maintain public order and safety in Mindanao, constituting the crime of rebellion; and

WHEREAS, **this recent attack shows the capability of the Maute group** and other rebel groups to sow terror, and cause death and damage to property not only in Lanao del Sur but also in other parts of Mindanao.[5] (Emphasis supplied)

The identity of the rebel group used by Congress to extend martial law and suspend the privilege of the writ must be limited to the same rebel group contained in the initial proclamation of the President. This is in consonance with Section 18, Article VII of the 1987 Constitution which states:

The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call

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[5] Bayan Muna Petition, *Rollo*, G.R. No. 243677, p. 8.

out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. **Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.**

x x x x (Emphasis supplied)

The Constitution is clear that upon the initiative of the President and the joint voting of both chambers of Congress, the proclamation of martial law and the suspension of the privilege of the writ may be extended "if the x x x rebellion shall **persist**" or, in simpler terms, if the rebellion led by the rebel group cited in the initial proclamation shall **continue**. In this case, the rebellion of the Maute group had undoubtedly been terminated upon the death of their leader, Isnilon Hapilon, and the liberation of Marawi City. In fact, in a statement dated 17 October 2017, President Duterte publicly declared "**Marawi's liberation and beginning of (Marawi City's) rehabilitation**."[6]

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[6] Eimor P. Santos, *Duterte declares liberation of Marawi*<http://cnnphilippines.com/news/2017/10/17/Marawi-liberation-Duterte.html> (last accessed 1 February 2019). See also Claire Jiao and Lara Tan, *Fighting in Marawi City is over* <http://cnnphilippines.com/news/2017/10/23/Marawi-crisis.html> (last accessed 1 February 2019); Trisha Macas and Raffy Tima, *Duterte declares Marawi City is free*<http://www.gmanetwork.com/news/news/nation/629820/duterte-declares-marawi-city-is-free/story/> (last accessed 1 February 2019); Allan Nawal, Jeoffrey Maitem, Richel Umel and Divina Suson, *Marawi 'liberated' from terrorists but battle drags on* <http://newsinfo.inquirer.net/938592/president-duterte-marawi-city-liberated-terrorists> (last accessed 1 February 2019); AFP, AP and Francis Wakefield, *Battle of Marawi ends*<https://news.mb.com.ph/2017/10/24/battle-of-marawi-

On October 2017, National Defense Secretary Delfin Lorenzana also affirmed the "**termination of all combat operations in Marawi City**."[7] Furthermore, in the year 2018, the President and representatives of the Armed Forces of the Philippines have been consistent in their public statements that the actual rebellion in Marawi City had finally ended:

(1) Seven months after President Duterte's declaration of Marawi's liberation, Brig. Gen. Edgardo Arevalo, spokesperson for the AFP, said in a statement that "**Marawi has been liberated. If we have to look back to it, let's do so to learn from it and move on.**"[8]

(2) Before the year 2018 ended, President Duterte again affirmed that the rebellion in Marawi had already "finished." He said, "Then Marawi, there was massive destruction. I got a general (Eduardo del Rosario) who was assigned in my city. *Sabi ko* (I said), 'You fix it within 6 months.' And he did. ***Kaya natapos* (That's why it was finished)**."[9]

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ends/> (last accessed 1 February 2019); Catherine S. Valente, *Marawi free*<http://www.manilatimes.net/marawi-free/357155/> (last accessed 1 February 2019); Rosette Adel, *Duterte declares Marawi freed from terrorists*<http://www.philstar.com/headlines/2017/10/17/1749752/duterte-declares-marawi-freed-terrorists> (last accessed 1 February 2019); PTV News, *President Duterte declares liberation of Marawi City* <https://ptvnews.ph/president-duterte-declares-liberation-marawi-city/> (last accessed 1 February 2019).

[7] *Claire Jiao and Lara Tan, Fighting in Marawi City is over*<http://cnnphilippines.com/news/2017/10/23/Marawi-crisis.html> (last accessed 2 February 2019). See also AFP, AP and Francis Wakefield, *Battle of Marawi ends* <https://news.mb.com.ph/2017/10/24/battle-of-marawi-ends/> (last accessed 2 February 2019).

[8] Christine O. Avendaño, *Duterte to mark Marawi liberation in October*<https://newsinfo.inquirer.net/993817/duterte-to-mark-marawi-liberation-in-october#ixzz5cdrFD6B5> (last accessed 31 January 2019).

[9] Pia Ranada, *President in Fatigues: In 2018, Duterte turns to military for (almost) everything* <https://www.rappler.com/newsbreak/in-depth/218680-duterte-turns-to-philippine-military-yearend-2018> (last accessed 1 February 2019).

During the oral arguments on 29 January 2019, Major General Lorenzo of the Armed Forces of the Philippines also admitted **that there is no longer any armed rebellion in Marawi City**, to wit:

SENIOR ASSOCIATE JUSTICE CARPIO:
Is there an on-going armed rebellion in Marawi City?

MAJOR GENERAL LORENZO:
Not in Marawi City, Your Honor.[10] (Emphasis supplied)

Hence, the end of the armed Maute rebellion bars the extension of Proclamation No. 216 which was issued because of the Maute rebellion. Any extension pursuant to Proclamation No. 216 under Joint Resolution No. 6 is unconstitutional. To uphold the extension of martial law and the suspension of the privilege of the writ under Joint Resolution No. 6 in the absence of an actual rebellion would sanction a clear violation of Section 18, Article VII of the 1987 Constitution.

The Government failed to discharge the burden of proof that there is an on-going rebellion of the Maute group in the whole Mindanao group of islands.

The burden of proof to show the sufficiency of the factual basis of the declaration of martial law and the suspension of the privilege of the writ is on the Government. The *sui generis* proceeding under paragraph 3, Section 18, Article VII of the 1987 Constitution is intended as a checking mechanism against the abusive imposition of martial law or suspension of the privilege of the writ. The Government bears the burden of justifying the resort to extraordinary powers that are subject to the extraordinary review mechanisms of this Court under the Constitution. This is only logical because it is the Government that is in possession of facts and intelligence reports justifying the declaration of martial law or suspension of the privilege of the writ. Indeed, the majority of the members of this Court in

[10] TSN, p. 42.

Lagman v. Medialdea[11] conceded that this burden **rests** on the Government, to wit:

> x x x. The President's conclusion, that there was an armed public uprising, the culpable purpose of which was the removal from the allegiance of the Philippine Government a portion of its territory and the deprivation of the President from performing his powers and prerogatives, was reached after a tactical consideration of the facts. In fine, **the President satisfactorily discharged his burden of proof**.

After all, what the President needs to satisfy is only the standard of probable cause for a valid declaration of martial law and suspension of the privilege of the writ of *habeas corpus*. As Justice Carpio decreed in his Dissent in *Fortun*:

> x x x [T]he Constitution does not compel the President to produce such amount of proof as to unduly burden and effectively incapacitate her from exercising such powers.
>
> Definitely, the President need not gather proof beyond reasonable doubt, which is the standard of proof required for convicting an accused charged with a criminal offense. x x x
>
> x x x x x x x x x
>
> Proof beyond reasonable doubt is the highest quantum of evidence, and to require the President to establish the existence of rebellion or invasion with such amount of proof before declaring martial law or suspending the writ amounts to an excessive restriction on 'the President's power to act as to practically tie her hands and disable her from effectively protecting the nation against threats to public safety.'
>
> Neither clear and convincing evidence, which is employed in either criminal or civil cases, is indispensable for a lawful declaration of martial law or suspension of the writ. This amount of proof likewise unduly restrains the President in exercising her emergency powers, as it requires proof greater than preponderance of evidence although not beyond reasonable doubt.

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[11] *Supra* note 3, at 192-194, citing *Fortun v. President Macapagal-Arroyo*, 684 Phil. 595-598 (2012).

Not even preponderance of evidence, which is the degree of proof necessary in civil cases, is demanded for a lawful declaration of martial law.

x x x x x x x x x

Weighing the superiority of the evidence on hand, from at least two opposing sides, before she can act and impose martial law or suspend the writ unreasonably curtails the President's emergency powers.

Similarly, substantial evidence constitutes an unnecessary restriction on the President's use of her emergency powers. Substantial evidence is the amount of proof required in administrative or quasi-judicial cases, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

I am of the view that probable cause of the existence of either invasion or rebellion suffices and satisfies the standard of proof for a valid declaration of martial law and suspension of the writ.

Probable cause is the same amount of proof required for the filing of a criminal information by the prosecutor and for the issuance of an arrest warrant by a judge. Probable cause has been defined as a 'set of facts and circumstances as would lead a reasonably discreet and prudent man to believe that the offense charged in the Information or any offense included therein has been committed by the person sought to be arrested.'

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. He relies on common sense. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands more than suspicion; it requires less than evidence that would justify conviction

Probable cause, basically premised on common sense, is the most reasonable, most practical, and most expedient standard by which the President can fully ascertain the

existence or non-existence of rebellion, necessary for a declaration of martial law. x x x. (Emphasis supplied)

During my interpellation of the Solicitor General in the oral arguments last 29 January 2019, the Government could not confirm that the elements of the Maute group are engaged in actual rebellion in Davao City. The record states:

SENIOR ASSOCIATE JUSTICE CARPIO:
Mr. Sol-Gen, is there an ongoing armed rebellion today in Davao City?

SOLICITOR GENERAL CALIDA:
In certain parts, Your Honor, there is.

SENIOR ASSOCIATE JUSTICE CARPIO:
Committed by whom?

SOLICITOR GENERAL CALIDA:
I understand the communist groups, Your Honor.

SENIOR ASSOCIATE JUSTICE CARPIO:
So the NPA?

SOLICITOR GENERAL CALIDA:
NPA.

SENIOR ASSOCIATE JUSTICE CARPIO:
Certainly not the MILF? Peace agreement.

SOLICITOR GENERAL CALIDA:
I have not been to Davao for quite some time, Your Honor, so I don't exactly know.

SENIOR ASSOCIATE JUSTICE CARPIO:
But you are aware that we have a peace agreement now with the MILF. I don't think.... (interrupted)

SOLICITOR GENERAL CALIDA:
MILF, yes, Your Honor.

SENIOR ASSOCIATE JUSTICE CARPIO:
So the rebellion in Davao, parts of Davao, as you say, is being committed by the NPA, correct?

SOLICITOR GENERAL CALIDA:
Well, if I'm not mistaken, yes, Your Honor.

SENIOR ASSOCIATE JUSTICE CARPIO:
But not by the MILF, correct?

SOLICITOR GENERAL CALIDA:
Not by the... or MI...?

SENIOR ASSOCIATE JUSTICE CARPIO:
The MILF.

SOLICITOR GENERAL CALIDA:
Not to my knowledge, Your Honor.

SENIOR ASSOCIATE JUSTICE CARPIO:
Well, we have a peace agreement. I don't think they have broken that. x x x **the [Maute/ISIS] group, they are not in Davao?**

SOLICITOR GENERAL CALIDA:
I'm not sure of that, Your Honor.

SENIOR ASSOCIATE JUSTICE CARPIO:
But do you know x x x [if] they have armed rebels there operating in Davao City?

SOLICITOR GENERAL CALIDA:
That is a possibility because Davao City is a huge city and in fact... (interrupted)

SENIOR ASSOCIATE JUSTICE CARPIO:
Do you have any... (interrupted)

SOLICITOR GENERAL CALIDA:
...there was... (interrupted)

SENIOR ASSOCIATE JUSTICE CARPIO:
...information that they are operating in Davao City?

SOLICITOR GENERAL CALIDA:
I have no... (interrupted)

SENIOR ASSOCIATE JUSTICE CARPIO:
Have they engaged in any skirmish with the military or police in Davao City?

SOLICITOR GENERAL CALIDA:
I have no personal knowledge at this time but I can research, Your Honor.

SENIOR ASSOCIATE JUSTICE CARPIO:
Okay, you include that in your memo. How about the BIFF, are they committing rebellion in Davao City?

SOLICITOR GENERAL CALIDA:
I'm not sure, Your Honor.

SENIOR ASSOCIATE JUSTICE CARPIO:
So you are only sure of the NPA?

SOLICITOR GENERAL CALIDA:
For now, Yes, Your Honor, but I will ask the military, Your Honor, and the police to update me if there are incidents like what you've mentioned, Your Honor.

SENIOR ASSOCIATE JUSTICE CARPIO:
So okay, but you are defending martial law throughout Mindanao but you are not sure if the Maute and the ISIS groups are operating in Davao City?

SOLICITOR GENERAL CALIDA:
Well, at this time I don't have the knowledge but I will try to get feedback, Your Honor.[12] (Emphasis supplied)

The Government could not even affirm the existence of an on-going armed rebellion by the Maute group in Davao City. In fact, the Government has not named any province, city or municipality in the entire Mindanao where an actual rebellion by the Maute group is on-going. Consequently, under the Constitution, there is no sufficient factual basis to extend the declaration of martial law under Proclamation No. 216 in the whole of Mindanao for another period of one (1) year.

ACCORDINGLY, I vote to **GRANT** the petitions in G.R. Nos. 243522, 243677, 243745, and 243797 and **DECLARE** Joint Resolution No. 6 dated 12 December 2018 of the Senate and the House of Representatives **UNCONSTITUTIONAL** for failure to comply with Section 18, Article VII of the 1987 Constitution.

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[12] TSN, pp. 93-95.

DISSENTING OPINION

Sapere aude.[1]
-Kant

LEONEN, *J.*:

I dissent.

I continue to reiterate the points that I have already raised in my dissents in *Padilla, et al. v. Congress*,[2] *Lagman, et al. v. Medialdea, et al.*,[3] and *Lagman, et al. v. Pimentel III, et al*.[4] This is the third one-year extension of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* over the entire Mindanao.

I cannot join the majority's increasing judicial appeasement of the President's unconstitutional exercise of his commander-in-chief powers. Allowing this new extension amounts to an abdication of this Court's duty enshrined in the Constitution. With this fourth accommodation, we have become an enfeebled Supreme Court, far from what our fundamental law requires of us when the President exercises his commander-in-chief powers. What the majority has done disappoints a better reading of history. It all but removes the constitutional protections against the rise of another authoritarian.

The declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* are not simple law enforcement measures. They are intended to be used only under

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[1] Dare to know. Alternatively, dare to think for yourself. Immanuel Kant, *An Answer to the Question: What is enlightenment* (1784).

[2] G.R. Nos. 231671 and 231694, July 25, 2017, 832 SCRA 282 [Per *J.* Leonardo-De Castro, *En Banc*].

[3] G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1 [Per *J.* Del Castillo, *En Banc*].

[4] G.R. Nos. 235935, 236061, 236145 and 236155, February 9, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/february2018/235935.pdf> [Per *J.* Tijam, *En Banc*].

the most exigent circumstances where the State's existence already drifts between life and death. The imminence of such a possibility must be clear, and should be the product of reasonable inferences from facts which are clear, proven, consistent, and not contradictory. They are not to be exercised for any kind of rebellion except that which is close to or at the verge of success. Anything less should be constitutionally addressed with law enforcement or by the President's power to call out the armed forces.

The declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* are not intended to be psychological measures to impose fear on our citizens. They are no substitute for effective, efficient, and professional police action.

These powers of the commander-in-chief are constitutional options of last resort as they undermine the balance of democratic deliberation and pragmatic action embedded in our fundamental law. They are meant as temporary measures which will expire with clear achievable goals. Their necessity must be demonstrable. The kinds of powers to be exercised should be transparent and legible.

I do not see Proclamation No. 216 and all of its extensions as having passed the stringent requirements in our fundamental law.

I

On May 23, 2017, spurred by the Maute Group's attack on Marawi City, President Rodrigo R. Duterte (President Duterte) issued Proclamation No. 216 (the Proclamation), which declared a state of martial law and suspended the privilege of the writ of *habeas corpus* in Mindanao for 60 days. On May 25, 2017, the President submitted a Report to Congress detailing the factual basis of the Proclamation. Representatives from the Executive Department, military, and police also conducted briefings before the Senate and the House of Representatives.[5] Shortly after,

[5] *Lagman, et al. v. Medialdea, et al.*, G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1, 132 [Per J. Del Castillo, *En Banc*].

the Senate issued P.S. Resolution No. 388[6] supporting the Proclamation. For its part, the House of Representatives issued House Resolution No. 1050.[7]

Three (3) separate Petitions were filed against the Proclamation, questioning the imposition of martial law and the suspension of the privilege of the writ of *habeas corpus*, which this Court dismissed in *Lagman, et al. v. Medialdea, et al.*[8]

The majority in *Lagman, et al. v. Medialdea, et al.* stressed that in reviewing the sufficiency of factual basis of the martial law declaration or suspension of the privilege of the writ of *habeas corpus*, this Court could not intrude upon the President's judgment, over which he should avail of his calibrated powers in a given situation. The majority declared that there was sufficient factual basis for the Proclamation's issuance, stating that it should view the totality of the factual basis as presented to the President, without expecting him to verify the "absolute correctness, accuracy, or precision of the facts because to do so would unduly tie the hands of the President in responding to an urgent situation."[9] It emphasized that in determining the existence of rebellion, the President only needed probable cause "that more likely than not[,] a rebellion was committed or is being committed."[10]

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[6] Resolution Expressing the Sense of the Senate, Supporting Proclamation No. 216 Dated May 23, 2017, Entitled 'Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao' and Finding No Cause to Revoke the Same *available at* https://www.senate.gov.ph/lisdata/2613422471!.pdf. Accessed February 15, 2019.

[7] Expressing the Full Support of the House of Representatives to President Rodrigo Duterte as it Finds No Reason to Revoke Proclamation No. 216 Entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao" *available at* http://www.congress.gov.ph/legisdocs/basic_17/HR01050.pdf. Accessed February 15, 2019.

[8] *Lagman, et al. v. Medialdea, et al.*, G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1 [Per *J.* Del Castillo, *En Banc*].

[9] *Id*. at 194.

[10] *Id*. at 184.

In my dissent in *Lagman, et al. v. Medialdea, et al.*, I insisted that, with our nation's history with martial law, this Court must be more stringent, more precise, and more vigilant in performing its constitutional duty to review the sufficiency of the factual basis for the martial law declaration.

At the outset, the government's designation of the Maute Group as rebels is erroneous. The group neither had the numbers nor the sophistication necessary to hold ground in Marawi. It did not seek to control the centers of governance. Its ideology, inspired by the extremist views of Salafi Jihadism, could not sway the local community to take up arms and overwhelm the local and national government. During the Marawi siege, local terrorist groups acted not to control seats of governance, but to slow down the advance of government forces and facilitate their members' escapes. They committed atrocities to establish their terrorist credentials and sow fear.[11]

Terrorists and terrorism cannot be neutralized through the declaration of martial law. Counteracting violent extremism calls for thoughtful action, along with "patience, community participation, precision, and a sophisticated strategy that respects rights, and at the same time uses force decisively at the right time and in the right way."[12]

As for the sufficiency of the factual bases surrounding the issuance of the Proclamation, I pointed out that the government's presentation of facts was utterly wanting. The factual bases cited were primarily allegations, with the government deliberately failing to present their information's sources and their vetting process. Furthermore, some of the factual bases cited in the Proclamation would not lead to a conclusion that rebels were impelled by political motives like overthrowing the government or wresting government control over a portion of Mindanao. Thus, the facts cited as bases for the Proclamation show acts of terrorism, not necessarily rebellion.

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[11] *J.* Leonen, Dissenting Opinion in *Lagman, et al. v. Medialdea, et al.*, G.R. Nos. 231658, 231771 and 231774, 829 SCRA 1, 490 [Per *J.* Del Castillo, *En Banc*].

[12] *Id.* at 602.

In his dissent in *Lagman, et al. v. Medialdea, et al.*, Associate Justice Antonio T. Carpio (Associate Justice Carpio) stated that the sufficiency of the factual basis for the Proclamation must be determined at the time it was proclaimed, with immediately preceding or contemporaneous events tending to show probable cause that factual basis existed for the declaration of martial law or suspension of the privilege of the writ of *habeas corpus*. Subsequent events that immediately take place would then serve as confirmation on the existence of probable cause.[13]

Associate Justice Carpio opined that while there was probable cause for President Duterte to believe that there was a need to impose martial law in Marawi City, there was no similar probable cause to include the entirety of Mindanao within the Proclamation's coverage. He pointed out that the hostilities were confined in Marawi City, and the Presidents' Report had no evidence to show that there was actual rebellion outside of it. Moreover, the Maute Group's spokesperson announced that the group intended to implement Shariah Law in the city, but mentioned no other place in Mindanao. Associate Justice Carpio asserted that the Maute Group's capability to sow terror, without an actual rebellion or invasion, was not a ground to declare martial law or suspend the privilege of the writ of *habeas corpus*.[14]

Associate Justice Alfredo Benjamin S. Caguioa (Associate Justice Caguioa), concurring with then Chief Justice Maria Lourdes Sereno and Associate Justice Carpio, stated that there was probable cause for the President to believe that actual rebellion and public safety required the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*. Nonetheless, there was a dearth of evidence to show that actual rebellion existed outside of Marawi City. He stressed that, on the chance that Maute Group members may flee to other parts of Mindanao, this does not merit including the whole Mindanao in the Proclamation. Instead, "[t]hey can be pursued by the

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[13] *Id*. at 304.

[14] *Id*. at 308.

State under the concept of rebellion being a continuing crime, even without martial law."[15]

On July 18, 2017,[16] President Duterte again requested Congress to extend the Proclamation's effectivity to December 31, 2017, as it was set to expire on July 22, 2017. He claimed that after reading the reports and recommendations of the Department of National Defense Secretary, Chief of Staff of the Armed Forces of the Philippines (Armed Forces), and the Chief of the Philippine National Police, he believed that the rebellion in Mindanao would not be quelled by July 22, 2017. His letter to Congress reported that 379 of some 600 Da'watul Islamiyah Waliyatul Masriq rebels had been neutralized, and 329 firearms recovered. Further, operations against other rebel groups[17] were successful and the checkpoints led to the arrest of 66 individuals associated with it. Nonetheless, he stated that despite the armed forces' achievements, rebellion persisted not only from the Maute Group, but from the other rebel groups as well:

> The DIWM DAESH-inspired group continues to offer armed resistance in Marawi City and other parts of Western and Central Mindanao. Parts of Marawi City, comprising around four (4) barangays, are still under the control of the rebels. The city's commercial districts, where about 800 structures are located, are found within these areas. The rebels have likewise holed up in mosques, *madrasahs*, and hospitals, thereby restricting the government troops' offensive movements, as they have to consider the safety of civilian hostages and trapped residents nearby.
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> The DIWM DAESH-inspired group's leadership largely remains intact despite the considerable decline in the number of rebels fighting in the main battle area. Moreover, terrorist groups from various parts of Mindanao espousing or sympathizing with the same ideology remain

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[15] *Id*. at 659.

[16] Mara Cepeda, *READ: Duterte's letter to Congress asking for martial law extension*, RAPPLER, July 19, 2017, <https://www.rappler.com/nation/176084-document-duterte-letter-congress-martial-law-extension> [Accessed on February 15, 2019].

[17] The other rebel groups mentioned were the Bangsamoro Islamic Freedom Fighters (BIFF), Abu Sayyaf Group (ASG) and New People's Army (NPA).

active and are ready to reinforce Isnilon Hapilon's group or launch diversionary attacks and similar uprisings elsewhere. Key leaders of the rebellion, namely, Hapilon, the Maute brothers Abdullah, Omarkhayam, and Abdulasiz *alias* Madie, and foreign terrorist Mahmud bin Ahmad remain at large. Despite the arrest of key personalities like Ominta Maute, support structures have been continuously sustained, with the emergence of such new replacements as Adel Sarip Maute *alias* Monai, who was recently apprehended in Taguig City, Metro Manila.

Of the two hundred seventy-nine (279) personalities identified and ordered to be arrested by the Martial Law Administrator under Arrest Order Nos. 1 and 2 dated 29 May 2017 and 05 June 2017, respectively, only twelve (12) have been either neutralized or arrested. The AFP is further set to recommend the issuance of another arrest order for some two hundred (200) other individuals. There are also indications that the DIWM rebels are vigorously recruiting from other lawless armed groups, terrorist elements, and their families and supporters, to add to their ranks and replace those who have been killed or arrested.

The rebels have been found to possess high-powered and military-grade weapons such as rocket-propelled grenades and a large supply of ammunition. There have been reported entries of reinforcements, weapons, ammunitions, and other logistical supplies from outside Marawi City through clandestine routes. Private armed groups and supporters of some sympathetic local politicians are likely to continue extending their assistance.

Other Islamic State-inclined armed groups (*i.e.*, ASG, AKP, and BIFF), which are capable of perpetrating atrocities and violent attacks against vulnerable targets, remain scattered in various areas in Mindanao. Several reports consistently indicate that these local terrorist groups are pursuing offensive actions and conspiring to attain their overall objective of establishing a *wilayat* or *caliphate* in Mindanao. Significantly, videos recovered from a safehouse previously occupied by DIWM rebels validate their intention to establish a *wilayat* in Marawi City and other areas of Mindanao through simultaneous armed public uprisings against the duly constituted authorities therein.[18] (Emphasis in the original, citation omitted)

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[18] Letter of President Rodrigo Duterte to the Senate and the House of Representatives dated July 18, 2017 *available at* https://www.rappler.com/

On July 22, 2017, in a special joint session, the Senate and the House of Representatives adopted Resolution of Both Houses No. 2[19] extending the Proclamation to December 31, 2017.

On October 16, 2017, Isnilon Hapilon and Omar Maute, leaders of the Maute Group, were killed in a military assault.[20]

On October 17, 2017, the President announced Marawi's liberation from rebel forces. He also announced the creation of a task force for Marawi's rehabilitation with an initial budget of ₱20 billion.[21]

On December 8, 2017, President Duterte requested a second extension[22] from Congress. He reported that while the government forces made remarkable progress in controlling the rebellion, the adversary group's remaining members continued to recruit and train new members to fight back. He also reported additional threats from other rebel groups such as the Turaifie Group, Bangsamoro Islamic Freedom Fighters, Abu Sayyaf Group, and the New People's Army.

President Duterte wrote that National Defense Secretary Delfin N. Lorenzana (Secretary Lorenzana), as Martial Law

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nation/176084-document-duterte-letter-congress-martial-law-extension (last accessed on February 15, 2019).

[19] Resolution of Both Houses Extending until 31 December 2017 Proclamation No. 216, Series of 2017, Entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao" *available at* http://www.congress.gov.ph/legisdocs/second_17/RBH0011.pdf. Accessed February 15, 2019.

[20] *TIMELINE: The Battle for Marawi*, ABS-CBN NEWS, October 17, 2017, <https://news.abs-cbn.com/news/10/17/17/timeline-the-battle-for-marawi> (last accessed on February 15,2019).

[21] *TIMELINE: The Battle for Marawi*, ABS-CBN NEWS, October 17, 2017, <https://news.abs-cbn.com/news/10/17/17/timeline-the-battle-for-marawi> (last accessed on February 15, 2019).

[22] Pia Ranada, *Duterte asks Congress for 1-year martial law extension*, RAPPLER, December 11, 2017, <https://www.rappler.com/nation/191015-duterte-asks-congress-one-year-martial-law-extension- mindanao> (last accessed on February 16, 2019).

Administrator, recommended the extension of martial law for another year "to ensure total eradication of DAESH-inspired Da'awatul Islamiyah Waliyatul Masriq (DIWM), other like-minded Local/Foreign Terrorist Groups (L/FTGs) and Armed Lawless Groups (ALGs), and the communist terrorists (CTs) and their coddlers, supporters, and financiers."[23]

During the joint session on December 13, 2017, members of Congress were only provided with the three (3) letters written by the President, General Guerrero, and Secretary Lorenzana. Each member was only allowed to interpellate resource persons for a maximum of three (3) minutes.[24] That same day, the Congress adopted Resolution of Both Houses No. 4,[25] which further extends the Proclamation from January 1, 2018 to December 31, 2018.

Four (4) consolidated Petitions were filed before this Court questioning the constitutionality of the second extension.

On February 6, 2018, *Lagman, et al. v. Pimentel III, et al.*[26] declared the sufficiency of factual basis for the President's second extension of martial law over Mindanao. It held that rebellion

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[23] Pia Ranada, *Duterte asks Congress for 1-year martial law extension*, RAPPLER, December 11, 2017, <https://www.rappler.com/nation/191015-duterte-asks-congress-one-year-martial-law-extension-mindanao> (last accessed on February 16, 2019).

[24] *J.* Leonen, Dissenting Opinion in *Lagman, et al. v. Pimentel III, et al.*, G.R. Nos. 235935, 236061, 236145 and 236155, February 9, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/february2018/235935.pdf> [Per *J.* Tijam, *En Banc*].

[25] Resolution of Both Houses Further Extending Proclamation No. 216, Series of 2017, Entitled "Declaring a State of Martial Law and Suspending the Privilege of the Writ of *Habeas Corpus* in the Whole of Mindanao" For a Period of One (1) Year from January 1, 2018 to December 31, 2018 *available at* http://www.congress.gov.ph/legisdocs/second_17/RBH0014.pdf. Accessed February 15, 2019].

[26] G.R. Nos. 235935, 236061, 236145 and 236155, February 9, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/february2018/235935.pdf> [Per *J.* Tijam, *En Banc*].

persisted and there was a continuing effort to rebuild the group, as reflected in the intelligence reports submitted to the President.

Lagman, et al. v. Pimentel III, et al. also stated that while the factual basis for the second extension referred to other lawless groups not in the Proclamation, the President already alluded to other lawless armed groups as participants in the Marawi siege and the Maute Group's extensive linkage with other local and foreign armed groups, which were also predisposed to wrest government control over Marawi City.

Likewise, *Lagman, et al. v. Pimentel III, et al.* explained that including the New People's Army in the factual basis for the second extension would not render it void, since the latter's aims of establishing communist rule and overthrowing the existing government are well-known.

My dissent in *Lagman, et al. v. Pimentel III, et al.* called for a stricter mode of review when evaluating the sufficiency of factual basis for the extension of martial law. The "proposal for a type of deferential factual review, is nothing but a reincarnation of the political question doctrine similar to that in *Aquino v. Enrile* and *Morales v. Enrile* during the darker days of martial law declared by Ferdinand E. Marcos."[27] I sought to persuade this Court to exercise its independence and conduct a "sober and conscientious review amid the hysteria of the moment."[28]

Further, I have already warned that the blind acceptance of the Armed Forces and the President's factual allegations would only result in a token review, which would surrender our constitutional duty:

To establish that the factual basis for the extension of martial law is sufficient, the government has to show evidence for its factual

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[27] *J.* Leonen, Dissenting Opinion in *Lagman, et al. v. Pimentel III, et al.*, G.R. Nos. 235935, 236061, 236145 and 236155, February 9, 2018, 4 <http://sc.judiciary.gov.ph/pclf/web/viewer.html?file=/jurisprudence/2018/february2018/235935.pdf> [Per *J.* Tijam, *En Banc*].

[28] *Id.* at 3.

allegations as well as the context for its inference. An enumeration of violent incidents containing nothing but the area of the incident, the type of violent incident, and the date of the incident, without its sources and the basis for its inference, does not meet the sufficiency of the factual basis to show persisting rebellion and the level of threat to public safety that will support a declaration of martial law or the suspension of the writ of *habeas corpus*.

There are two (2) *facta probanda*, or ultimate facts, necessary to establish that martial law was properly extended, namely: (1) the persistence of an actual rebellion; and (2) that public safety requires the extension of martial law.

Of course, no single piece of evidence can establish these ultimate facts. There must be an attempt to establish them through evidentiary facts, which must, in turn, be proved by evidence—not bare allegations, not suspicion, not conjecture.

Letters stating that rebellion persists and that public safety requires the extension of martial law do not prove the *facta probanda*. The letters only prove that the writers thereof wrote that rebellion persists and public safety requires the extension of martial law. Lists of violent incidents do not prove the *facta probanda*; they only tend to prove the *factum probans* that there were, in fact, violent incidents that occurred. But, assuming the evidence is credible to prove the *factum probans* that violent incidents have occurred, this *factum probans*, without context, is insufficient to show that rebellion persists.

We do not conflate the *factum probandum* with the *factum probans*. Muddling the two undermines the review required by the Constitution. It will lead this Court to simply accept the allegations of the government without any modicum of review.[29] (Emphasis in the original)

Congress' approval of the second extension was not proven to have been based on sufficient factual basis, as its members were not provided with the same intelligence information to which the President had access. More importantly, its members were not informed of the context of the provided raw data from which they could logically assess if an extension was indeed

[29] *Id*. at 41.

warranted. They were also not apprised of how the Armed Forces vetted the information they received.

I further highlighted that the government had already achieved the supposed target of the Proclamation, after neutralizing the Maute Group leaders and at least 920 DAESH-inspired fighters, along with the liberation of Marawi City. Even if recruitment efforts were being done to build up the decimated ranks of the Maute Group, the 537 "rebels" were no match for the hundreds and thousands of men and women in the Armed Forces and the Philippine National Police. The numbers presented and accepted by the majority was, to me, "hardly ... a decent figure that will support an extended declaration of martial law and a suspension of the writ of *habeas corpus* throughout the entire Mindanao region, and for a period of one year."[30]

I also raised how the majority, in their eagerness to label the law enforcement problems in Mindanao as rebellion and provide the President *carte blanche* authority to declare martial law, abdicated their constitutional duty to the Filipino people. I warned that their actuations and reverence of the President were not new, and were reminiscent of this Court's actions during one of the darkest episodes in Philippine history:

> In the 1970s, there was a Court which painfully morphed into a willing accomplice to the demise of fundamental rights through tortured readings of their clear constitutional mandate in order to accommodate a strongman. What followed was one of the darkest episodes in our history. Slowly but surely, soldiers lost their professionalism. Thousands lost their freedoms. Families suffered from involuntary disappearances, torture, and summary killings. Among them are some of the petitioners in this case.
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> Regardless of the motives of the justices then, it was a Court that was complicit to the suffering [of] our people. It was a Court that degenerated into a willing pawn diminished by its fear of the impatience of a dictator.

The majority's decision in this case aligns us towards the same dangerous path. It erodes this Court's role as our society's legal

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[30] *Id.* at 47.

conscience. It misleads our people that the solution to the problems of Mindanao can be solved principally with the determined use of force. It is a path to disempowerment.

Contrary to the text and spirit of the Constitution, the decision in this case provides the environment that enables the rise of an emboldened authoritarian.[31]

In his dissent in *Lagman, et al. v. Pimentel III, et al.*, Associate Justice Francis H. Jardeleza (Associate Justice Jardeleza) stated that the government failed to prove that public safety still required martial law in Mindanao. He referred to two (2) "minimum indicators of scale"[32] that would meet the public safety requirements for a declaration of martial law and suspension of the writ of *habeas corpus*. These are:

... (1) the presence of hostile groups engaged in *actual and sustained armed hostilities* with government forces; and (2) these groups have actually *taken over, and are holding*, territory...[33] (Emphasis in the original)

Associate Justice Jardeleza emphasized that despite the barrage of data presented by the government to substantiate its second extension, the evidence neither reached the "minimum reasonable indicators"[34] nor rose to the same level of scale in Marawi City when the Proclamation was issued.

Likewise, Associate Justice Carpio stated that with the liberation of Marawi City and the end of the Maute Group's rebellion, the Proclamation can no longer be extended. He maintained that the capability of the rebel group's remnants to sow terror or damage property is not the actual rebellion contemplated by the Constitution:

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[31] *Id*. at 75.

[32] J. Jardeleza, Dissenting Opinion in *Lagman, et al. v. Pimentel III, et al.*, G.R. Nos. 235935, 236061, 236145 and 236155, February 9, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/february2018/235935.pdf> 17 [Per J. Tijam, *En Banc*].

[33] *Id*.

[34] *Id*. at 20.

Respondents cannot rely on the *capability* of the remnants of the defeated rebels to deprive duly constituted authorities of their powers as a justification for the extension of the state of martial law or suspension of the privilege of the writ. To emphasize, *capability* to rebel, *absent an actual rebellion or invasion*, is not a ground to extend the declaration of martial law or suspension of the privilege of the writ. To allow martial law on the basis of an imminent danger or threat would unlawfully reinstate the ground of "imminent danger" of rebellion or invasion, a ground that was intentionally removed from the 1987 Constitution.[35] (Emphasis in the original)

On December 4, 2018,[36] Secretary Lorenzana, emboldened by this Court's deferential but unconstitutional manner of review in the earlier cases, recommended a third extension of martial law and suspension of the privilege of the writ of *habeas corpus* until December 31, 2019. It was endorsed by the Department of National Defense and Chief of Staff of the Armed Forces.[37] He also included various resolutions and requests for the martial law extension from the Provincial and Municipal Councils, Peace and Order Councils, and Chambers of Commerce and Industry from Mindanao.

Secretary Lorenzana wrote that the operations of the Armed Forces ended the DAESH-inspired and Communist Party of the Philippines' rebellion, leading to the following gains:

1. The neutralization of 688 members of the Abu Sayyaf Group, Bangsamoro Islamic Freedom Fighters, and other Dl-affiliated groups, and the seizure of 448 firearms;

2. The neutralization of 1,049 CNTs, and the seizure of 307 firearms;

3. The conduct of 5,020 activities by the AFP with the assistance of CAFGU Active Auxiliary units (CAA) in coordination with other agencies to insulate and secure unaffected areas,

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[35] *J.* Carpio, Dissenting Opinion in *Lagman, et al. v. Pimentel III, et al.*, G.R. Nos. 235935, 236061 236145 and 236155, February 9, 2018, 11 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/february2018/235935.pdf> [Per *J.* Tijam, *En Banc*].

[36] *Rollo* (G.R. No. 243522), Vol. 1, pp. 201-202. Comment, Annex 1.

[37] *Id*. at 208-213. Comment, Annex 2.

critical infrastructure, and vital installations against operations of the rebel groups;

4. The AFP supported anti-illegal drug operations of the Philippine Drug Enforcement Agency (PDEA) resulting in the neutralization of 239 drug personalities, and the seizure of 87 firearms and 814 sachets of illegal drugs[.][38]

Despite the gains made, Secretary Lorenzana revealed that various rebel groups in Mindanao continued their operations against both civilians and government forces. The supposed rebel operations included the four (4) bombing incidents that killed 16 people and injured 63 within two (2) months.[39]

Secretary Lorenzana wrote that with the extension of martial law up to December 31, 2019, the Department of National Defense hoped to:

1. Put an end to the continuing rebellion of the DAESH-inspired groups and the threat posed by the CNT through a whole-of-government approach;

2. Prevent the influx of foreign fighters, disrupt the local and international financial conduits, and neutralize the leadership of the rebel groups operating in Mindanao;

3. Secure the conduct of the 2019 mid-term elections and the Bangsamoro Plebiscite and the possible implementation of the Bangsamoro Organic Law[.][40]

On December 6, 2018,[41] President Duterte wrote both houses of Congress for a further extension of martial law and suspension of the privilege of the writ of *habeas corpus* in Mindanao. He referred to Secretary Lorenzana's letter to substantiate his request, and reported the following gains in quelling rebellion:

I am pleased to inform the Congress that during the Martial Law period, as extended, in Mindanao, we have achieved significant

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[38] *Id*. at 201-202.

[39] *Id*. at 201.

[40] *Id*. at 202.

[41] Petition (G.R. No. 243522), pp. 51-55. Annex A.

progress in putting the rebellion under control, ushering in substantial economic gains in Mindanao. In a joint security assessment report, General Carlito G. Galvez Jr., the Armed Forces of the Philippines (AFP) Chief of Staff and Martial Law Implementor, and Director-General Oscar D. Albayalde, Chief of the Philippine National Police (PNP), highlighted the following accomplishments, among others, owing to the implementation of Martial Law in Mindanao: reduction of the capabilities of different terrorist groups, particularly the neutralization of 685 members of the local terrorist groups (LTG) and 1,073 members of the communist terrorist groups (CTG); dismantling of seven (7) guerilla fronts and weakening of nineteen (19) others; surrender of unprecedented number of loose firearms (more than eight thousand from January to November 2018); 19% reduction of atrocities committed by CTG in 2018 compared to those inflicted in 2017; 29% reduction of terrorist acts committed by LTG in 2018 compared to 2017; and substantial decrease in crime incidence (Cotabato City — 51% reduction and Maguindanao — 38% reduction). All of these gains in security and peace and order have resulted in remarkable economic gains in Mindanao. In fact, private sectors, local and regional peace and order councils, and local government units in Mindanao are now also clamoring for a further extension of the subject proclamation and suspension.[42]

However, President Duterte wrote that despite the government's exceptional gains against rebellion in Mindanao, intelligence reports confirmed that rebellion persisted and public safety still needed the continued imposition of martial law:

The Abu Sayyaf Group, Bangsamoro Islamic Freedom Fighters, Daulah Islamiyah (DI), and other terrorist groups (collectively labeled as LTG) which seek to proto global rebellion, continue to defy the government by perpetrating hostile activities during the extended period of Martial Law. At least four (4) bombings/ Improvised Explosive Device (IED) explosions had been cited in the AFP report. The Lamitan City bombing on 31 July 2018 that killed eleven (11) individuals and wounded ten (10) others, the Isulan, Sultan Kudarat IED explosion on 28 August and 02 September 2018 that killed five (5) individuals and wounded forty-five (45) others, and the Barangay Apopong IED explosion that left eight (8) individuals wounded.

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[42] *Id*. at 52-53.

The DI forces continue to pursue their rebellion against the government by furthering the conduct of their radicalization activities, and continuing to recruit new members, especially in vulnerable Muslim communities.

While the government was preoccupied in addressing the challenges posed by said groups, the CTG, which has publicly declared its intention to seize political power through violent means and supplant the country's democratic form of government with Communist rule, took advantage and likewise posed serious security concerns. Records disclosed that at least three hundred forty-two (342) violent incidents, ranging from harassments against government installations, liquidation operations, and arson attacks as part of extortion schemes, which occurred mostly in Eastern Mindanao, had been perpetrated from 01 January 2018 to 30 November 2018. About twenty-three (23) arson incidents had been recorded and it had been estimated that the amount of the properties destroyed in Mindanao alone has reached One Hundred Fifty-Six (156) Million Pesos. On the part of the military, the atrocities resulted in the killing of eighty-seven (87) military personnel and wounding of four hundred eight (408) others.

Apart from these, major Abu Sayyaf Group factions in Sulu continue to pursue kidnap for ransom activities to finance their operations. As of counting, there are a total of eight (8) kidnappings that have occurred involving a Dutch, a Vietnamese, two (2) Indonesians, and four (4) Filipinos.

The foregoing merely illustrates in general terms the continuing rebellion in Mindanao. I will be submitting a more detailed report on the subsisting rebellion in the next few days.[43]

On December 12, 2018, the Congress, in a joint session, adopted Resolution of Both Houses No. 6,[44] again extending the Proclamation from January 1, 2019 to December 31, 2019.

Four (4) consolidated Petitions[45] were filed before this Court questioning the constitutionality of the third martial law

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[43] *Id*. at 53-54. Annex A.

[44] *Id*. at 56-58. Annex B.

[45] The petitioners were *Representatives Edcel C. Lagman, et al. v. Hon. Salvador C. Medialdea*, *Executive Secretary, et al.* (G.R. No. 243522), *Bayan*

extension. Among them, Rius Valle, *et al.*'s Petition detailed the environment of continued impunity created by the wholesale extension of martial law and suspension of the privilege of the writ of *habeas corpus*. It alleged how the military forces were blatantly targeting, intimidating, harassing, and "red tagging" teachers and students of lumad schools, as well as their families.[46]

II

As I stated in my dissents in *Lagman, et al. v. Medialdea, et al.* and *Lagman, et al. v. Pimentel III, et al.*, the Constitution does not allow a vague declaration and extension of martial law without clear pronouncement of the scope and parameters of its application.

The martial law declaration has been vague from the beginning, and continues to be with each extension. The Proclamation did not provide the scope and parameters of its application. It merely declared a state of martial law in Mindanao for 60 days and suspended the privilege of the writ of *habeas corpus* for the same period.

The scope of the martial law proclamation of martial law expanded with every new issuance from its administrators. On May 30, 2017, the President issued General Order No. 1[47] (or the General Order) to implement Proclamation No. 216, which expanded the coverage of martial law to suppress all acts of rebellion *and* lawless violence in Mindanao, regardless of whether the lawless violence was related to the original hostilities in Marawi City. It also granted the Armed Forces full authority

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Muna Partylist Representative Carlos Isagani T. Zarate, et al. v. President Rodrigo Duterte, et al. (G.R. No. 243677), *Christian S. Monsod, et al. v. Senate of the Philippines (Represented by Senate President Vicente Sotto III), et al.* (G.R. No. 243745), and *Rius Valle, et al. v. The Senate of the Philippines, represented by the Senate President Vicente C. Sotto III, et al.* (G.R. No. 243797).

[46] Memorandum (G.R. No. 243797), pp. 80-82.

[47] Implementing Proclamation No. 216 Dated 23 May 27, *available at* http://www.officialgazette.gov.ph/downloads/2017/05may/20170530-GO-l-RRD.pdf. Accessed February 17, 2019.

to arrest "persons and/or groups who have committed, are committing, or attempting to commit" rebellion and any other kind of lawless violence.[48]

In my dissent in *Lagman, et al. v. Medialdea, et al.*, I pointed out that the Armed Forces had insufficient guidelines to follow in implementing martial law. This is seen in its overly broad interpretation of its responsibilities under martial law, which it construed to include the dismantling of the New People's Army, illegal drug syndicates, peace spoilers, other terror-linked private armed groups, and other lawless armed groups.[49] Yet, illegal drug syndicates and "peace spoilers"[50] are not covered by the concept of rebellion. The Proclamation's vagueness made their inclusion in the Operational Directive possible.

Under the Proclamation and General Order No. 1, the overly broad and undefined power accorded to the President and the Armed Forces translates to unrestricted authority, which may go against constitutional rights and guarantees.

General Order No. 1 is effectively a directive for law enforcement officers to arrest persons committing unspecified acts. It is, likewise, an implied gag order on the media, as evidenced by a directive for it "to provide full support and cooperation to attain the objectives of [the General Order]"[51] and "exercise prudence in the performance of their duties so as not to compromise the security and safety of the Armed Forces and law enforcement personnel, and enable them to effectively discharge their duties and functions under [the General Order]."[52]

In addition, the Proclamation's vagueness, along with the subsequent issuances, allowed it to evade both legislative and

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[48] *J.* Leonen, Dissenting Opinion in *Lagman, et al. v. Medialdea, et al.*, G.R. Nos. 231658, 231771 and 231774, 829 SCRA 1, 492-493 [Per *J.* Del Castillo, *En Banc*].

[49] *Id.* at 493.

[50] *Id.*

[51] General Order No. 1 (2017), Sec. 6.

[52] General Order No. 1 (2017), Sec. 6.

judicial review of the sufficiency of the factual basis surrounding it.

The lack of parameters, standards, or criteria continue to hound the third extension of martial law. The intelligence reports, which became the basis for the third extension of martial law, cite a gamut of criminal acts committed in Mindanao from January 1, 2018 to November 30, 2018. These include ambuscades, arson, firefighting/attack, grenade throwing, harassment, improvised explosive device or landmine explosion, kidnapping, attempted kidnapping, liquidation, murder, and robbery/ hold-up, among others.[53]

The government maintained that the criminal acts were committed "relative to the continuing rebellion being waged by the [local terrorist and rebel groups]";[54] however, its conclusion was not supported by its own intelligence reports. Perpetrators were not identified or, if identified, no motive was attributed behind their criminal acts.[55]

The calculated vagueness behind the Proclamation leads to its broad and indiscriminate application, empowering law enforcement officers with unbridled discretion to carry out its operations against unspecified enemies.

Indeed, the Proclamation has created dubious and imaginary monsters, and enforcers of the law will not hesitate to slay them with the great and limitless power bestowed upon them.

II

Even the measurable targets of martial law's implementation have been unclear since its initial proclamation in 2017. Worse, the government has been reluctant to set forth any targets, and pronouncements on its targets have been inconsistent.

Just as the vagueness of what powers to exercise leads to unduly broad powers, the absence of any clear target leads to

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[53] *Rollo* (G.R. No. 243522), Vol. 2, pp. 826-827. OSG Memorandum.

[54] *Id*. at 826.

[55] *Ponencia*, p. 19.

the probability of indefinite and repeated extensions. This is based on illegal activities still occurring in places in Mindanao despite the subsistence of martial law.

In my dissent in *Lagman, et al. v. Pimentel III, et al.*, I explained why the government must define its targets for the martial law extension. Without this articulation, this Court cannot review the sufficiency of the factual basis for the extension.

I noted that according to the Chief of Staffs Operational Directive submitted in *Lagman, et al. v. Medialdea, et al.*, the operation's purpose was to ensure that normalcy be restored, and safety and security be assured throughout Mindanao within 60 days. Although the operation's key tasks included destroying local terrorist groups and dismantling the New People's Army, it did not state what would constitute doing so.

In the second, longer extension, the government still failed to define its targets. During the oral arguments, General Rey Leonardo Guerrero only named quelling the rebellion as the objective of the then one (1)-year extension of martial law. Yet, he could not explain what it meant to "quell the rebellion"[56] or how much degradation of forces would be enough to consider the rebellion quelled.

As of the beginning of the oral arguments for the latest martial law extension, there were still no mention of any targets or projected timelines, or any measure to determine whether the rebellion had been successfully quelled:

ASSOCIATE JUSTICE CAGUIOA:

... Okay, my last question is this, is there a projected or estimated timeline when government forces will be able to put an end to the, what you say is a persisting rebellion in Mindanao, is there a timeline?

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[56] See *J.* Leonen, Dissenting Opinion in *Lagman, et al. v. Pimentel III, et al.*, G.R. Nos. 235935, 236061, 236145 and 236155, February 9, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/february2018/235935.pdf> [Per *J.* Tijam, *En Banc*].

MAJOR GENERAL LORENZO:

We have targets in our campaign, targeting the different groups, Your Honor, so what I can say at this point is, it is dependent on the accomplishment or attainment of the target goals set in the different campaigns that we are implementing, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:

Okay, at which point in time from your perspective can you say that rebellion would have been quelled? At which point in time when the last rebel is dead? At which point in time do we say rebellion is done, is no longer persisting? Just for me to understand from your point of view.

MAJOR GENERAL LORENZO:

Sir, given that question, what I could say is, it's not the killing of every single rebel out there when we can call, when we can say that rebellion no longer exist. Rather, it is the attainment of a level of security whereby the different threat groups can no longer impose their will or impose their will (sic) on the people or they are no longer effective as far as attaining their political objectives are concerned. So, we...

ASSOCIATE JUSTICE CAGUIOA:

So, until such...

MAJOR GENERAL LORENZO:

... we set certain parameters for this, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:

So, until such time that that level of security is not attained, it is your position that rebellion continues, is that it?

MAJOR GENERAL LORENZO:

Yes, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:

So, until such time that rebellion continues, martial law will continue?

MAJOR GENERAL LORENZO:

Not necessarily, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:

But that is the, that was the endorsement of the Military to the President, correct?

MAJOR GENERAL LORENZO:

Yes, Your Honor.[57]

Later on, Associate Justice Jardeleza coaxed from the Solicitor General a semblance of a target, and for the first time, a basis to determine whether the rebellion had been addressed enough so that public safety no longer requires a martial law extension:

JUSTICE JARDELEZA:

... The question I have, Mr. SolGen and the reason if you can, I can give you a time to confer with them. I would like you to look at the testimony of Secretary Lorenzana to the Congress, and I quote: "Kapag po nai-reduced iyan nang about 30% ng kanilang capability and they become law enforcement problems, then the police forces can take over without the military." Do you see it, Mr. SolGen? So I would like to give you time to show it to General Albayalde and Usec Yano. And when General Mendoza and Secretary Año are back, I'm sorry, Madrigal are back, you can show it also to them and then I have a question which you can answer after you confer with them. Is it the position of the government that when the capability of the local and the communist terrorist groups are degraded by 30%, then you can already recommend to the President that martial law is over? You can confer with your clients, Mr. Solgen.

CHIEF JUSTICE BERSAMIN:

Undersecretary Yano?... There is an instruction or request for you to confer with the Solicitor General on the subject of that interpellation. You may join the Solicitor General.

Secretary Año, you are I think needed to confer with the Solicitor General.

Note:

After several minutes.

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[57] TSN dated January 29, 2019, pp. 40-41.

SOLICITOR GENERAL CALIDA:

Your Honor, we have talked with our clients and I will ask one of them to answer your question, Your Honor.

JUSTICE JARDELEZA:

Yes, thank you, Mr. SolGen.

GENERAL MADRIGAL:

Your Honor, I'm General Benjamin Madrigal, Jr., the Chief of Staff of the Armed Forces of the Philippines. Regarding the statement of the Secretary, that basically, Your Honor, is the military definition of destruction of the enemy. When you attain 30% not only in terms of number of the regular forces but rather the 30%, you have reduced the enemy by 30% in terms of strength, firearms, the support system, for example the Barangay affectations as well as resources, Your Honor.

JUSTICE JARDELEZA:

So I think that's very interesting, General, in effect that is what I am asking, what is the science behind the 30% and I think, correct me, if I am correct, if I'm right, the capability of the enemies of the State is measured and I see it that's how you present it to Congress in terms of (1) manpower; that's why you have number of people; (2) firearms; (3) I think controlled barangays...

GENERAL MADRIGAL:

Yes, Your Honor.

JUSTICE JARDELEZA:

And no. (4) violent incidents?

GENERAL MADRIGAL:

Yes, Your Honor.

JUSTICE JARDELEZA:

So those four, which are in your data and as presented today and as presented to the Congress. The sum total is what you call capability?

GENERAL MADRIGAL:

Yes, Your Honor.

JUSTICE JARDELEZA:

And when you degrade the capability by 30% then...?

GENERAL MADRIGAL:

By 70%, meaning, the remaining part is 30%, Your Honor.

JUSTICE JARDELEZA:

If you degrade their capability by 70% and their strength is only 30%, what is the term? You have defeated them or what?

GENERAL MADRIGAL:

We call it that, that is, that it has been brought down to level of law enforcement, Your Honor.

JUSTICE JARDELEZA:

Which means General Albayalde...

GENERAL MADRIGAL:

Can take over...

JUSTICE JARDELEZA:

...and the DILG will take over?

GENERAL MADRIGAL:

They can take the lead, Your Honor.

JUSTICE JARDELEZA:

Now, but do you have an opinion on whether then martial law should be lifted because you don't need the military anymore?

GENERAL MADRIGAL:

We will gladly recommend the lifting of martial law if we attain that, Your Honor.

JUSTICE JARDELEZA:

Thank you.

Can I have a second question to the SolGen? Again, may I ask the able staff of the SolGen to show to the SolGen Annex 1 of your, OSG Comment? I am referring to the undated letter of General Carlito G. Galvez, Jr. to the President... There is a portion there, Mr. SolGen

where General Galvez says, and the beginning of the sentence is "The LTGs manpower and firepower have been reduced by...

SOLICITOR GENERAL CALIDA:

What number, Your Honor?

JUSTICE JARDELEZA:

I think ASG Rex can point it to you.

SOLICITOR GENERAL CALIDA:

This is no. 1, Your Honor, page 3.

JUSTICE JARDELEZA:

Yes, the sentence begins, Mr. SolGen "the LTGs manpower and firepower have been reduced by..." do you see that?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE JARDELEZA:

Can I complete now the sentence? It says, "the LTGs manpower, meaning the local terrorists groups, the LTGs manpower and firepower have been reduced by 62% and 45%, respectively." And the letter of General Galvez continues and, I quote: "On the other hand, the CTGs, meaning the communist terrorist groups, the NPAs, manpower and firepower have been reduced by 31% and 38%, respectively." Do you see that, Mr. SolGen?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE JARDELEZA:

So given that the science is supposed to be from the military point of view, degrading it by 70% in the case of the manpower of the LTGs, the degradation was 62%.

SOLICITOR GENERAL CALIDA:

Your Honor, I'd like to clarify when we were speaking about the 30%, Your Honor, statement of Secretary Lorenzana, I asked them, what is the baseline and what did 30%, when will you impose this? And they said, this year, Your Honor. If in this year they can reduce

the capability to 30% this year, then they will recommend as you heard from the General, Your Honor.

JUSTICE JARDELEZA:

So, Mr. SolGen, the position we would like to know from the government and please cover it in the memo. If we can agree now, we are looking, the Court will be looking to you what is the baseline? We have to agree. If the baseline is January 1, 2019...?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE JARDELEZA:

If the baseline is January 1, 2019, that is the meaning of what the officers have testified today.

SOLICITOR GENERAL CALIDA:

That's correct, Your Honor.

JUSTICE JARDELEZA:

So, I do not know how the Court will decide. If the Court decides not to grant an extension, then that's the end of it. If the Court decides to grant an extension, we have agreed today that you will give us what is the baseline in terms of manpower, in terms of firearms, controlled barangays...

SOLICITOR GENERAL CALIDA:

Capability.

JUSTICE JARDELEZA:

...and violent incidents so that by the end of the year we will know how much progress has been made?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE JARDELEZA:

We have a deal, Mr. SolGen?

SOLICITOR GENERAL CALIDA:

Can we add capability, Your Honor, because that is what...?

JUSTICE JARDELEZA:

Well, what capability?

SOLICITOR GENERAL CALIDA:

...what Lorenzana said, Your Honor, capability.

. . . . . .

JUSTICE JARDELEZA:

Well, because if you add, as what I'm saying now, as of today in your submission to the Congress and your slide today, you don't have a column called capability because as the resource person said and I thought as a layman, the military men testifying, capability is again the sum total of "gaano kadami ba 'yong kalaban, gaano 'yong firearms."

SOLICITOR GENERAL CALIDA:

And the support of the...

JUSTICE JARDELEZA:

How many barangays they control or...

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE JARDELEZA:

...they influenced...

SOLICITOR GENERAL CALIDA:

Correct.

JUSTICE JARDELEZA:

The sum total of which is the capability to have violent incidents. So to me the four are already, or if you add the four equals capability.

SOLICITOR GENERAL CALIDA:

Okay, Your Honor. I agree.

JUSTICE JARDELEZA:

So we have a deal. That's the...

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

JUSTICE JARDELEZA:

...the definition of terms. Now, Mr. SolGen, I would like to congratulate you because earlier we had a session where you were there and the petitioners' counsels were there and I believed you were able to prevail on your clients to declassify or make public your report to the Congress and I really, I'm very happy that the SolGen is able to convince his clients. So again as I said I don't know whether the Court will extend the martial law.

SOLICITOR GENERAL CALIDA:

I hope it will, Your Honor.

JUSTICE JARDELEZA:

Well, when I mean for this case, but in the event that the Court does, I will urge again the government through you, through the SolGen, to keep following the practice of submitting reports to the Congress. Because now we have a baseline. I have my own views about capability but granting everything that the government has said, and I think what we have established today is a baseline. You give us the figures, January 1, 2019, manpower plus firearms plus controlled barangays plus violent incident equals capability. And I think you have done a great service to the country by saying the report of the military to the Congress is not classified so that the people will know on a month to month basis how much progress the military and the PNP are doing. And I really hope and pray that before December 2019, that the military and the police degrade by more than 70% so that the members of the Court do not have to meet again and have another petition. Thank you very much, Mr. SolGen.[58]

However, upon further interpellation, the Solicitor General admitted that this 30% target discussed with Associate Justice Jardeleza had only been developed that day. He further admitted that he could not "predict the future"[59] when it came to the President's own targets for martial law:

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[58] TSN dated January 29, 2019, pp. 51-59.

[59] TSN dated January 29, 2019, p. 70.

ASSOCIATE JUSTICE LEONEN:

I asked for the Solicitor General because I know that you are the most knowledgeable in your, with your side.

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

ASSOCIATE JUSTICE LEONEN:

Okay. When did government arrive at the 30% target that you discussed with Justice Jardeleza?

SOLICITOR GENERAL CALIDA:

Actually, I just read it this afternoon, Your Honor.

ASSOCIATE JUSTICE LEONEN:

So, you just arrived at the goal of martial law 30% degrading only this afternoon?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

ASSOCIATE JUSTICE LEONEN:

And you are now binding the Commander-in-Chief? In other words, you just discussed it here in caucus?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

ASSOCIATE JUSTICE LEONEN:

And now you committed to Court a degradation of 70% as the goal of martial law?

SOLICITOR GENERAL CALIDA:

For this year, Your Honor.

ASSOCIATE JUSTICE LEONEN:

For this year?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

ASSOCIATE JUSTICE LEONEN:

And this is the position of government, correct?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

ASSOCIATE JUSTICE LEONEN:

Are you binding President Rodrigo Duterte, the Commander-in-Chief? Because I do not see him here and if you arrived at the target only now that means you are binding the President?

SOLICITOR GENERAL CALIDA:

I will explain to him what happened here and I will report to you, Your Honor.

ASSOCIATE JUSTICE LEONEN:

But I think you know the President more than I do, he has his own mind, is that not correct?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

ASSOCIATE JUSTICE LEONEN:

He has his own goals, is that not correct?

SOLICITOR GENERAL CALIDA:

That's correct, Your Honor.

ASSOCIATE JUSTICE LEONEN:

And as far as all of you are concerned you are all alter egos, advisers to the President, is that not correct?

SOLICITOR GENERAL CALIDA:

That's correct, Your Honor.

ASSOCIATE JUSTICE LEONEN:

And therefore, you cannot commit to this Court 30%, correct?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor, because it came from the military group, Your Honor.

ASSOCIATE JUSTICE LEONEN:

More importantly, this 30% was it discussed with Congress?

SOLICITOR GENERAL CALIDA:

I was not present there, Your Honor, so I have no idea.

ASSOCIATE JUSTICE LEONEN:

In other words, it was not, it was in one of the statements of Lorenzana, the Secretary. But Congress did not push and ask the resource speakers what was the goal of one year, is that not correct?

SOLICITOR GENERAL CALIDA:

That's correct, Your Honor.

ASSOCIATE JUSTICE LEONEN:

Yes. So it's possible to have an extension for 2020, is that not correct? Still possible?

SOLICITOR GENERAL CALIDA:

Yes, Your Honor.

ASSOCIATE JUSTICE LEONEN:

Perhaps even 2021, correct?

SOLICITOR GENERAL CALIDA:

That's possible, Your Honor.

ASSOCIATE JUSTICE LEONEN:

Perhaps 2022, correct?

SOLICITOR GENERAL CALIDA:

Hopefully, yes, Your Honor.

ASSOCIATE JUSTICE LEONEN:

So this is the new normal? That for the whole term of this President there will be martial law in Mindanao, is that not possible? Considering that the Communist Party has been resilient for 50 years. I was only six years old when they started, now I'm 56. Considering that violent extremism will exist in Mindanao in the next three years, considering that there will still be kidnapping, considering that there will still be

rido and those are all in your reports. Therefore, are you now telling the Supreme Court that it is possible that the extensions will be not only three, will be four, five or six extensions?

SOLICITOR GENERAL CALIDA:

Well, it depends, Your Honor, if the policy of 30% degradation which will start this year, if we can attain it, why not, Your Honor.

ASSOCIATE JUSTICE LEONEN:

Yes, but it is not the goal of the Commander-in-Chief, correct? Not yet?

SOLICITOR GENERAL CALIDA:

Well, I cannot predict the future, Your Honor.[60]

Although the Solicitor General had initially appeared to be willing to commit to a 30% degradation target and to explain the situation to the President, he ultimately admitted that he could not predict how the President would think in the future.

Moreover, the targets identified during the January 29, 2019 oral arguments are inconsistent with the pronouncements made by Secretary Lorenzana barely a week later, on February 4, 2019, in his speech on the National Security Outlook for the Philippines in 2019. In his speech, he-said:

> The Anti-Terrorism Act which, when enacted, would no longer necessitate the proclamation of martial law and suspension of habeas corpus; this is the main argument that we presented to the Senate when we were there to defend martial law because we told them that the people now have no teeth... I told them, if they can pass it within half of this year, then I can recommend the cessation of martial law in Mindanao by July first.[61]

Additionally, the Office of the Solicitor General admitted that the targets set during the oral arguments were essentially

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[60] TSN dated January 29, 2019, pp. 66-70.

[61] Delfin N. Lorenzana, *The National Security Outlook in the Philippines in* 2019 (Proposed Remarks for the Secretary of National Defense, February 4, 2019).

lip service. In its Memorandum, it said that it could not bind the President to its definition of when the rebellion would be quelled:

> 83. A plain reading of Section 18, Article VII of the Constitution shows that the President's power to determine the necessity for an extension of martial law is not subject to any condition except the requirements of actual invasion or rebellion and public safety. It would also be contrary to common sense if the decision of the President is to depend on the calculations of his alter ego. The President is not bound by the actions of his subalterns; the former is only bound by what the Constitution dictates. Ergo, an extension of martial law would still be valid even if the DND Secretary declares that the rebels' capabilities had been degraded by more than seventy percent.[62] (Citation omitted)

Curiously, figures on anti-illegal drug operations have repeatedly been cited in the government's letters and reports on martial law, as if the figures were targets in the proclamation and implementation of martial law. In his December 4, 2018 Letter to President Duterte, the Solicitor General said:

> The operations conducted by the AFP in support of the implementation of martial law have resulted in gains in ending the DAES inspired and CNT rebellion in the country, including:
>
> . . . . . .
>
> 4. The AFP supported anti-illegal drug operations of the Philippine Drug Enforcement Agency (PDEA) resulting in the neutralization of 239 drug personalities, and the seizure of 87 firearms and 814 sachets of illegal drugs[.][63]

Similarly, in his letter to President Duterte, General Carlito G. Galvez, Jr. cited the Armed Forces' support of anti-illegal drug operations as one of the outcomes of the martial law implementation in Mindanao. Likewise, all of the Armed Forces' monthly reports included figures that pertained to the dismantling of "illegal drug syndicates and other lawless armed groups,"[64]

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[62] *Rollo* (G.R. No. 243522), Vol. 2, p. 834.

[63] *Rollo* (G.R. No. 243522), Vol. 1, pp. 201-202.

[64] *Rollo* (G.R. No. 243522), Vol. 1, p. 205.

reporting: (1) the volume of illegal drugs confiscated; and (2) the number of personalities who surrendered, were killed, or were captured.

Notably, the existence of illegal drug syndicates was not, and cannot be, the basis of the martial law declaration.

These conflicting assertions on the targets of martial law raise doubts on whether any target exists at all, or if the government has been implementing martial law to sincerely quell a supposed rebellion and restore civil rule in Mindanao. They reveal a lack of foresight, preparation, or strategy in the implementation of martial law, which should put this Court on guard in this exercise.

IV

It is this Court's constitutional duty to review, in an appropriate proceeding, the sufficiency of the factual basis for the extension of martial law and suspension of the privilege of the writ of *habeas corpus*.[65] Thus, this Court is bound to reassess and

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[65] CONST., Art. VII, Sec. 18 partly provides:

SECTION 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without any need of a call.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial

independently determine the sufficiency of the factual basis presented by the government. We cannot accept the President's conclusion *pro forma* and adopt it as our own.

Settled is the rule that the burden is on the government to show this Court that it has sufficient factual basis for the extension of martial law and suspension of the privilege of the writ of *habeas corpus*.[66] The government is duty bound to adequately prove that the facts and information it alleged can support the extension. This may be done by presenting evidence supporting its factual allegations, and the context for its interference.

Standards must be set to guide this Court as it treads the multitudinous reports given to determine the sufficiency of the factual bases invoked by the President.

In my dissent in *Lagman, et al. v. Medialdea, et al.*, I asserted that the facts alleged and relied upon by the President must be: (1) credible; (2) complete or sufficient to establish a conclusion;[67] (3) consistent with each other; and (4) able to establish a sensible connection between the incidents reported and the existence of rebellion, and the consequent need for martial law's proclamation or extension.

The government's presentation of facts justifying the extension has not met these standards.

V

The government failed to show the credibility of its intelligence reports to justify the third extension of martial law. It has failed to show that the kind of rebellion, if any, suffices to justify the necessity and public safety requirement to declare martial law or suspend the privilege of the writ of *habeas corpus*.

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law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

[66] *J.* Leonen, Dissenting Opinion in *Lagman, et al. v. Medialdea, et al.*, G.R. Nos. 231658, 231771 and 231774, 829 SCRA 1, 489 (2017) [Per *J.* Del Castillo, *En Banc*].

[67] *Id.*

Due to the multifarious responsibilities demanding the president's attention, he or she is constrained to heavily rely on the intelligence reports submitted by those under his or her command.[68] The President banks on his or her alter egos' reports to determine the proclamation or extension of martial law. These reports constituting the factual bases of the President's judgment must go through a strict validation process. To serve as sufficient bases, they must be subjected to a scrupulous process of analysis and validation.[69] This process must be airtight in nature to avoid, or at least minimize, dubious data. Finally, to ensure that the source of information is credible, the information collected must be transparent.

Facts are deemed judicially sufficient when it is shown that they came from credible sources, these being the foundation of the President's exercise of its commander-in-chief powers under Article VII, Section 18 of the Constitution.

The credibility of the information rests upon the degree of validation used to confirm its authenticity. The function of validating information is vital to the resulting judgment of the President.

In my dissenting opinion in *Lagman, et al. v. Madialdea, et al.* I enumerated five (5) disciplines in gathering information, namely: (1) signals intelligence; (2) human intelligence; (3) open-source intelligence; (4) geospatial intelligence; and (5) measurement and signatures intelligence.[70]

Signals Intelligence (SIGINT) refers to the interception of communications between individuals and "electronic transmissions that can be collected by ships, planes, ground sites, or satellites."

Human Intelligence (HUMINT) refers to information collected from human sources either through witness interviews or clandestine operations.

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[68] *Id*. at 552.

[69] *Id.*

[70] *Id*. at 553.

By the term itself, Open-Source Intelligence (OSINT) refers to readily-accessible information within the public domain. Open-Source Intelligence sources include "traditional media, Internet forums and media, government publications, and professional or academic papers."

Newspapers and radio and television broadcasts are more specific examples of Open-Source Intelligence sources from which intelligence analysts may collect data.

Geospatial Intelligence (GEOINT) pertains to imagery of activities on earth. An example of geospatial intelligence is a "satellite photo of a foreign military base with topography[.]"

Lastly, Measures and Signatures Intelligence (MASINT) refers to "scientific and highly technical intelligence obtained by identifying and analyzing environmental byproducts of developments of interests, such as weapons tests." Measures and Signatures Intelligence has been helpful in "identify[ing] chemical weapons and pinpoint[ing] the specific features of unknown weapons systems."[71] (Citations omitted)

Respondents submitted numerous reports[72] as basis for the third extension of martial law. These reports, according to respondents, are the consolidation of various intelligences and accounts of different field units and multiple sources within the government.[73]

Since the reports were the foundation of the President's judgment, this Court probed into how they were validated and authenticated. Regrettably, respondents failed to illuminate on this matter:

ASSOCIATE JUSTICE CAGUIOA:

Alright. Let me begin my small questions. I noticed, that in the Annexes that you submitted at the lower right hand portion there is a stamp that says "authenticated by" and there is a signature over the name, if I can read the name, SMS Dionisio B. Medilo PAF, NCOIC, ATD, 0.12. Can you tell us who this person is?

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[71] *Id*. at 553-554.

[72] *Rollo* (G.R. No. 243522), Vol. 1, pp. 214-292. Comment, Annexes 3-8.

[73] Oral Arguments dated January 19, 2019.

MAJOR GENERAL LORENZO:

Yes, Your Honor. He is the enlisted personnel assigned to our office.

ASSOCIATE JUSTICE CAGUIOA:

And can you tell us what his functions are?

MAJOR GENERAL LORENZO:

He is assigned with the Anti-Terrorist Division of the OJ2. He receives reports, assists in the research and intelligence reports relative to the counter-terrorism efforts of the Armed Forces of the Philippines, Your Honor.

ASSOCIATE JUSTICE CAGUIOA:

He is based in Mindanao?

MAJOR GENERAL LORENZO?

He is based in Manila.

. . . . . .

ASSOCIATE JUSTICE CAGUIOA:

Thank you. Now, going back to the person who authenticated these reports, can you tell us the process? What is the process that 0J2 follows in authenticating reports, in vetting intel? Can you tell us how that process goes?

MAJOR GENERAL LORENZO:

May I be clarified on the question, Your Honor?

ASSOCIATE JUSTICE CAGUIOA:

In the preparation of these Tables, I'm sure there is a vetting process, there is an authentication process as explained by the phrase "authenticated by." I just want to know what is the process involved in the process of authentication.

MAJOR GENERAL LORENZO:

Normally, Sir, as we received reports, for intelligence processing, Sir, there is the so-called intelligence cycle. So as we received reports, that is the submission of reports to us, that is already, shall I say, collected information goes through different stages of processing

We collate, integrate and bring in other information that are related to it. We also evaluate the source of the report whether in terms of reliability, the accuracy of the information until we come out with more refined or more accurate intelligence that is for the intelligence cycle... (interrupted)

. . . . . .

ASSOCIATE JUSTICE CAGUIOA:

Let me cut you. When Medilo says "he authenticates these Tables," what exactly is he saying?

MAJOR GENERAL LORENZO:

Your Honor, if you are referring to authentication of documents as to authenticity of what we are receiving, he will just look at the original file and a reproduction of what would be authenticated by usually officers under us. We have admin officers to authenticate documents... (interrupted)

. . . . . .

ASSOCIATE JUSTICE CAGUIOA:

So just to be clear there are more raw information coming in, they all come together. You do a screening, check the sources, and then, you make your conclusions and all of that is in a report and Mr. Medilo simply collates and compiles these reports. Is that correct?

MAJOR GENERAL LORENZO:

Yes, Your Honor.[74]

. . . . . .

ASSOCIATE JUSTICE GESMUNDO:

So, just to be clarified, when you mentioned authenticated by SMS Medillo, what do you mean by that? Does he verified it, each incident report from an index or what?

GEN. LORENZO:

Yes, Your Honor, because it's a faithful reproduction of what's already on file.

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[74] TSN dated January 29, 2019, pp. 24-28.

ASSOCIATE JUSTICE GESMUNDO:

Because you want the Court to rely on this report as the factual basis for the prayer for the extension of martial law, we want to be assured that this is authenticated, you may have the presumption of regularity but we want to know the authenticity and veracity of these incident reports.

GEN. LORENZO:

Sorry, Your Honor, those reports came from the chain of command, Your Honor, the... (interrupted)

ASSOCIATE JUSTICE GESMUNDO:

Can you put that in your memorandum also, how this report was processed?

GEN. LORENZO:

We will do that, Your Honor.

ASSOCIATE JUSTICE GESMUNDO:

Thank you very much.[75]

Despite the opportunity to expound in their Memorandum the authentication process the reports had gone through, respondents repeatedly failed to provide a satisfactory explanation. They merely stated that the information in the reports came from various Armed Forces units obtained through formal channels[76] and informants who are members of the threat groups.[77]

Respondents only indicated that they have been "[d]uly validated in accordance with military procedure,"[78] and are similar to entries in official records which enjoy the presumption of being the *prima facie* evidence of the facts.[79]

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[75] TSN dated January 29, 2019, p. 65.

[76] *Rollo* (G.R. No. 243522), Vol. 2, pp. 847-859. See Memorandum for Respondents, Annex 1. Reports of government agencies performing security and law enforcement functions.

[77] *Id*. at 838.

[78] *Id.*

[79] *Id*.

More, they hinge on petitioner's failure to advance any basis for this Court to cast doubt on these reports.[80]

However, it must be emphasized that due to the intelligence reports' confidentiality, any opportunity for petitioners to challenge their authenticity is negated. Petitioners have no duty to uncover the errors and inaccuracies of these reports; rather, it is the government's obligation to prove that the reports it relied on are authentic.

The rights curtailed by martial law demand that the government ensure the information it gathered had come from credible sources. Respondents' failure to indicate the analytical process their reports have gone through raises serious doubts on their authenticity and reliability.

With the government forcing upon this Court the premise that the facts it alleged warrant a martial law extension, without properly citing any standard to validate them, this Court will be constrained to accept the alleged facts as absolute truth. This cannot be the case. The Constitution explicitly grants this Court the power to review the sufficiency of the factual basis for the martial law extension. Anything less will render this Court's judicial power of review inutile.

VI

Although many criminal incidents were alleged to support the claim that there is an ongoing rebellion in Mindanao, many of the reports were glaringly incomplete, and lacked a crucial detail: who the perpetrators were.

Members of this Court rigorously scrutinized the submissions made by respondents and found glaring inadequacy in their reports. A number of the violent incidents reported to be associated to an ongoing rebellion do not indicate their perpetrators. Likewise, the motives behind these attacks were not indicated. To name a few:

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[80] *Id*.

1. On March 5, 2018 a report was made that a certain Mutim Abdos of So Hawani, Barangay Latin, Patikul, Sulu was fired upon by an "*undetermined number of unidentified armed men*"[81] believed to be Abu Sayyaf Group members.[82]

2. On March 7, 2018, a certain Sitti Dornis Mustapa Hamsirani was abducted by three (3) *unidentified armed men* while she was on her way to Jolo town. After investigation, it was discovered that she has been failing to pay her debt to an unknown man. Further inquiry was made to determine the identity and real motive of the abduction.[83]

3. On April 11, 2018, *unidentified persons* placed an unidentified improvised explosive device beneath a payloader at Barangay Geras, Isabela City, Basilan.[84]

4. On April 16, 2018, an *unidentified person* threw a hand grenade at the warehouse of Engineer Soler Undug, District Engineer of Basilan-Autonomous Region of Muslim Mindanao, in Barangay y Aguada, Isabela City, Basilan.[85]

5. On April 28, 2018, a certain Nijam AWSAL @ NGAIN was killed by an *unidentified assailant* believed to be an Abu Sayyaf Group member.[86]

6. On May 28, 2018, SSg Alam Intel NCO of Bcoy, 18IB was ambushed by *unidentified armed men* in Sitio Bekew, Barangay Baguindan, Tipo-Tipo, Basilan while he was traversing their CP Base in Sitio Kapayagan, Baguindan, Tipo-Tipo, Basilan.[87]

7. On November 23, 2018, a red/black Suzuki Raider was reported to have been forcibly taken by 10 armed Abu Sayaff Group members.[88]

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[81] *Rollo* (G.R. No. 243522), Vol. 1, p. 225.

[82] *Id*.

[83] *Id*. at 226.

[84] *Id*. at 229.

[85] *Id*. at 230.

[86] *Id*. at 231. Spelling error in the original.

[87] *Id*. at 233.

[88] *Id*. at 243.

8. On November 30, 2018, the house of a certain Abul Hair Oddok was burned down by 11 armed Abu Sayaff Group members. No information was given regarding the purpose of the attack.[89]

9. On December 12, 2018, an engineer of HHH Developer and Construction Company in Barangay Cabunbata, Isabela City, Basilan, was shot to death by a riding-in-tandem duo of the Abu Sayaff Group.[90]

During the oral arguments, these omissions were pointed out to respondents, who were then directed by this Court to include in their Memorandum updates on the perpetrators' identities. However, they failed to conclusively ascertain that these attacks were executed by insurgents to further the rebellion.[91]

In his December 6, 2018 letter[92] to the Senate and the House of Representatives, President Duterte stated that during the extended period of martial law, the Abu Sayyaf Group, Bangsamoro Islamic Federation Fighters, Daulah Islamiyah, and other terrorist groups continue to defy the government by perpetuating hostile activities. This, he said, required further extension of martial law.

By ascribing to these terrorist groups the authorship of the hostile activities, the President has unduly jumped to a conclusion insufficiently supported by evidence. The intelligence report, which formed part of the President's determination to declare martial law, did not categorically state that it was the members of these groups who executed the hostile acts, which allegedly warranted the extension of martial law.

Likewise, the motive of these unidentified men in committing the hostile acts were never identified in the intelligence report.

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[89] *Id*. at 244.

[90] *Id*. at 245.

[91] *Rollo* (G.R. No. 243522), Vol. 2, pp. 863, 867, 868 and 869. Memorandum for Respondents, Annexes 2-C, 2-G, 2-H, and 2-I.

[92] *Rollo* (G.R. No. 243522), Vol. 1, pp. 51-55.

The link to ascertain the malefactors' identities and their motives in committing the hostile acts *vis-à-vis* the actual perpetuators and their implied affiliation with these terrorist groups were never alleged.

This failure cannot be allowed. A considerable void exists within the intelligence report, which cannot be substituted by any amount of implication or guesswork.

VII

Assuming that these violent incidents were authored by terrorist groups, respondents failed to show that they were committed to further the rebellion. No definite connection was presented to show that these incidents were carried out to advance the objectives of the rebellion. They failed to demonstrate how these events support the government's conclusion of persisting rebellion in Mindanao. They also failed to show that these were the kinds of rebellion which met the requirement of necessity and public safety in the Constitution.

Among the incidents was the ambush of a certain Muksin Kaidin and Mukim on February 1, 2018, by an undetermined number of unidentified men while onboard their vehicle. The victims sustained multiple gunshot wounds and died due to the vehicle's explosion. Initial investigation revealed that the attack was caused by a longstanding family feud between the victims and the suspects.[93]

On February 28, 2018, members of Barangay Peacekeeping Action Team and Local Government Unit conducting road construction projects in the barangay hall of Barangay Dugaa, Tuburan, Basilan, were fired upon by Abu Sayaff Group affiliates led by Abu Sayyaf Group Subleader Abdullah Jovel Indanan @ Guro, who reportedly feuds with the incumbent barangay chair of Dugaa.[94]

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[93] *Rollo* (G.R. No. 243522), Vol. 1, p. 218.

[94] *Id*. at 224. Spelling error in the original.

On March 30, 2018, a firefight ensued at Barangay Latih Detachment in Patikul, Sulu, initiated by Abu Sayaff Group members to avenge the death of its member, Roger Samlaon.[95]

On June 17, 2018, Abu Sayyaf Group Subleader Alden Bagade @ SAYNING was killed by his brother, Muslim Bagade, who mistook him for an intruder.[96]

On July 24, 2018, the house of a certain Kagui Norodin Lasam was burned down by unidentified armed men, believed to be members of the Bangsamoro Islamic Freedom Fighters, for not giving the mandatory zakat.[97]

During the oral arguments, members of this Court pressed respondents to make a connection between the following incidents and the alleged continuing rebellion in Mindanao. Despite their categorical commitment, respondents failed to do so.

ASSOCIATE JUSTICE LEONEN:

Okay. All intelligence reports and conclusions are validated, is that not correct?

SOLICITOR GENERAL CALIDA:

According to the military, Yes, Your Honor.

ASSOCIATE JUSTICE LEONEN:

When presented to the Commander-in-Chief, it is validated especially, is that not correct? Because he's the Commander-in-Chief he has to act with very specific validated information, is that not correct?

SOLICITOR GENERAL CALIDA:

Well, I have no personal knowledge on that, Your Honor, but I trust our military, Your Honor.

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[95] *Id*. at 227.

[96] *Id.* at 235.

[97] *Id.* at 272.

ASSOCIATE JUSTICE LEONEN:

Yes, and when it is presented to Congress on a matter as significant as martial law, it is likewise validated, is that not correct?

SOLICITOR GENERAL CALIDA:

It should be validated, Your Honor.

ASSOCIATE JUSTICE LEONEN:

Yes. Now, how do you explain the inconsistencies, the incomplete statements, the inclusion of rido and kidnapping in the report that was just submitted to the highest court of the land to support the extension of martial law?

SOLICITOR GENERAL CALIDA:

I think, Your Honor, that was corrected by them, maybe there were some clerical errors.

ASSOCIATE JUSTICE LEONEN:

It was not clerical errors.

SOLICITOR GENERAL CALIDA:

To err is human, Your Honor.[98]

Contrary to respondents' justification, including kidnapping incidents and family feuds in the intelligence reports are not clerical errors. Their insertion means that these acts were committed to further the objectives of rebellion. By doing so, the government is duty bound to give details as to why they were included.

Respondents failed to overcome the burden of proving the connection between these instances. That the attacks were perpetrated by members of the terrorist groups that the President mentioned does not mean that they were committed in furtherance of rebellion. At best, they were politically motivated or based only on grudges involving private matters.

A mere invocation of random firefights or encounters involving armed men cannot engender a belief that they were undertaken in furtherance of rebellion.

[98] TSN dated January 29, 2019, pp. 70-71.

VIII

The intelligence reports are replete with inconsistencies.

The headings of the intelligence reports containing the violent incidents state, "ASG-INITIATED VIOLENT INCIDENTS,"[99] "BIFF-INITIATED VIOLENT INCIDENTS"[100] and "DI-INITIATED VIOLENT INCIDENTS."[101] However, a reading of these intelligence reports would show that the individuals involved in some of the incidents in them were not identified. That these unidentified men were involved in the violent incidents renders the whole intelligence report inconsistent, because the headings attribute these acts to specific terrorist groups.

Respondents, in no equivocal terms, stated that unidentified men were involved in some of the incidents in its intelligence reports. The intent to deceive in the crafting of the intelligence report is more real than not.

Moreover, the monthly reports of martial law's implementation in Mindandao submitted by the Armed Forces to Congress were methodically prepared to give an impression of continued rebellion in Mindanao. The facts were presented to depict a situation justifying the martial law's further extension. However, a scrutiny of these reports shows that they are brimming with irregularities. One might conclude that the reports have been tweaked to cater the need of the policy maker.

In its February 23, 2018 report[102] for the period of January 2018, the Armed Forces reported a total of 31 neutralized terrorist group members and 36 recovered firearms, as follows:

Objective	Measure of Performance	TOTAL
	Nr of neutralized terrorist group members	**31**

[99] *Rollo* (G.R. No. 243522), Vol. 1, p. 215. Comment, Annex 4.

[100] *Id*. at 246. Comment, Annex 5.

[101] *Id*. at 283. Comment, Annex 6.

[102] AFP Monthly Report, Annex A. For the month of January 2018.

Terrorist Groups destroyed	• Killed	19
	• Captured/Apprehended	1
	• Surrendered	11
	Nr of firearms recovered	**36**
	• High-powered	19
	• Low-powered	17

In February 2018, the Armed Forces reported[103] additional 42 neutralized terrorist group members and 31 firearms recovered:

Objective	**Measure of Performance**	**TOTAL (01-28 Feb 18)**	**TOTAL (01 Jan-to date)**
Terrorist Groups destroyed	Nr of neutralized terrorist group members	**42**	**73**
	Killed	20	39
	Captured/Apprehended	6	7
	Surrendered	16	27
	Nr of firearms recovered	**31**	**67**
	High-powered	18	37
	Low-powered	13	30

In March 2018, 95 terrorist group members were reported[104] to have been neutralized and 32 firearms recovered. This would have amounted to 168 neutralized terrorist group members and 99 seized firearms, but reported as follows:

Objective	**Measure of Performance**	**Inclusive Date(Mar 1-31, '18)**	**TOTAL(Jan 1 -Mar 31, '18)**

[103] AFP Monthly Report, Annex B. For the month of February 2018.

[104] AFP Monthly Report, Annex D. For the month of March 2018.

Terrorist Groups destroyed	Nr of neutralized terrorist group members	**95**	**187**
	Killed	58	98
	Captured/Apprehended	6	25
	Surrendered	31	64
	Nr of firearms recovered	**32**	**97**
	High-powered	28	95
	Low-powered	4	2

Respondents failed to submit to this Court a copy of the report for April.

In May 2018, additional 93 terrorist group members were neutralized and 83 firearms seized:[105]

Objective	**Measure of Performance**	**Inclusive Date (May 1-31, '18)**	**TOTAL (Jan 1-May 31, '18)**
Terrorist Groups destroyed	Nr of neutralized terrorist group members	**93**	**312**
	Killed	11	117
	Captured/Apprehended	41	66
	Surrendered	41	129
	Nr of firearms recovered		
	High-powered	69	208
	Low-powered	14	33

For the month of June 2018, they reported[106] additional neutralized 66 terrorists and 36 seized firearms which should have resulted to 378 neutralized terrorist group members and

[105] AFP Monthly Report, Annex E. For the month of May 2018.

[106] AFP Monthly Report, Annex F. For the month of June 2018.

277 firearms recovered. However, the number as reported was lower than what it should have been without furnishing any explanation.

Objective	Measure of Performance	Inclusive Date (June 1-30, '18)	TOTAL (Jan 1-June 30, '18)
	Nr of neutralized terrorist group members	**66**	**301**
Terrorist Groups destroyed	Killed	34	128
	Captured/Apprehended	11	28
	Surrendered	21	145
	Nr of firearms recovered	**36**	**235**
	High-powered	30	206
	Low-powered	6	29

Similar irregularities are scattered among the different monthly reports submitted by the Armed Forces. They belie any assertion that the monthly reports are consistent with the data they represent — the *raison d'etre* of martial law in Mindanao.

The inconsistencies in both the intelligence reports and monthly reports of the Armed Forces are fatal flaws in the President's plan to continue imposing martial law in Mindanao.

To determine the sufficiency of the factual basis for the extension of martial law, all relevant information must be exhaustively determined. Each piece of evidence submitted must be rigorously examined. This Court cannot blindly acknowledge the perception of the President as correct. It is our burden to uphold and safeguard our democratic processes.

I am not convinced that there is sufficient factual basis for the extension of Martial Law.

Moreover, the intelligence reports failed to present themselves credible enough to narrate the information justifying the martial law extension. There is a lack of transparency on the information

sources gathered by the Armed Forces. This renders the collected information dubious, as there is a risk that the information the President used to determine the martial law extension may have been tampered or maliciously leaked to support unscrupulous ends.

Respondents failed to illuminate this Court on the analytical standard or procedure used by the government to determine the legitimacy of the information contained in the intelligence reports. By simply alleging the information without bothering to explain how it was authenticated, this Court is left in the dark and is forced to accept any and all data or information included in the intelligence reports.

The hostile acts in the intelligence reports lack effective links to ascribe the hostilities to the Abu Sayaff Group, Bangsamoro IslamicFreedom Fighters, or Daulah Islamiyah. Respondents failed to determine the perpetrators' identities and motives in committing the hostile acts. By failing to make a concrete link between the terrorist groups and the unidentified men, the intelligence reports unduly assume that the terrorist groups were indeed the entities behind the hostilities.

This assumption cannot pass legal muster. This Court is mandated by the Constitution to make a determination as to the sufficiency of the factual basis for the martial law extension. By engaging in assumptions and guesswork, the completeness of the intelligence reports comes under scrutiny, their findings become dubious, and the conclusions they present are put in question.

Assuming that the information in the intelligence reports is credible and complete, the intelligence reports still suffer from an infirmity. During the oral arguments, this Court pressed respondents to draw a connection between the violent incidents in the intelligence reports and the existence of rebellion in Mindanao. Respondents, however, failed to sufficiently draw the nexus. This lack of a reasonable connection proves fatal in justifying the extension of martial law.

Moreover, a scrutiny of the intelligence reports and monthly reports brings about numerous inconsistencies in the documents' narration and determination of data.

The intelligence reports all contained headings to the effect that the violent incidents contained within were initiated by the Abu Sayyaf Group, Bangsamoro Islamic Freedom Fighters, and Daulah Islamiyah. However, upon closer look, the perpetuators of some of the incidents in them were unidentified.

In other words, despite their headings explicitly stating that the terrorist groups spearheaded the violent incidents, the intelligence reports still acknowledged that the perpetuators of some of the violent incidents were never identified.

The monthly reports also suffer from the same inconsistencies. They show that the data did not tally correctly. The numbers representing the measure of performance for each month did not match upon final determination. Such inconsistencies would lead a reasonable mind to no other conclusion except that the monthly reports were made in a rush.

IX

The Communist Party of the Philippines-New Peoples' Army-National Democratic Front (CPP-NPA-NDF) was not properly included as basis for the initial proclamation of martial law. The CPP-NPA-NDF, as it subsists and has subsisted for the past few decades, is not a rebellion that requires the declaration of martial law.

In my dissent in *Lagman, et al. v. Pimentel III, et al.*,[107] I pointed out that President Duterte, in his letter requesting for the longer extension of martial law, introduced the CPP-NPA as new basis for the claim that rebellion persists, not present in the Proclamation. Thus, the government, in extending martial law, inserted incidents relating to the diminishing insurrection

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[107] See J. Leonen, Dissenting Opinion in *Lagman, et al. v. Pimentel III, et al.*, G.R. Nos. 235935, 236061, 236145 and 236155, February 9, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/february2018/235935.pdf> [Per J. Tijam, *En Banc*].

of the CPP-NPA-NDF as an afterthought to bolster its claims of a rebellion requiring the martial law declaration.

In my dissent, I pointed out that there was no explanation why: (1) they should be included in justifying the need to extend martial law; (2) the martial law is only in Mindanao, despite incidents of violence outside of it attributed to the CPP-NPA; and (3) the martial law would only be for a year. It was also not explained what could be accomplished in that period, considering that the CPP-NPA has been operating for more than 50 years. I further pointed out that the army's numbers have only been decreasing—while it had around 26,000 soldiers in the 1980s, its ranks now only total 1,748 in Mincjanao, according to the Armed Forces data.

Despite this, respondents insist, and the majority accepts, that the claim that the CPP-NPA's operations require a martial law declaration. In his December 6, 2018 letter, President Duterte asserted:

> While the government was preoccupied in addressing the challenges posed by said groups, the CTG which has publicly declared its intention to seize political power through violent means and supplant the country's democratic form of government with Communist rule, took advantage and likewise posed serious security concerns[.][108]

However, in his letter-report on the martial law implementation, Armed Forces Chief of Staff Benjamin R. Madrigal, Jr. stated that the Armed Forces had claimed a total of 1,620 CPP-NPA members had been neutralized. Specifically, 62 had been killed, 189 had been captured, and 1,369 surrendered.[109]

During the oral arguments, I restated my position that the government has not sufficiently justified including the CPP-NPA as a reason for extending martial law. Save for its diminishing numbers, the CPP-NPA is a nationwide movement that can move outside the area under martial law.[110]

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[108] *Rollo* (G.R. No. 243522), Vol. 1, pp. 53-54. Annexes to the Petition.

[109] *Id*. at 59-66. Annex C of the Corrected Monthly Reports.

[110] TSN, pp. 82-83.

Respondents' failure to address these points make it clear that including the CPP-NPA to justify extending martial law is just a means of inflating the numbers of criminal or violent incidents, and thus, making their assertion that public safety requires military rule more credible.

X

As early as in *Lagman, et al. v. Medialdea, et al.*, I insisted and reiterate that martial law is product of necessity. It is only called when the civil government is incapable of maintaining peace and order.[111] It should not be indefinite, but a mere temporary condition.[112]

Article VII, Section 18 of the 1987 Constitution[113] provides that as commander-in-chief, the President shall have the power

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[111] *J.* Leonen, Dissenting Opinion in *Lagman, et al. v. Medialdea, et al.*, G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1 [Per *J.* Del Castillo, *En Banc*].

[112] *Id*. at 35.

[113] Const., Art. VII, Sec. 18 provides:

SECTION 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus*, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without any need of a call.

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial

to call out the Armed Forces to suppress rebellion. Martial law should be declared only when the calling-out powers of the President becomes inadequate to quell rebellion:

JUSTICE LEONEN:

Would you agree with me that in Section 18 of Article VII, the requirement for a declaration of martial law or the suspension of a writ of habeas corpus is not only that rebellion exists but there is a certain degree of rebellion that requires the exigency of martial law, is that not correct?

ATTY. DIOKNO:

Yes, Your Honor, and that rebellion is ongoing.

JUSTICE LEONEN:

Yes, prior to the declaration of martial law, if it is only lawless violence that happens or aggrupation of lawless violence that the military is not prohibited from calling out the Armed Forces, is that not correct?

ATTY. DIOKNO:

That is true, Your Honor.

JUSTICE LEONEN:

And would you agree with me that the degree of judicial review or the scrutiny that is involved when the President, as Commander-in-Chief, calls out the Armed Forces is less than when he declares martial law?

ATTY. DIOKNO:

Yes, Your Honor.

JUSTICE LEONEN:

Okay, battle of hearts and minds, I heard it so often. Do you recall where it came from?

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law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

. . . .

ATTY. DIOKNO:

I don't see, I think that it came from.... (interrupted)

JUSTICE LEONEN:

In Vietnam by a certain Colonel Lansdale when he inaugurated the concept of anti-insurgency and tested it using an occupying force because they were losing the war against the Vietcong, am I not correct?

ATTY. DIOKNO:

Yes, Your Honor.

JUSTICE LEONEN:

Now, this requires that winning hearts and minds is not only done by the military, that was the mistake in Vietnam, correct?

ATTY. DIOKNO:

Yes.

JUSTICE LEONEN:

That it requires the cooperation of the military and the civilian authority, is that not correct?

ATTY. DIOKNO:

That's true.

JUSTICE LEONEN:

Yes, as a matter of fact, several military plans, I think this was under AFP General Año, AFP General Bautista, among others, created the concept of Balikatan or "Whole-of-nation" approach where it was recognized that winning the war will not only take the military but will also take civilian authority, is that not correct?

ATTY. DIOKNO:

I think it's obvious that military action alone will not be sufficient, Your Honor.

JUSTICE LEONEN:

Yes, by a protracted declaration of martial law which means the military rules regardless of whether or not it is benign, there is an implicit message that local governments cannot do it, is that not correct?

ATTY. DIOKNO:

That is the case, yes.

JUSTICE LEONEN:

And the danger there is recognized by our Constitution because, therefore, it said that martial law is only exigent and contingent, is that not correct?

ATTY. DIOKNO:

I think it's clear, Your Honor, that the martial law is really intended to be a temporary to address an emergency.

JUSTICE LEONEN:

And to win against one thousand six hundred (1600) communists and five hundred seventy-five (575), I will not even say Muslim, I will say Salafis, I will say violent extremists, will take not only the might of the military no matter how professional they are, but good governance, is that not correct?

ATTY. DIOKNO:

That is so true, Your Honor, no.... (interrupted)

JUSTICE LEONEN:

And martial law is antithetical to good governance, is that not correct?

ATTY. DIOKNO:

That is the case, Your Honor.

JUSTICE LEONEN:

Because we do not give an opportunity to civilian authorities to catch up, is that not correct?

ATTY. DIOKNO:

Yes, Your Honor.

JUSTICE LEONEN:

Okay, may I ask you, can checkpoints be set up without martial law?

ATTY. DIOKNO:

Yes, Your Honor.

JUSTICE LEONEN:

Can busses be searched without martial law?

ATTY. DIOKNO:

Yes, Your Honor.

JUSTICE LEONEN:

Saluday vs. People under the ponentia of Justice Carpio, unanimous Court said it can, very recently, 2018 only. Can the attendance of LGUs be checked without martial law?

ATTY. DIOKNO:

Of course, yes, Your Honor.

JUSTICE LEONEN:

In fact, will they, will the local governments in the ARMM be more fearful and attend to their duties if it is ordered by the President himself rather than simply the military?

ATTY. DIOKNO:

Yes, I believe so.

JUSTICE LEONEN:

Who is more feared, the president or the military?

ATTY. DIOKNO:

(Chuckles) I'm not sure, Your Honor.

JUSTICE LEONEN:

Well, I guess people will say the Commander-in-Chief is more powerful than the military. So, what we need really is a serious program to counter violent extremism, as well as a serious program to build good governance rather than martial law, is that not correct?

ATTY. DIOKNO:

That is true, Your Honor.

JUSTICE LEONEN:

Because no matter the numbers of fighting forces and firearms, it will always recur if the root causes are not addressed, is that not correct?

ATTY. DIOKNO:

That is correct.[114]

A perusal of respondents' justification for a further extension of martial law leads to a single conclusion: there is absolutely no necessity for martial law.

In his December 6, 2018 letter, the President categorically stated that rebellion have already been put under control. The factual bases provided by the President in justifying the martial law extension is insufficient. Respondents, with all the data and information it has presented, failed to discharge the burden of proving that there is absolute necessity in extending martial law in Mindanao. The President is, however, not without recourse. The lawless and violent incidents in Mindanao may either be quelled by professional police action or the President's calling-out powers in relation to the Armed Forces.

XI

Judicial review of the President's exercise of his or her powers to declare martial law and suspend the privilege of the writ of *habeas corpus* is not a novel issue. Unfortunately, the majority cites jurisprudence out of context and without appreciation of the evolution of relevant doctrines. The majority opinion cites precedents that are no longer binding.

The Court may review the sufficiency of the factual basis of the martial law extension. The text of the Constitution is clear. The only disagreement pertains to how this Court should perform its review; that is, what this Court may examine and what standards to use. Likewise, we should determine what must be submitted to this Court as proof of factual basis and what standards should these submissions meet to be deemed sufficient.

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[114] TSN dated January 29, 2019, pp. 107-111.

Retracing the evolution of the constitutional provision authorizing the proclamation of martial law and suspension of the privilege of the writ of *habeas corpus*, as well as this Court's interpretation of the provision, provides guidance.

We begin with a discussion of *Barcelon v. Baker, Jr.*,[115] which was decided before the 1935 Philippine Constitution, when the Philippine Bill of 1902 was in effect.

In *Barcelon*, an application for a writ of *habeas corpus* was filed on behalf of petitioner Felix Barcelon, because he was detained and restrained in Batangas under the orders of one of the respondents, David J. Baker, Jr. In that case, the respondents countered that the Governor-General, under a resolution and request of the Philippine Commission, had suspended the writ of *habeas corpus* in Cavite and Batangas, and thus, the writ of *habeas corpus* prayed by Barcelon should not be granted. Thus, this Court was called to determine whether it could investigate the facts upon which the branches of government acted in suspending the privilege of the writ of *habeas corpus*. This Court held that the factual basis relied on by the Governor-General and the Philippine Commission in suspending the privilege of the writ was beyond judicial review, it being exclusively political in nature:

> In short, the status of the country as to peace or war is legally determined by the political (department of the Government) and not by the judicial department. When the decision is made the courts are concluded thereby, and bound to apply the legal rules which belong to that condition. The same power which determines the existence of war or insurrection must also decide when hostilities have ceased — that is, when peace is restored. In a legal sense the state of war or peace is not a question in pais for courts to determine. It is a legal fact, ascertainable only from the decision of the political department.[116] (Citations omitted)

At the time of *Barcelon*, there was no constitutional provision on martial law to interpret, much less any constitutional provision

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[115] 5 Phil. 87 (1905) [Per *J*. Johnson, *En Banc*].

[116] *Id*. at 107.

authorizing this Court to review any government act in relation to its declaration.

This did not change with the passage of the 1935 Constitution, which authorized the President to place any part of the Philippines under martial law in cases of invasion, insurrection, or rebellion, or imminent danger thereof, when required by public safety. Article VII, Section 10(2) of the 1935 Constitution provided:

> (2) The President shall be commander-in-chief of all armed forces of the Philippines, and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. In case of invasion, insurrection, or rebellion or imminent danger thereof, when the public safety requires it, he may suspend the privilege of the writ of *habeas corpus*, or place the Philippines or any part thereof under Martial Law.

Thus, the first relevant constitutional provision authorized the president to declare martial law, but did not expressly authorize this Court to review his or her exercise of this power.

In *Montenegro v. Castañeda*,[117] when the 1935 Constitution was in effect, this Court was called upon to determine the validity of the president's suspension of the privilege of the writ of *habeas corpus*. The petitioner in that case argued that there was no state of invasion, insurrection, rebellion, or imminent danger to justify the suspension of the privilege of the writ. This Court, citing *Barcelon*, deferred to the president's authority to decide on the matter as being final and conclusive:

> To the petitioner's unpracticed eye the repeated encounters between dissident elements and military troops may seem sporadic, isolated, or casual. But the officers charged with the Nation's security, analyzed the extent and pattern of such violent clashes and arrived at the conclusion that they are warp and woof of a general scheme to overthrow this government *vi et armis*, by force and arms.
>
> And we agree with the Solicitor General that in the light of the views of the United States Supreme Court thru Marshall, Taney and Story quoted with approval in Barcelon vs. Baker (5 Phil., 87, pp.

[117] 91 Phil. 882 (1952) [Per *J.* Bengzon, *En Banc*].

98 and 100) the authority to decide whether the exigency has arisen requiring suspension belongs to the President and "his decision is final and conclusive" upon the courts and upon all other persons.

Indeed as Justice Johnson said in that decision, whereas the Executive branch of the Government is enabled thru its civil and military branches to obtain information about peace and order from every quarter and corner of the nation, the judicial department, with its very limited machinery cannot be in better position to ascertain or evaluate the conditions prevailing in the Archipelago.[118] (Emphasis supplied)

However, almost 19 years later, this Court unanimously reversed this deferential policy in *In the Matter of the Petition for Habeas Corpus of Lansang v. Garcia*.[119]

Still operating under the 1935 Constitution, this Court, in *In Re: Lansang*, was called upon to revisit its deferential position in *Montenegro* and *Barcelon*, to determine whether it should inquire into the existence of the factual basis required for the suspension of the privilege of the writ of *habeas corpus*. Abandoning its previous position, this Court decided that it had this authority, and should use it. It held:

[T]he members of the Court are now *unanimous* in the conviction that it has the authority to inquire into the existence of said factual bases in order to determine the constitutional sufficiency thereof.

Indeed, the grant of power to suspend the privilege is neither absolute nor unqualified. The authority conferred by the Constitution, both under the Bill of Rights and under the Executive Department, is limited and conditional. The precept in the Bill of Rights establishes a general rule, as well as an exception thereto. What is more, it postulates the former in the *negative*, evidently to stress its importance, by providing that "(t)he privilege of the writ of *habeas corpus* shall *not* be suspended...." It is only by way of *exception* that it permits the suspension of the privilege "in cases of invasion, insurrection, or rebellion" — or, under Art. VII of the Constitution, imminent danger thereof — "when the public safety requires it, in any of which

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[118] *Id*. at 886-887.

[119] 149 Phil. 547 (1971) [Per *C.J.* Concepcion, *En Banc*].

events the same may be suspended wherever during such period the necessity for such suspension shall exist." For from being full and plenary, the authority to suspend the privilege of the writ is thus circumscribed, confined and restricted, not only by the prescribed setting or the conditions essential to its existence, but, also, as regards the time when and the place where it may be exercised. These factors and the aforementioned setting or conditions mark, establish and define the extent, the confines and the limits of said power, beyond which it does not exist. And, like the limitations and restrictions imposed by the Fundamental Law upon the legislative department, adherence thereto and compliance therewith may, within proper bounds, be inquired into by courts of justice. Otherwise, the explicit constitutional provisions thereon would be meaningless. Surely, the framers of our Constitution could not have intended to engage in such a wasteful exercise in futility.[120] (Emphasis in the original, citation omitted)

This Court further ruled that the separation of powers under the Constitution is not absolute. The system of checks and balances recognizes the executive department's supremacy on the suspension of the privilege of the writ of *habeas corpus* only when it is exercised within certain discretionary limits. Determining whether the executive department has acted within the ambit of its discretion is vested with the judicial department, where it is constitutionally supreme.[121]

Shortly after *In Re: Lansang*, on September 22, 1972, former President Ferdinand E. Marcos (former President Marcos) issued General Order No. 2, causing the arrest and detention of the petitioners in the consolidated petitions of *In the Matter of the Petition for Habeas Corpus of Aquino, et al. v. Ponce Enrile*.[122] The majority in that case ruled that the sufficiency of the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* was purely political, and was outside the ambit of the courts' power of review. The case, therefore,

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[120] *Id*. at 585-586.

[121] *Id*.

[122] 158-A Phil. 1 (1974) [Per *C.J.* Makalintal, *En Banc*].

not justiciable. The ruling in *In Re: Aquino* effectively abandoned the doctrine laid down in *In Re: Lansang*.

On January 17, 1973, former President Marcos issued Proclamation No. 11-02, which certified and proclaimed that the 1973 Constitution has been ratified and has come into effect. The 1973 Constitution reiterated the president's commander-in-chief powers under the 1935 Constitution.

Article VII, Section 11 of the 1973 Constitution provided:

> SECTION 11. The President shall be commander-in-chief of all armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. In case of invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it, he may suspend the privilege of the writ of habeas corpus, or place the Philippines or any part thereof under martial law.

Almost a decade after, this Court, in *In the Issuance of the Writ of Habeas Corpus for Parong, et al. v. Enrile*,[123] reiterated the doctrine of political question in *Baker* and *Montenegro*. It decreed:

> In times of war or national emergency, the legislature may surrender a part of its power of legislation to the President. Would it not be as proper and wholly acceptable to lay down the principle that during such crises, the judiciary should be less jealous of its power and more trusting of the Executive in the exercise of its emergency powers in recognition of the same necessity? Verily, the existence of the emergencies should be left to President's sole and unfettered determination. His exercise of the power to suspend the privilege of the writ of habeas corpus on the occasion thereof, should also be beyond judicial review. Arbitrariness, as a ground for judicial inquiry of presidential acts and decisions, sounds good in theory but impractical and unrealistic, considering how well-nigh impossible it is for the courts to contradict the finding of the President on the existence of the emergency that gives occasion for the exercise of the power to suspend the privilege of the writ. For the Court to insist on reviewing

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[123] 206 Phil. 392 (1983) [Per *J.* De Castro, *En Banc*]. Also known as *Garcia v. Padilla*.

Presidential action on the ground of arbitrariness may only result in a violent collision of two jealous powers with tragic consequences, by all means to be avoided, in favor of adhering to the more desirable and long-tested doctrine of "political question" in reference to the power of judicial review.

Amendment No. 6 of the 1973 Constitution, as earlier cited, affords further reason for the reexamination of the Lansang doctrine and reversion to that of Barcelon vs. Baker and Montenegro vs. Castaneda.[124] (Citations omitted)

Notably, barely six (6) days after the promulgation of *In Parong, et al.*, this Court, in *In the Matter of the Petition for Habeas Corpus of Morales, Jr. v. Enrile*[125] reverted to the ruling of justiciability as pronounced in *In Re: Lansang*. In that case, it ruled that the issue of the sufficiency of the factual bases the president relied on in suspending the privilege of the writ of *habeas corpus* raises a justiciable, rather than a political, question. It further decreed that this Court "must inquire into every phase and aspect of petitioner's detention ... up to the moment the court passes upon the merits of the petition"[126] to ensure that the due process clause of the Constitution had not been violated.

The justiciability of the president's discretion was finally laid to rest upon the ratification of the 1987 Constitution.[127] Under Article VII, Section 18, this Court is duty bound to review the sufficiency of the factual basis of the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*. It provides, in part:

SECTION 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless

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[124] *Id*. at 431-432.

[125] 206 Phil. 466 (1983) [Per J. Concepcion, Jr., Second Division].

[126] *Id*. at 496.

[127] J. Leonen, Dissenting Opinion in *Lagman, et al. v. Medialdea, et al.*, G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1, 510 [Per J. Del Castillo, *En Banc*].

violence, invasion or rebellion. In case of invasion or rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of habeas corpus or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of habeas corpus, the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.

The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without any need of a call.

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 or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

In *David v. Senate Electoral Tribunal*,[128] this Court stressed that legal provisions are the result of the re-adoption or re-calibration of previously existing rules. More often than not, these recalibrated legal provisions are introduced to address and cure the shortcomings and inadequacies of the previous rules:

Interpretation grounded on textual primacy likewise looks into how the text has evolved. Unless completely novel, legal provisions are the result of the re-adoption — often with accompanying re-calibration — of previously existing rules. Even when seemingly novel, provisions are often introduced as a means of addressing the inadequacies and excesses of previously existing rules.

One may trace the historical development of text: by comparing its current iteration with prior counterpart provisions, keenly taking

[128] 795 Phil. 529 (2016) [Per *J.* Leonen, *En Banc*].

note of changes in syntax, along with accounting for more conspicuous substantive changes such as the addition and deletion of provisos or items in enumerations, shifting terminologies, the use of more emphatic or more moderate qualifiers, and the imposition of heavier penalties. The tension between consistency and change galvanizes meaning.[129]

The historical developments that led to the advent of the 1987 Constitution show its framers' unmistakable intent to expand the power of this Court to review and check on possible abuses committed by the executive department in the exercise of its powers. As it stands, the 1987 Constitution mandates this Court to review and assess the factual bases relied upon by the President in declaring martial law.[130] The political question doctrine has steadily diminished.

The conclusion reached by the majority on the authority of this Court to review the factual basis of the martial law extension ignores this historical and jurisprudential backdrop. The majority cites *Montenegro* as basis for the presumption of correctness to which the judiciary should accord the acts of the executive and legislative departments.[131] However, *Montenegro* was decided almost 60 years ago, in 1952, under a different constitution. The opinion it holds has become *passe* not only because it was delivered more than half a century ago, but also because it runs counter against the categorical mandate of the fundamental law of the land.

I reiterate my opinion in *Lagman, et al. v. Medialdea, et al.*:[132]

The Supreme Court cannot shirk from its responsibility drawn from a historical reading of the context of the provision of the Constitution through specious procedural devices. As experienced

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[129] *Id*. at 572-573.

[130] *J*. Leonen, Dissenting Opinion in *Lagman v. Medialdea*, G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1, 551 [Per *J*. Del Castillo, *En Banc*].

[131] *Ponencia*, p. 22.

[132] G.R. Nos. 231658, 231771 and 231774, July 4, 2017, 829 SCRA 1 [Per *J*. Del Castillo, *En Banc*].

during the darker Marcos Martial Law years, even magistrates of the highest court were not immune from the significant powerful and coercive hegemony of an authoritarian. It is in this context that this Court should regard its power. While it does not substitute its own wisdom for that of the President, the sovereign has assigned it the delicate task of reviewing the reasons stated for the suspension of the writ of habeas corpus or the declaration of martial law. This Court thus must not be deferential. Its review is not a disrespect of a sitting President, it is rather its own Constitutional duty.[133]

XII

Years from now, the younger generation will look back to review history as we write them today. They will then hold all of us to account.

They will discover how, during these trying times, the very institution that our society depends on to secure their liberties to pursue meaningful freedoms under the framework of a constitution won by our people allowed the steady slide toward authoritarianism and the consequent loss of critical dissent. They will look to the saga of these four (4) cases relating to Proclamation No. 216 and the way that the clear text, jurisprudence, and historical context of Article VII, Section 18 of the 1987 Constitution was mangled.

The majority in all these cases have normalized martial law and the suspension of the writ of *habeas corpus*. They have reduced the most stringent modality of judicial review found in our Constitution into a mere token and cursory exercise. Worse, they have allowed the exercise of an undefined set of commander-in-chief powers within an arbitrary time frame, without a goal, and within a wide territorial area without clear judicially discoverable basis. They have allowed the Commander-in-Chief to declare martial law and suspend the privilege of the writ of *habeas corpus* against violent acts which did not call for such remedies.

It is no argument that this martial law is different from the martial law of the seventies. Those of us who lived through

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[133] *Id*. at 512.

those days were also told of the myth of the New Society or the *Bagong Lipunan*. Many among us were beguiled with the narrative of a strong, brilliant, and omniscient leader — only to wake up years later with all our democratic institutions not only undermined but also rendered impotent. The narrative of a benevolent authoritarian is never true.

We have not learned our lessons well. The violent manifestations by those whom we call rebels or violent extremists are the product of the abuses and inequality within our society. These are acts of desperation delivered by corruption and a system that rewards greed and fails to make meaningful citizens of us all.

History writes of the folly of the authoritarian that keeps power through fear. Reading the history of our people correctly, we should already know that it will be the political and economic empowerment of our people that will assure that those who resort to violence will be dissuaded, discovered, or weakened.

The declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* over a wide swath of territory does the exact opposite. That is why it should never be normal. It cannot be allowed to be extended three (3) times. That is why its declaration should be scrutinized carefully, deliberately and conscientiously, by both the Congress and this Court. It is an exceptional measure. It should not hide the lack of professionalism, the failures of intelligence, and the inefficiencies that have spawned our troubles.

Those who dissent within a society are not necessarily its enemies, or its government's. It may just be that they perform the role of asking those in power and in the majority to pause and listen to reason, rather than acquiesce to the tendencies of the strongest among them.

I regret that, in this case and for the fourth time, we did not again take careful pause. Despite the woeful state of the data provided to us, the majority looked the other way. It would have been this Court's opportunity to show that we can reason better and truly think for ourselves.

Sapiere aude.

For these reasons and for the sake of this and future generations, I dissent.

Accordingly, I vote to **GRANT** the Petitions.

DISSENTING OPINION

JARDELEZA, *J.*:

Through Resolution of Both Houses No. 6 dated December 12, 2018, the Congress of the Philippines, in a Joint Session, by 235 affirmative votes comprising the majority of all its members, has voted to further extend Proclamation No. 216, series of 2017, entitled "*Declaring a State of Martial Law and Suspending the Privilege of the Writ of Habeas Corpus in the Whole of Mindanao*," from January 1, 2019 to December 31, 2019. Once again, this Court's power under Section 18, Article VII of the Constitution is invoked to determine the sufficiency of the factual bases for yet another year's *extension* of martial law.

Similar to my position in *Lagman v. Medialdea*,[1] which involved the constitutionality of the *first* extension of Proclamation No. 216, I do not dispute that a state of rebellion exists in Mindanao. However, I remain unconvinced that the Government has met the burden of the Constitution's public safety requirement as to support the continued extension of martial law and suspension of the privilege of the writ of *habeas corpus*. To me, the Government's own evidence shows that the *scale* of the rebellion which started in 2016, and continued into 2017, has been materially *degraded* in 2018, as a result of the success and bravery of the men and women of the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP). As a result, I do not believe that there is sufficient factual basis to support any further extension of martial law in Mindanao. I thus vote to GRANT the petitions.

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[1] G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1.

Furthermore, I submit this Opinion to reiterate my grave concerns over the Court's seeming abdication of its duty under Section 18, Article VII of the Constitution as a consequence of its adamant refusal to "substitute [its] own judgment"[2] over that of the President or Congress. Respect for the President's assessment of the necessity of the declaration of martial law and/or suspension of the privilege of the writ of *habeas corpus* is not incompatible with the Court's faithful fulfillment of its duty to determine the sufficiency of the President's factual bases. Such "permissive deference" becomes all the more objectionable when presentation by the Government of its factual bases is allowed to be made *in camera*.

I

To begin, I reiterate my position that public interest is better served when proceedings such as these are conducted with full transparency.[3] In fact, our actual experience with three successive years of martial law litigation convinces me that the Court should reject, for being anathema to our constitutional system, any plea from the Government to present its evidence *in camera*. By requiring authorship of its own evidence and submissions, full accountability can be exacted from the Government to justify its resort to such an extreme measure as the declaration of martial law and/or suspension of the privilege of the writ.

In his Compliance[4] dated January 21, 2019, the Solicitor General manifested that the Government would submit in "an executive session" the Monthly/Periodic Reports on Martial Law Implementation made by the Department of National Defense (DND) to the Congress from January 1, 2018 to December 31, 2018 (the Reports). According to the Solicitor General, presentation of its evidence in an executive session is

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[2] *Ponencia*, p. 27.

[3] See Jardeleza, *J.*, Separate Opinion, *Lagman v. Medialdea*, G.R. Nos. 231658, 231771, & 231774, July 4, 2017, 829 SCRA 1, 602-668.

[4] See Resolution, *Lagman v. Medialdea*, G.R. No. 243522, January 21, 2019.

necessary as the Reports "involve highly sensitive and confidential matters affecting the security of the State."[5] The Court issued a Resolution[6] directing the OSG to submit the Reports in 15 sealed copies, to be filed directly with the Office of the Clerk of Court *En Banc* only, for the Members of the Court to make a preliminary assessment of whether the Reports may only be appropriately discussed and deliberated upon in an executive session. By noon of January 25, 2019, the Solicitor General submitted 15 copies of the Reports in sealed envelopes,[7] which were promptly distributed to the Members of the Court.

In its *En Banc* session in the morning of January 29, 2019, the Court briefly discussed the Reports and decided to call for an executive session to be held just before the oral argument scheduled in the afternoon of the same day. During this executive session, and in the presence of counsel for petitioners, the Solicitor General again argued against the release of the Reports to the public. After I expressed the view that the Reports did not contain sensitive material, such as secret sources of information or names of confidential informants, and thus should be made available to the public,[8] the Solicitor General changed tack and asked to seek clearance from his principals on the matter.

As it would turn out, the Government had no objections and the Reports were eventually made available to petitioners. Still, and considering the effects of a declaration of martial law and

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[5] That the Government would deign to renew a plea for *in camera* proceedings (after having decided **not** to do so in *Lagman v. Pimentel*) is for me a lamentably disappointing experience of constitutional *déjà vu*.)

[6] *Rollo*, pp. 716-720.

[7] *Supra* note 4.

[8] To my mind, the Reports did not implicate the types of information falling within the "single, extremely narrow class of cases" that the United States Supreme Court, in the leading case of *New York Times Co. v. United States* (403 U.S. 713, 1971), held may be validly covered by prior restraint. These types of information include, for example, sailing dates of transports or the number and location of troops, when the Nation is at war. (See also Separate Opinion in *Lagman v. Medialdea, supra*)

the suspension of the privilege of the writ of *habeas corpus*, I feel strongly that such a decision (whether to make public the presentation of the Government's factual bases) should not be left to the latter's will or benevolence.

Furthermore, I feel that the Court could have had a *more robust* response to the Government's claims of confidentiality. In cases such as this, transparency should be the rule, confidentiality the exception. The Court should be neither allayed nor cowed by general invocations of reasons of national security; to be the meaningful check the Constitution intended it to be, the Court should require more than general invocations of confidentiality. All evidence should be made public, save for instances when the Government is able to immediately show how a specific piece of evidence, if publicly disclosed, may reveal critical information.[9]

For the same reasons, it is my view that the public, through petitioners and their counsel, must be given access to the Government's evidence *at the earliest possible time*. Here, although copies were made available to petitioners the same afternoon of the oral argument, they (and, more importantly, the public) were still deprived of four days, from the time the Reports were made available to the Court, to vet the Government's evidentiary claims.[10] As shown by Justice Benjamin S. Caguioa's thoughtful and detailed analysis, the accuracy of the Government's Reports leaves much to be desired, including, but not limited to, its identification of its sources, attribution of responsible groups, and the number and location of violent incidents. An approach that gives the public more time to independently verify the facts as presented by the Government would also serve to sharpen the sense of obligation and responsibility of the concerned Government functionaries to make their Reports as accurate as possible, and, in turn, enable the Court to better ascertain the truth respecting the matters of fact presented to it.

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[9] *Supra* note 3.

[10] Given the unusually short timeframe in martial law litigation, four days is an eternity.

I shall now discuss the grounds on which I base my judgment that these petitions should be granted.

II

I have previously articulated my views on the definition of "rebellion" as used under Section 18, Article VII of the Constitution, which is simply "armed public resistance to the Government."[11] A "rebel," on the other hand, is defined as "a person who refuses allegiance to, resists, or rises in arms against the government or ruler of his or her country," or a "person who resists any authority, control, or tradition;"[12] one "who unjustly take up arms against the ruler of the society, or the lawful and constitutional government, whether their view be to deprive him of the supreme authority or to resist his lawful commands in some instance, and to impose conditions on him."[13]

These definitions overlap with what is considered "terrorism" or a "terrorist" under Republic Act (RA) No. 9372, otherwise known as the Human Security Act of 2007,[14] which lists rebellion

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[11] *Supra* note 3.

[12] https://www.dictionary.com/browse/rebel, last accessed on February 9, 2019.

[13] https://thelawdictionary.org/rebel/, last accessed on February 9, 2019.

[14] Sec. 3. *Terrorism*. — Any person who commits an act punishable under any of the following provisions of the Revised Penal Code:

a. Art. 122 (Piracy in General and Mutiny in the High Seas or in the Philippine Waters);

b. Art. 134 (Rebellion or Insurrection);

c. Art. 134-a (*Coup d' Etat*), including acts committed by private persons;

d. Art. 248 (Murder);

e. Art. 267 (Kidnapping and Serious Illegal Detention);

f. Art. 324 (Crimes Involving Destruction), or under:

1. Presidential Decree No. 1613 (The Law on Arson);
2. Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990);
3. Republic Act No. 5207 (Atomic Energy Regulatory and Liability Act of 1968);
4. Republic Act No. 6235 (Anti-Hijacking Law);
5. Presidential Decree No. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974); and

under Article 134 of the Revised Penal Code (RPC) as one of the predicate crimes for the commission of terrorism.

Since a rebel, as above defined, can fit the profile of the local and communist terrorist groups sought to be quelled by the Government in this present extension of martial law in Mindanao, I take no issue on the question of whether local or communist terrorist groups are actually perpetrating rebellion as defined in the RPC, or merely carrying out terrorist attacks or lawless violence. As long as these groups commit public, armed resistance to the government, to me, the requirement of rebellion as used under Section 18, Article VII of the Constitution has been reasonably met. In fact, I have no serious disagreement with the majority's conclusion that, with the proliferation of both local and communist terrorist groups, a state of rebellion continues to exist in Mindanao.

I thus maintain my view that the Court should accord "rebellion" a meaning that will not unduly tie the government's hands and unwittingly make it ill-equipped to deal with the exigencies of the times. To be sure, there are many lives lost, ruined, and threatened by the presence of communist and local terrorist groups. The present administration should be allowed reasonable leeway to mitigate these groups' impact on society and the economic development of our nation.

In any case, I believe that the purpose of the strict proscriptions under Section 18, Article VII of the Constitution is not so much to limit the meaning of rebellion but more to limit the instances calling for the President's exercise of his power to declare martial law and/or suspend the privilege of the writ of *habeas corpus*.

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6. Presidential Decree No. 1866, as amended (Decree codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunition or Explosives).

Thereby sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand shall be guilty of the crime of terrorism and shall suffer the penalty of forty (40) years of imprisonment, without the benefit of parole as provided for under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended. (Emphasis supplied.)

Otherwise stated, the restrictions in Section 18, Article VII of the Constitution are directed mainly on the exercise of presidential power; it is not necessarily fixated on the meaning of the terms used. If the purpose of martial law is self-preservation, then the government should be allowed to wield that power as a potent tool to realize its purpose, unhampered by technicalities in meaning that was neither placed nor intended by the framers in the first place.

III

A

Even conceding that a state of rebellion exists in Mindanao, I still do not find that the situation has reached such scale as to satisfy the public safety requirement under Section 18, Article VII of the Constitution.

In *Lagman v. Pimentel*,[15] involving the constitutionality of the second extension of martial law in Mindanao, I had occasion to express my view that "the public safety requirement under Section 18, Article VII of the Constitution operates to limit the exercise of the President's extraordinary powers *only to rebellions of a certain scale as to sufficiently threaten public safety*."[16] I, thereafter, sought to identify certain circumstances present in the rebellion in Marawi City which, in my view, could serve as minimum indicators of scale as to reasonably justify the President's resort to extraordinary measures: (1) there are actual and *sustained* armed hostilities with government forces; and (2) armed groups have actually *taken over*, and are *holding, territory*.[17]

In these present petitions, the Government attempts once more to present evidence showing the magnitude of the rebellion for

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[15] G.R. No. 235935, February 6, 2018.

[16] See Jardeleza, *J*., Dissenting Opinion, *Lagman v. Pimentel*, G.R. No. 235935, February 6, 2018.

[17] *Id.* After finding that none of the above indicators obtained in *Lagman v. Pimentel*, I voted against the further extension of martial law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao.

purposes of extending martial law in Mindanao until December 31, 2019. After going over the Government's evidence, I do not find any of the circumstances present which reasonably indicate that the state of rebellion in Mindanao has reached a scale as to justify the President's exercise of his extraordinary powers.

Nowhere in its presentation or its pleadings did the Government assert that there are actual and sustained armed hostilities (*e.g.*, continuous exchange of fire) between government troops and the terrorist groups in any place in Mindanao. Neither was there any claim (much less, actual evidence) that these terrorist groups have taken over, or are actually holding, territory, similar to what the Maute rebels were able to achieve during the Marawi siege. At most, the Government's data shows that the armed terrorist groups have not been quelled, and that they continue to be dangerous and capable of inflicting violence and terror in Mindanao. This notwithstanding, the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*, given their tremendous effect on certain civil liberties, are measures of last resort, not knee-jerk responses, to address such terror threats.

B

Even if taken in their best light and for the avowed purposes for which they were presented, the totality of the Government's evidence still does not support a reasonable conclusion that they meet the Constitution's public safety requirement as to justify the extension of martial law in Mindanao.

In defending against the petitions that led to *Lagman v. Pimentel*, the Government, using data supplied by the AFP, introduced into evidence, for the first time in the history of martial law litigation, certain *metrics* by which to gauge the magnitude of the rebellion waged by the two terrorist groups in the year 2017. The AFP's metrics, as reaffirmed by Lieutenant General Madrigal (Gen. Madrigal) during oral arguments in

this case,[18] has four components: (1) the manpower count; (2) firearms count; (3) number of controlled barangays; and (4) number of violent incidents (which include harassment, liquidation, ambuscade, arson, carnapping, grenade throwing, improvised explosive device (IED) explosions, kidnapping and murder).

For the year 2017, the figures corresponding to these metrics, as summarized from the AFP Presentation[19] in *Lagman v. Pimentel*, are as follows:

Rebel/Terrorist Groups	Manpower	Firearms	Controlled Barangays	Violent Incidents
Communist Rebels	1,748	2,123	426	422
Dawlah Islamiyah	137	162	-	53
BIFF	388	328	59	116
ASG	508	598	52	44
GRAND TOTAL	**2,781**	**3,211**	**537**	**635**[20]

For purposes of the present petitions, the Government employed the same *metrics* and presented as evidence the following statistics[21] for the year 2018:

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[18] Transcript of Oral Arguments-*En Banc*, pp. 52-53; In the oral argument on January 29, 2019, the following exchanges were made between Associate Justice Jardeleza and Gen. Madrigal:
Justice Jardeleza: x x x I think, correct me, if I am correct, if I'm right, the capability of the enemies of the State is measured and I see it that's how you present it to Congress in terms of (1) manpower; that's why you have number of people; (2) firearms; (3) I think controlled barangays...
Gen. Madrigal: Yes, Your Honor.
Justice Jardeleza: And no. (4) violent incidents?
Gen. Madrigal: Yes, Your Honor.
Justice Jardeleza: So those four, which are in your data and as presented today and as presented to Congress. The sum total is what you call capability?
Gen. Madrigal: Yes, Your Honor.

[19] AFP presentation in *Lagman v. Pimentel*, slide nos. 19, 26, 37, 52 and 75.

[20] *Id.*

[21] OSG Comment, Annexes "4", "5", "6", and "7"; undated letter of Major General Fernando T. Trinidad to Cong. Edcel C. Lagman, Annex

Rebel/Terrorist Groups	Manpower	Firearms	Controlled Barangays	Violent Incidents
Communist Rebels	1,636[22]	1,568[23]	232[24]	193
Dawlah Islamiyah	150	91	16	10
BIFF	264	254	50	76
ASG	424	473	138	66
GRAND TOTAL	**2,474**	**2,386**	**436**	**345**[25]

Even the most cursory comparison of the 2017 and 2018 data would show that all four components of the AFP's capability metrics went **down**.

In his letter to President Duterte recommending the extension of martial law, Secretary of National Defense Delfin N. Lorenzana attributed the "**degradation** in manpower and capabilities" of rebel groups to be "a result of the continued operations of the security forces of the National Government."[26]

AFP Chief of Staff, General Carlito Galvez, Jr. (Gen. Galvez), for his part, also reported a "*significant* **reduction** on the

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"E-14" of Lagman petition; OSG Comment, paragraph 33 states that these are 2018 "end of first semester data" without citing sources or providing figures for communist terrorist groups. In addition, I note that the 2018 figures vary per source of information. For example, the figures on firearms and controlled barangays corresponding to communist rebels are not found in the government's submissions. They were instead provided by Major General Lorenzo (Maj. Gen. Lorenzo) in his presentation at the oral arguments. Moreover, in his testimony before the Joint Session of Congress, Gen. Madrigal stated that the government is still pursuing a total of 2,435 communist and local terrorist groups, which is less than the total manpower tallied above.

[22] Testimony of Gen. Madrigal during the Joint Session of Congress on December 12, 2018, Transcript, p. 27. Per Gen. Madrigal, the figures were "current... at this point."

[23] Presentation of Maj. Gen. Lorenzo, Transcript of the Oral Arguments-*En Banc*, pp. 18-19.

[24] *Id.*

[25] OSG Comment, Annexes "4", "5", "6", and "7".

[26] OSG Comment, Annex "1". Letter of Gen. Delfin N. Lorenzana to President Duterte dated December 4, 2018.

capability of the threat groups."[27] In his letter to President Duterte, he mentioned a 62% and 45% **reduction** in the manpower and firepower, respectively, of *local* terrorist groups, and a 31% and 38% reduction in manpower and firepower, respectively, of *communist* terrorist groups. He also reported a **reduction** in threat atrocities from local and communist terrorist groups by 22% and 36%, respectively.[28]

Thus, and as a trier of fact who previously voted *against* the extension of martial law in 2018 due to lack of reasonable showing of scale, I find even less reason to further extend martial law here, when even by the Government's own estimation, the *scale* or *magnitude* of the rebellion in Mindanao has been significantly reduced or degraded.

Notably, publicly available information seems to validate the government's findings of degradation/reduction. A report to the United States (US) Congress,[29] for example, gave the following account: (1) the "force strength" of violent extremist Philippine organizations affiliated with the ISIS,[30] which was around "300 to 550 members" in the last quarter of 2018, is "significantly less than the group's peak strength during the Marawi siege," where "more than 1,000 militants fought;" (2) there were "approximately 40 foreign fighters, mostly from Malaysia and Indonesia, in the Philippines during the [last quarter of 2018]," and there is "no evidence of either an influx or exodus of foreign fighters during the [same] quarter;"[31] and (3) ISIS-

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[27] OSG Comment, Annex "1". Undated Letter of Gen. Carlito Galvez, Jr. to President Duterte, emphasis supplied.

[28] *Id.*

[29] Report of the Lead Inspector General to the United States Congress on Operation Pacific Eagle-Philippines, October 1, 2018 to December 31, 2018, p. 5, https://media.defense.gov/2019/Feb/05/2002086502/-1/-1/1/FY2019_LIG_OCOREPORT.PDF(last accessed February on 17, 2019).

[30] Collectively referred as "ISIS-Philippines" or "ISIS-P" in the Report, https://media.defense.gov/2018/Jun/18/2001932643/1/1/1/FY2018_LIG_OCO_OIR_Q1_12222017_2.P DF (last accessed on February 17, 2019).

[31] Report of the Lead Inspector General to the United States Congress on Operation Pacific Eagle-Philippines, October 1, 2018 to December 31,

Philippines "neither gained nor lost territory during the quarter, and extremist activity was limited to the Sulu archipelago. x x x [It] made no progress in expanding its operations or influence outside of the Sulu archipelago."[32]

C

I now take this occasion to share some further observations:

First. The AFP's use of certain metrics by which our armed forces measures enemy capability appears consistent with the practice of the United States military in their war against terror, specifically as waged against ISIS and ISIS-related or ISIS-inspired groups.[33]

Second. Statements made by our top military officials confirm that there *is* some science behind the military's recommendation to declare martial law and/or suspend the privilege of the writ of *habeas corpus*. This, I feel, is important to help assuage any fears that the President's exercise of his extraordinary powers was made without rhyme or reason, or worse, on pure whim.

In his testimony before the Joint Session of Congress on December 12, 2018, Secretary Lorenzana professed:

> We need more time to catch these people, to neutralize them, to reduce their capability to create trouble. *Kapag po nai-reduce iyan* ng about 30 percent *ng kanilang* capability and they become law enforcement problems, then the police forces can take over without the military. *Kaunti na lang kami siguro, so support* na lang kami.[34]

2018, p. 6, https://media.defense.gov/2019/Feb/05/2002086502/-1/-1/1/FY2019_LIG_OCOREPORT.PDF (last accessed on February 17, 2019).

[32] *Id.*

[33] *Id.* My appreciation of the use of metrics by the American military was reinforced when I came across the report submitted to the United States Congress that I earlier adverted to. In the report, the United States Indo-Pacific Command was stated to be using "four metrics to track the degradation of ISIS-Philippines," namely: (1) lack of an ISIS-Core designated ISIS-Philippines emir; (2) the amount of funding ISIS-Core provides ISIS-Philippines; (3) the quality of ISIS-Core media coverage of ISIS-Philippines activities; and 4) cohesion or fragmentation of ISIS-Philippines' individual elements.

[34] Transcript of the Joint Session of Congress, p. 57.

During the oral argument, Gen. Madrigal affirmed Secretary Lorenzana's statement before Congress[35] and explained that, the "military definition of destruction of the enemy," is "[reduction of their capability] by 30% in terms of strength, firearms, the support system."[36] In such case, the conflict will be considered a law enforcement, rather than military, matter, on the basis of which the AFP "will gladly recommend the lifting of martial law."[37] Gen. Madrigal's statements were seconded by Solicitor Calida, who afterwards declared:

Your Honor, I'd like to clarify when we were speaking about the 30%, Your Honor, statement of Secretary Lorenzana, I asked them, what is the baseline and what did 30%, when will you impose this? And they said, this year, Your Honor. If in this year they can reduce the capability to 30% this year, then they will recommend as you heard from the General, Your Honor.[38]

Third. Although Solicitor General Calida committed to clarify, through the Memorandum to be submitted by the Government, the baseline on which the 30% capability reduction threshold will be applied,[39] he would unfortunately renege on this

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[35] I asked the Government to explain Secretary Lorenzana's statement. My question was, "Is it the position of the government that when the capability of the local and the communist terrorist groups are degraded by 30%, then you can already recommend to the president that martial law is over?" (Transcript of Oral Arguments-*En Banc*, January 29, 2019, p. 51.)

[36] Transcript of Oral Arguments-*En Banc*, January 29, 2019, p. 52.

[37] Transcript of Oral Arguments-*En Banc*, January 29, 2019, pp. 52-54.

[38] Transcript of Oral Arguments-*En Banc*, January 29, 2019, p. 55.

[39] Transcript of Oral Arguments-*En Banc*, January 29, 2019, pp. 56-58

In the oral argument, the following exchanges transpired:

Justice Jardeleza: So, Mr. SolGen, the position we would like to know from the government and please cover it in the memo. If we can agree now, we are looking, the Court will be looking to you what is the baseline? We have to agree. If the baseline is January 1, 2019...?

Solicitor General Calida: Yes, Your Honor.

Justice Jardeleza: If the baseline is January 1, 2019, that is the meaning of what the officers have testified today.

commitment. Instead of clarifying the 70%-30% baseline as initially promised, the Solicitor General, in the Government's Memorandum, would thereafter assert that: "[t]he assessment of whether to extend martial law defies computation: it is not subject to any mathematical formula;"[40] the AFP's calculus "cannot bind the President who is only bound by Section 18, Article VII of the Constitution;"[41] "it would be contrary to common sense if the decision of the President is to depend on the calculations of his alter ego;"[42] and "an extension of martial law would still be valid even if the DND Secretary declares that the rebels' capabilities had been degraded by more than seventy percent."[43]

I find the above assertions by the Solicitor General to be worrisome and disconcerting, to say the least. Having heard the explanation of the AFP, admitted the existence of the mathematical formula, and committed to clarify the baseline for its application during oral arguments, the Solicitor General now refuses to admit responsibility to any of these. This effectively puts the cart before the horse and adopts a stance of self-preservation that is inconsistent with the ideal of public accountability.

Solicitor General Calida: That's correct, Your Honor.

Justice Jardeleza: So, I do not know how the Court will decide. If the Court decides not to grant an extension, then that's the end of it. If the Court decides to grant an extension, we have agreed today that you will give us what is the baseline in terms of manpower, in terms of firearms, controlled barangays...

Solicitor General Calida: Capability.

x x x x x x x x x

Justice Jardeleza: So we have a deal. That's the...

Solicitor General Calida: Yes, Your Honor.

[40] OSG Memorandum, para. 82.

[41] OSG Memorandum, para. 82.

[42] OSG Memorandum, para. 83.

[43] OSG Memorandum, paras. 82-83.

Indeed, the power to declare martial law rests solely in the executive. Gen. Madrigal exhibited sufficient discernment when he stated during oral arguments that the AFP's role is recommendatory,[44] meaning it does not bind the president. I find that the position taken by the Solicitor General underrates the military's competence to recommend the lifting of martial law based on verifiable facts, as it also undermines the president's ability to act upon the recommendation of his own subordinates. The stance taken by the Solicitor General, to my mind, is not only unfair to the Court, but also unfair to its principals.

Fourth. The AFP's statements on its use of certain metrics and the baselines considered for a recommendation on martial law are entitled to the highest credibility, having been conveyed by high-ranking military officials in proceedings sanctioned by the Constitution.

More importantly, as a Member of the Court specifically mandated by the Constitution to determine the sufficiency of the factual bases for the President's declaration of martial law and/or suspension of the privilege of the writ of *habeas corpus*, I appreciate the AFP's use of science and metrics. To me, these serve as objective[45] and reasonable measures by which I can arrive at a conclusion. In fact, it is my view that the Court should inquire into its application in similar future cases as a way of measuring the factual existence of the twin requirements for the declaration or extension of martial law. In the same manner, the government is duty-bound to make a truthful reporting and make information transparent. This is the essence of public accountability of all government entities whose primary duty is to serve and protect the People.

Finally, public office is a public trust; public officers and employees must, first and foremost, be accountable to the people at all times. They must serve the people with utmost

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[44] Transcript of Oral Arguments-*En Banc*, p. 54; Gen. Madrigal stated that "We will gladly recommend the lifting of martial law if we attain that," referring to 70% reduction of rebel and terrorist capability.

[45] As circumstances would allow.

responsibility, integrity, loyalty, and efficiency.[46] Public officials and employees are expected to discharge their duties with the highest degree of excellence, professionalism, intelligence and skill.[47] Consequently, the AFP is expected to remain as faithful to its duty make the correct reporting of facts as it is with its mandate to protect the people[48] and safeguard their rights.[49] Thus, it should stand to reason that if the AFP finds that there is no longer a need to extend martial law based on facts gathered from its intelligence activities and the application of the 30% rule on degradation, it is duty-bound to make a recommendation to the President to lift the declaration.

Similarly, if the President determines that there is no longer any factual basis to extend martial law based, among others, on the recommendation of the AFP, then it is also his duty to lift it. He is no less accountable to the people by virtue of his position. In fact, it is his first and foremost duty to uphold the sanctity of our laws.

To end, the proceeding provided for under the third paragraph of Section 18, Article VII of the Constitution is not a game of superiority or popularity. It is, in essence, a proceeding to determine whether the actions undertaken by the Government are in furtherance of the welfare of its constituents. It is of such nature that, regardless which of the opposing parties win, the outcome should be a victory of the people.

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[46] CONSTITUTION, Art. XI, Sec. 1.

[47] Sec. 4, R.A. No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees.

[48] Sec. 3, Art. II, of the 1987 Constitution provides: The Armed Forces of the Philippines is the protector of the people and the State.

[49] Sec. 5, Art. XVI of the 1987 Constitution provides:

1. All members of the armed forces shall take an oath or affirmation to uphold and defend this Constitution.
2. The State shall strengthen the patriotic spirit and nationalist consciousness of the military, and respect for people's rights in the performance of their duty.

ACCORDINGLY, I vote to **GRANT** the petitions in G.R. Nos. 243522, 243677, 243745 and 243797 and **DECLARE INVALID** Resolution of Both Houses No. 6 of the Senate and the House of Representatives dated December 12, 2018, for failure to comply with Section 18, Article VII of the 1987 Constitution.

DISSENTING OPINION

CAGUIOA, *J.*:

Before the Court are consolidated petitions filed under Section 18, Article VII of the Constitution, assailing the constitutionality of the third extension of the proclamation of martial law and suspension of the privilege of the writ of *habeas corpus* in the entire Mindanao for another year, from January 1 to December 31, 2019. The petitioners in G.R. Nos. 243522, 243745, and 243797 additionally pray for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction (WPI).

Sufficiency of Factual Basis

A. Whether there exists sufficient factual basis for the extension of martial law in Mindanao

All four petitions question the sufficiency of the factual basis of the third extension of martial law, arguing cumulatively that there is no longer any rebellion in Mindanao and public safety does not require the extension.

The respondents, on the other hand, claim that there are ongoing rebellions being waged by the Communist Party of the Philippines (CPP) - New People's Army (NPA) - National Democratic Front (NDF) and the DAESH-inspired groups in Mindanao and that public safety requires the extension. Moreover, the respondents maintain that the President and Congress had probable cause to believe that there are ongoing rebellions in Mindanao.

A.1. Whether rebellion exists and persists in Mindanao

In support of the President's request for extension of martial law, the Executive department presented to the Congress during the joint session of the Senate and the House of Representatives a compilation of violent incidents committed by the Abu Sayyaf Group (ASG), the Bangsamoro Islamic Freedom Fighters (BIFF), the Daulah Islamiyah (DI) and other groups that have established affiliation with ISIS/DAESH (collectively called by the Executive and respondents as Local Terrorist Rebel Groups [LTRGs]), and by what the Executive calls the Communist Terrorist Rebel Groups (CTRGs), the components of which are: the CPP, the NPA, and the NDF for the period of January 1 to November 30, 2018.[1]

The violent incidents attributed to the ASG, BIFF and DI consist of one hundred thirty-seven (137) incidents of ambuscades, arson, firefighting/attack, grenade throwing, harassment, IED/landmining explosion, attempted kidnapping, kidnapping, liquidation, murder and shooting. As for the NPA, the violent incidents consist of one hundred seventy-seven (177) incidents involving ambushes, raids, nuisance harassments and harassments, disarming, landmining, SPARU operations, liquidations, kidnappings, robberies/holdups, bombings, and arson.[2]

According to the respondents, these criminal acts constitute rebellion as they were committed in furtherance of the crime.[3] The President was aware that these criminal activities are part and parcel of rebellion as he stated in the letter that "[the ASG, BIFF, DI], and other terrorist groups x x x continue to defy the government by perpetrating hostile activities during the extended period of Martial Law" and "x x x the CTG which has publicly

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[1] *Rollo* (G.R. No. 243522), Vol. 2, pp. 825-826, citing Slide Nos. 8 and 9 of the AFP Presentation.

[2] *Id*. at 826-827, citing Slide Nos. 27 and 26 of the AFP Presentation.

[3] *Id*. at 827

declared its intention to seize political power through violent means and supplant the country's democratic form of government with Communist rule, took advantage and likewise posed serious security concerns x x x."[4]

Before the Court, the respondents submitted as Annexes to their submissions an updated compilation of reports of these violent incidents to include all violent incidents for the entire period of 2018 which they attributed to the ASG, the BIFF, the DI, and the NPA. These Annexes, in turn, had covering tables summarizing the contents of the submitted data. With the exception of the NPA-initiated violent incidents, these covering tables/summaries are supported by individual reports that supply the date of the incident, the type of incident, and the particulars of the said incident. In some cases, these include acronyms that tend to show the source of the information.

The respondents argue that these reports, being duly validated and authenticated in accordance with military procedure, are akin to entries in official records by a public officer which under the law enjoy the presumption as *prima facie* evidence of the facts stated therein, and that the trustworthiness of these official records is reinforced by the legal presumption of regularity in the performance of official duty.[5] As well, the respondents point out that the petitioners have not advanced any basis for the Court to doubt the reports which emanated from the AFP Office of the Deputy Chief of Staff for Intelligence J2 (OJ2).[6] They submit that there really are no inconsistencies, and the annexes are faithful accounts of the violent incidents in 2018 attributed to a specific threat group.[7]

These arguments do not persuade.

Section 18, Article VII of the Constitution squarely places the burden of proof upon the political departments to show

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[4] *Id*. at 828. Emphasis in the original.

[5] *Id*. at 838.

[6] *Id.*

[7] *Id*. at 839.

sufficient factual basis for the extension of martial law and the suspension of the privilege of the writ of *habeas corpus*. This is the Court's rulings in *Lagman v. Medialdea*[8] and *Lagman v. Pimentel III*[9] and no reason exists to deviate therefrom. Accordingly, applying the presumption of regularity in the performance of official duty and the presumption that these reports are *prima facie* evidence of the facts stated therein in a manner that excuses the respondents from introducing substantial evidence to prove to the Court that the twin requirements for the extension exist, defeats any intelligent review under Section 18.

To stress anew, Section 18 is in the nature of a neutral fact-checking mechanism by the Court. Having established the quantum of evidence required for the determination of the elements of rebellion as defined in the Revised Penal Code (RPC) as "probable cause", and in the determination of the twin requirements as substantial evidence, there are certain fundamental precepts in administrative fact-finding that are applicable. In *Ang Tibay v. CIR*,[10] the Court held:

> x x x The fact, however, that the Court of Industrial Relations may be said to be free from the rigidity of certain procedural requirements does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character. There are cardinal primary rights which must be respected even in proceedings of this character:
>
> x x x x x x x x x
>
> (2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the **tribunal *must consider* the evidence presented**. x x x In the language of this Court in Edwards vs. McCoy, 22 Phil., 598,

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[8] G.R. Nos. 231658, 231771 & 231774, July 4, 2017, 829 SCRA 1 [*En Banc*, per *J.* Del Castillo].

[9] G.R. Nos. 235935, 236061, 236145 & 236155, February 6, 2018 [*En Banc*, per *J.* Tijam].

[10] 69 Phil. 635 (1940) [*En Banc*, per *J.* Laurel].

"the right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration."

(3) "While the duty to deliberate does not impose the obligation to decide right, it does imply **a necessity** which cannot be disregarded, namely, that **of having something to support its decision**. A decision with absolutely nothing to support it is a nullity, a place when directly attached." x x x This principle emanates from the more fundamental principle that the genius of constitutional government is contrary to the vesting of unlimited power anywhere. Law is both a grant and a limitation upon power.

(4) **Not only must there be some evidence to support a finding or conclusion x x x, but the evidence must be "substantial."** x x x "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind accept as adequate to support a conclusion." x x x The statute provides that 'the rules of evidence prevailing in courts of law and equity shall not be controlling.' The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order. x x x But this assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a **basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence.** x x x

(5) **The decision must be rendered on the evidence presented at the hearing, or at least contained in the record** and disclosed to the parties affected. x x x Only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them. It should not, however, detract from their duty actively to see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy. x x x[11]

As applied to a Section 18 review, these fundamental principles require the government to show as much of its factual basis **to**

[11] *Id*. at 641-643. Citations omitted; emphasis and underscoring supplied.

enable the Court to reach the conclusion that the third extension of martial law and the suspension of the privilege of the writ of *habeas corpus* is justified by substantial evidence.

This burden entails the introduction of evidence of such quality and quantity that, after the consideration by the Court, there is "substantial evidence," that is, **relevant evidence with rational probative force, as a reasonable mind might accept as adequate to support a conclusion**. Stated differently, the evidence of the government must be such that, after weeding out the irrelevant evidence and those that are incompetent (uncorroborated hearsay or rumor) even under flexible evidentiary rules of an administrative proceeding, enough evidence remains to engender in the mind of the Court the finding that (1) rebellion persists in Mindanao, and (2) public safety requires the extension. ***This cannot be hurdled by the expediency of a presumption.***

To be certain, according the political departments the presumption of regularity in a Section 18 proceeding is simply untenable **and completely opposite to the duty of government to positively establish, with facts and evidence, the basis for the extension of Martial Law**:

> x x x [W]hile the Executive and Legislative departments cannot be compelled to produce evidence to prove the sufficiency of factual basis, these presumptions cannot operate to gain judicial approbation in the face of the refusal to adduce evidence, or presentation of insufficient evidence. For otherwise, the ruling that fixes the burden of proof upon the Executive and Legislative departments becomes illusory, and logically inconsistent: the Court cannot rule on the one hand that respondents in a Section 18 proceeding bear the burden of proof, and then on the other, rule that the presumptions of constitutionality and regularity apply. In short, the Court cannot say that the respondents must present evidence showing sufficient factual basis, but if they do not or cannot, the Court will presume that sufficient factual basis exists. x x x

Indeed, if the Court needs to rely upon presumptions during a Section 18 review, then it only goes to show that the Executive and Legislative departments failed to show sufficient factual basis for the declaration or extension. Attempts at validation on this ground

is equivalent to the Court excusing the political departments from complying with the positive requirement of Section 18.[12]

That said, and even if the presumption of regularity can somehow apply in a Section 18 proceeding, it will not prevent the Court from examining the government's evidence for consistency and credibility and weighing their rational probative force.

In this regard, the Court notes that this disputable presumption, even if accorded, may not even apply. After a careful examination of the submissions of the government, it is immediately evident that **the evidence itself contain irregularities that foreclose the application of the presumption**.

These include, just to name a few examples:

1. The government describes its evidence as consisting of reports duly validated and authenticated according to military procedure. Moreover, it is described as "reports x x x [emanating] from the OJ2".[13] However, in the government's report of the April 30, 2018 liquidation[14] attributed to the BIFF, the Report states:

30 April 2018		LIQUIDATION	Inihatid na sa kani kanilang pamilya ang dalawang SF member na pinagbabaril Patay sa Mother Bagua to sa lungsod noong isang araw.Sa Impormasyong ibinahagi ng Col. Eros James Uri sa BNFM COT. Kahapon ng tanghali ng bigyan ng Military Honor ang dalawa bago paman mahatid sa kani kanilang mga pamilya sina Pfc. Richard Bendanillo. Na taga Alamada, North Cotabato at Cpl. Nelson Paimalan na taga UPI, Maguindanao. BIFF naman ang nakikitang mga suspek sa dalawang sundalo.

[12] *J.* Caguioa, Dissenting Opinion in *Lagman v. Pimentel III*, *supra* note 9, at 4.

[13] *Rollo* (G.R. No. 243522), Vol. 2, p. 838.

[14] *Rollo* (G.R. No. 243522), Vol. 1, p. 265. The entry reads as follows:

"Inihatid na sa kani kanilang pamilya ang dalawang SF member na pinagbabaril Patay sa Mother Bagua to sa lungsod noong isang araw. Sa Impormasyong ibinahagi ng Col. Eros James Uri sa BNFM COT. Kahapon ng tanghali ng bigyan ng Military Honor ang dalawa bago paman mahatid sa kani kanilang mga pamilya sina Pfc. Richard Bendanillo. Na taga Alamada, North Cotabato at Cpl. Nelson Paimalan na taga UPI, Maguindanao. BIFF naman ang nakikitang mga suspek sa pamamaril sa dalawang sundalo."

A cursory search of BNFM COT yields the result that BNFM COT means Brigada News FM Cotabato.

Clearly, the source of the information for the foregoing entry is a news report. This belies, therefore, the claimed "validation" and "authentication" warranted by the government of the said AFP Reports as to the information that is proffered therein.

In this regard, it should be noted that out of the one hundred fifty (150) reports (entries) of violent incidents making up the respondents' submission, only seventy-one (71) entries had acronyms tending to point to the military or the police as the ultimate source of the information.[15] The inclusion of the foregoing stray entry thus prevents the Court from presuming that the remaining seventy-nine (79) entries that did not state their source actually come from the military or the police.

This thus casts doubt as to the source and the level of validation and authentication of the said information as warranted by the government of the said AFP Reports. In the same manner that the Court in *Lagman v. Pimentel III* held that online news articles have no probative value with respect to proving human rights violations, the Court cannot now presume as a regular military report that which obviously appears to be but based on a newsbyte. **Without the identification of the source of information, the report is nothing but an uncorroborated hearsay or rumor**, using the words of *Ang Tibay v. CIR*.[16]

2. Moreover, as noted by certain members of the Court during the oral arguments, the Annexes are **replete** with entries that are incomplete. Examples[17] of these, as flashed on the screen during the oral arguments, include:

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[15] During the oral arguments, the Court requested the respondents to submit a glossary of these acronyms to aid in the understanding of the reports. No submission was made.

[16] *Supra* note 10, at 643.

[17] See *rollo* (G.R. No. 243522), Vol. 1, pp. 217-218.

31-Jan-18	AMBUSCADE	(3) workers of DPWH, ARMM identified as Abdulbasit Daimun, Adzhar Dakis and Abdul Sarabin, with one SCAA escort identified as Mittoy Estajal onboard a dump truck emanated from Ung kaya Pukan going to DPWH Office in Brgy Lagasan, Lamitan City, both in Basilan were fired upon by two (2) unidentified gunmen using M203 Grenade launcher upon reaching vicinity of Brgy Baas, same city that resulted to the killing of two (2) civilians (Daimun and Dakis) and wounding of two (2) others (Sarabin and Estajal). Afterwich, the perpetrators withdrew towards the direction of Brgy Lebbuh, same city. The wounded victims were brought to Ciudad Medical in Zamboanga City for medication. Comments: a. The incident is an extortion related and possibly perpetrated by the group of Arjan Apinu under A5GSL Abdulla Jovel Indanan @ GURU, b. Since 2015, the group of @ GURU was monitored engaged in extortion activity targeting Construction Company, who has ongoing government projects in Tipo Tipo and Tuburan municipalities and prominent businessmen in the cities of certain Muksin Kaidin and Mukim (LNU) while onboard their vehicle were ambushed by undermined number of unidentified armed men at So Kapok Hawani, Brgy Latih, Patikul, Sulu. The victims sustained multiple GSWs and the body of Muksin Kaidin was burned due to the explosion of gasoline of said vehicle causing their death. Afterwhich, the suspects withdrew towards unknown directions while the cadavers of the victims were brought to IPHO Hospital, KHTB, Brgy Bus-Bus, Jolo, same province for proper disposition. Comments: a. Initial investigation conducted by the PNP averred that the motive of the incident is said to be a long-standing family feud or RIDO between the family of the victims and the suspects, b. On the other hand, it is most likely that this could be a handiwork of the Ajang-Ajang group tasked by the ASG to liquidate suspected military informants in the area. c. Patikul MPS conducted not pursuit operations on the suspects and will likewise conduct investigation to establish the motive and identity of the perpetrators.
01-Feb-18	AMBUSCADE	

The respondents were given the opportunity to rectify or supplement these gaps in the evidence. **Unfortunately, these gaps were not addressed.**[18]

Given the state of the government's evidence as observed above, the presumption of regularity in the performance of official duties, even if accorded, has been negated by the gaps and inconsistencies therein.

With the presumption unavailing, the evidence presented by the respondents will now be examined.

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[18] Despite the Court's instructions to the respondents to rectify or supplement these gaps in the evidence in their Memorandum, these incomplete entries were not completed.

Evidence of persisting rebellion

The Court has previously held that the rebellion required for the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus*, or the extension thereof, is rebellion as defined under Article 134 of the Revised Penal Code:

> Article 134. *Rebellion or insurrection*. — How committed. — The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippines or any part thereof, of any body of land, naval or other armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.

In this regard, the rule as it stands — and that which is applicable for the instant review — is that for purposes of establishing the sufficiency of the factual basis for the extension of martial law, the government bears the burden of proof to show that:

First,

(1) [T]here is a (a) public uprising and (b) taking [of] arms against the [G]overnment; and

(2) [T]he purpose of the uprising or movement is either (a) to remove from the allegiance to the Government or its laws: (i) the territory of the Philippines or any part thereof; or (ii) any body of land, naval, or other armed forces; or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives.[19]

And *second*, that public safety requires the extension.

To show the first requirement — the persistence of rebellion already parsed in *Lagman v. Medialdea*, the government must show with substantial evidence **the concurrence of both the overt act of rebellion and the specific purpose**. This is consistent with the jurisprudence on rebellion, thus:

> From the foregoing, it is plainly obvious that it is not enough that the overt acts of rebellion are duly proven. **Both purpose and overt**

[19] *Lagman v. Pimentel III*, *supra* note 9, at 39, citing *Lagman v. Medialdea*, *supra* note 8, at 53 and 54.

acts are essential components of the crime. With either of these elements wanting, the crime of rebellion legally does not exist. In fact, even in cases where the act complained of were committed simultaneously with or in the course of the rebellion, if the killing, robbing, or etc., were accomplished for private purposes or profit, without any political motivation, it has been held that the crime would be separately punishable as a common crime and would not be absorbed by the crime [of] rebellion.[20]

The totality of the evidence presented by the respondents consists of the following:

1. Specific reports of violent incidents divided into the groups which purportedly initiated them and a covering summary for each group. These were attached to the respondents' Comment as Annexes:
    a. Annex "4" referring to ASG-initiated violent incidents,
    b. Annex "5" referring to BIFF-initiated violent incidents,
    c. Annex "6" referring to Dl-initiated violent incidents, and
    d. Annex "7" referring to NPA-initiated violent incidents.[21]
2. Monthly Reports in the implementation of Martial Law;
3. Letter[22] of Major General Pablo M. Lorenzo, Deputy Chief of Staff for Intelligence of the AFP; and Letter[23] of Police Director Ma. O R. Aplasca containing PNP Data and other supporting reports providing updates or more information on the reports contained in the Annexes.[24]

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[20] *People v. Lovedioro*, 320 Phil. 481, 489 (1995) [First Division, per *J.* Kapunan]. Emphasis and underscoring supplied.

[21] *Rollo* (G.R. No. 243522), Vol. 1, pp. 215-289.

[22] *Rollo* (G.R. No. 243522), Vol. 2, pp. 847-859.

[23] *Id.* at 860.

[24] Annexes "2-A" to "2-U" of the OSG Memorandum, *id*. at 861-881.

Analysis of the data

To be able to make a reasonable inference from the compiled reports submitted, these reports (also called entries) were identified, analyzed, and then grouped according to: (1) the **designation of the incident**,[25] (2) the **perpetrator**,[26] (3) the **motive**,[27] and (4) completeness of the entry.[28] The number of reported **casualty**[29] is also noted.

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[25] **Designation of the incident.** The designation by the respondents of the types of the incidents (as those enumerated in the respondents' covering summaries in the column activities, *e.g.*, ambuscade, arson, carnapping, kidnapping, and murder) is adopted throughout this Opinion for consistency.

[26] **Identification of the perpetrator.** The reports are grouped according to these criteria:

a. No perpetrator. Entries are considered to have identified no perpetrator when the report does not state any perpetrator at all, states that the violent incident was committed by "[an] unidentified person," simply "armed men," "unidentified perpetrators," or descriptions of similar import.

b. Suspected perpetrator. Entries are considered as stating a suspected perpetrator when it states that the violent incident was committed by "[more or less] ten (10) suspected [ASG/BIFF/DI]," "unidentified armed men believed to be [ASG/BIFF/DI] member" or other descriptions of similar import.

c. General identification. Entries are considered as having generally identified the perpetrator when it states that the violent incident was committed by "[ASG/BIFF/DI]," "undetermined number of [ASG/BIFF/DI]," "riding-in-tandem [ASG/BIFF/DI]" or other descriptions of similar import.

d. Specific identification. Entries are considered to have specifically identified a perpetrator when it names a specific person belonging to either ASG, BIFF or DI as having committed the violent incident described, *e.g.*, "three (3) individuals with one (1) identified as Darmin Nani @ Kulot, an ASG member x x x," "undetermined number of ASG members led by Abdulla Jovel Indanan @ Guru," and "assailants identified as @ Ben, Mungkay, Alaam and Allam."

[27] **Statement of motive.** A report is considered to have no motive when no motive is stated or when the report states that the "motive of the incident not yet determined," "motive x x x is yet to be determined," or "motive of the incident is still unknown." All reports that state a motive are discussed under the Annexes where they are found. See February 5, 2018 account of liquidation, *rollo* (G.R. No. 243522), Vol. 1, p. 221; June 25, 2018 account of kidnapping, *id*. at 237; and July 15, 2018 account of murder, *id*. at 239, as examples.

[28] **Incomplete entries.** As shown by the exemplars in pages 8-9, these entries show, on their face, that the text in the cells were incomplete. For

ASG-initiated violent incidents

Annex "4" consists of alleged ASG-initiated violent incidents for the whole year of 2018 presented through a covering summary and specific reports therefor. The covering summary[30] is replicated below:

ANNEX "4"

ASG - INITIATED VIOLENT INCIDENTS
(01 January to 31 December 2018)

ACTIVITIES	INCIDENTS						CASUALTIES										
	PROVINCE						[illegible]		CIVILIAN				ASG				
	BASILAN	SULU	TAWI-TAWI	ZAMBOANGA PENINSULA	OTHERS	TOTAL	WIA	KIA	[illegible]	[illegible]	[illegible]	[illegible]	KLD	[illegible]	ARR	CAP	SUR
AMBUSCADE	4	1				5		2	4		4						
ARSON	1					1											
CARNAPPING		1				1											
GRENADE THROWING	1					1											
HARASSMENT	2	14				16	6		1		4		1				
IED LANDMINING/EXPLOSION	3	5				8	10	6	8		6						
ATTEMPTED KIDNAPPING	1	1				2											
KIDNAPPING		15		1	2	18				3							
LIQUIDATION	3	3				6		1			5						
MURDER	3		1			4					4						
SHOOTING		3		1		4	1		6								
SUBTOTAL	18	43	1	2	2	66	17	9	19	3	22	0	2	0	0	0	0
GRANDTOTAL	66						17	9	19	3	22	0	2				

The above table shows a total of sixty-six (66) incidents attributed to the ASG that resulted in thirty-three (33) persons dead, thirty-six (36) persons wounded, and three (3) persons missing.

The specific reports accompanying the summary, on the other hand, show sixty-six (66) incidents resulting in thirty-seven (37) persons dead (not 33), thirty-eight (38) persons wounded (not 36), and thirty-nine (39) persons missing (not 3). For ease of reference, the totality of the data in Annex "4," <u>when analyzed</u>, shows:

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purposes of conclusions made below, these incomplete entries are still considered. However, if the missing text prevents the Court from identifying the perpetrator or the motive, even if by context these are supplied, then these entries are considered to have stated no perpetrator or motive, as applicable. See May 6, 2018 account of a kidnapping incident, *id*. at 285; and May 13, 2018 account of a liquidation incident, *id*. at 284, in Annex "6" as examples of the treatment for missing text.

[29] **Casualty.** Casualty count is a total count including all reported casualty, without distinguishing between government, civilian or armed groups.

[30] *Rollo* (G.R. No. 243522), Vol. 1, p. 215.

ASG-initiated Violent Incidents	No. of Reports	Reported Casualty		
		Dead	Wounded	Missing
No perpetrator, no motive[31]	20	12	19	15
No perpetrator, motive not political[32]	1	0	0	0
Suspected ASG, no motive[33]	7	6	3	1
Suspected ASG, motive not political[34]	4	2	4	2
ASG generally identified, no motive[35]	13	9	6	5
ASG specifically identified, no. motive[36]	17	7	6	16
ASG specifically identified, motive not political[37]	4	1	0	0
Total	**66**	**37**	**38**	**39**
Per respondents' summary	66	33	36	3
Incomplete Reports	10	16	12	11

Of these sixty-six (66) entries, ten (10) are incomplete entries. Thirty-two (32) entries either do not identify perpetrators or identify the perpetrators as "suspected ASG" or "believed to be ASG." Fifty-seven (57) entries either do not identify the motive or state that the motive is undetermined. These gaps concur in twenty-six (26) entries which neither identify the perpetrators nor supply the motive.

Of the nine (9) entries that supply the motive, seven (7) are equivocal as to the political purpose. The information contained in these entries even lend to the conclusion that these are common crimes committed for private purposes or without the political motivation required in rebellion. These are:

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[31] *Id.* at 216, 219, 220, 223, 226-229, 232-233, 237, 239-243 and 245.

[32] *Id*. at 230.

[33] *Id*. at 216, 223, 225, 229, 231 and 240.

[34] *Id.* at 217-218, 222 and 226.

[35] *Id*. 221, 226-227, 234, 236-238 and 242-245.

[36] *Id*. at 216, 221-222, 224, 232-235, 239, 241 and 244-245.

[37] *Id*. at 219, 224, 227 and 235.

1. The January 31, 2018 account of ambuscade wherein DPWH workers were fired upon by "two (2) unidentified gunmen" with a grenade launcher. The Report goes on to state that it was "possibly perpetrated by the group of Arjan Apinu under ASGSL Abdulla Joven Indanan x x x Group of @ GURU was monitored engag[ing] in extortion activit[ies] targeting [construction [c]ompan[ies]" and that the motive is "**extortion[-]related**."[38]

2. The February 1, 2018 account of an ambuscade wherein a vehicle was ambushed by "unde[te]rmined number of unidentified armed men x x x most likely x x x [the] handiwork of the Ajang-Ajang group tasked by the ASG to **liquidate suspected military informants**." The stated motive is "**long-standing family feud or RIDO** between the family of the victims and the suspects."[39]

3. The February 14, 2018 account of kidnapping committed by "undetermined number of men" by abducting a DPWH-ARMM Engineer at gunpoint. The Report states that "motive of the incident is **probably** part of the **express kidnapping efforts** of the ASG."[40]

4. The February 28, 2018 account of harassment of BPAT and LGU conducting road construction projects by "[more or less ten (10)] fully armed ASG led by ASGSL Abdullah Jovel INDANAN @ GURO." The Report goes on to state that "@ GURO has a **family feud** with the incumbent Barangay Chairman of Dugaa" where the shooting happened.[41]

5. The March 7, 2018 account of the kidnapping of a school teacher "by three (3) unidentified armed men onboard

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[38] *Id.* at 217. Emphasis and underscoring supplied.

[39] *Id*. at 218. Emphasis and underscoring supplied.

[40] *Id*. at 222. Emphasis and underscoring supplied.

[41] *Id*. at 224. Emphasis and underscoring supplied.

a single motorcycle" but "it could not be ignored that the **ASG could have been involved** in said abduction since x x x incidents were rampant in the area." The Report continues, "[i]nitial [PNP] investigation [show] that the **victim was in debt with a large amount of money from an unidentified man** and has been neglecting paying her dues."[42]

6. The April 16, 2018 account of a grenade thrown at the warehouse of the ARMM District Engineer by an "unidentified person wearing black jacket." The Report states that the "initial motive x x x is believed to be **extortion**."[43]

7. The June 17, 2018 account of the shooting of ASGSL Bagade @ Sayning who was "**mistakenly shot and killed** by his own brother Muslim Bagade."[44] The PNP data[45] confirms this accidental shooting.

As well, among the violent incidents used to support the persistence of rebellion and requirement of public safety are two (2) incidents **that appear to have taken place outside of Philippine jurisdiction**:

1. The September 11, 2018 account of the kidnapping of the captain and crew of a fishing trawler **in Sempornah, Sabah** by "two (2) armed men with M16." The report states that the kidnap victims were taken by pumpboat towards Sitangkai/Sibutu Island in the Philippines.[46]

2. The December 5, 2018 account of the kidnapping of one (1) Malaysian and two (2) Indonesians who were kidnapped **in Lahad Datu, [Sabah]** and thereafter

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[42] *Id*. at 226. Emphasis and underscoring supplied.

[43] *Id.* at 230. Emphasis and underscoring supplied.

[44] *Id.* at 235. Emphasis and underscoring supplied.

[45] *Rollo* (G.R. No. 243522), Vol. 2, p. 881.

[46] *Rollo* (G.R. No. 243522), Vol. 1, p. 242. Emphasis and underscoring supplied.

monitored in Pata, Sulu. According to the report, the kidnappers were "around 20 ASG members with three of them identified as ASGSL RADEN ABU, SALIP MURA, and @ BONG" and "ASG had already contacted the Consul x x x."[47]

BIFF-initiated violent incidents

Annex "5" consists of alleged BIFF-initiated violent incidents for the whole year of 2018 presented through a covering summary followed by specific reports therefor. The summary[48] submitted by the respondents is replicated as follows:

BIFF-INITIATED VIOLENT INCIDENTS
(01 January to 31 December 2018)

ANNEX "5"

ACTIVITIES	INCIDENT			[illegible]												
	PROVINCE			[illegible]		[illegible]		CIVILIAN				BIFF				
	NORTH COTABATO	MAGUINDANAO	TOTAL	WIA	KIA	WIA	KIA	[illegible]	[illegible]	[illegible]	[illegible]	KLD	APP	ARR	CAP	SUR
AMBUSCADE	1		1													
ARSON		2	2													
EXPLOSION			1													
FIREFIGHT/ATTACK	1	3	4					4		2	2	9				
GRENADE THROWING		3	2													
HARASSMENT	9	31	40	7								2				
IED LANDMINING/ROADSIDE BOMBING	2	19	21	13	1	2				4		1				
KIDNAPPING		1	1						2							
MURDER		1	1							2						
SHOOTING		1	1				1									
LIQUIDATION	1	1	2		2		1	1								
SUBTOTAL	14	62	76	21	4	2	3	5	2	8	2	9	0	0	0	0
GRANDTOTAL	76			21	4	2	3	5	2	8	2	9				

The table shows a total of seventy-six (76) incidents attributed to the BIFF that resulted in twenty-four (24) persons dead, thirty (30) persons wounded, and two (2) persons missing.

[47] *Id*. at 244. Emphasis and underscoring supplied.

[48] *Id*. at 246.

The specific reports, on the other hand, show seventy-four (74) incidents[49] (not 76) resulting in sixteen (16) persons dead (not 24), thirty-five (35) persons wounded (not 30), and two (2) persons missing. For ease of reference, the totality of the data in Annex "5," when analyzed, shows:

BIFF-initiated Violent Incidents	No. of Reports	Reported Casualty		
		Dead	Wounded	Missing
No perpetrator, no motive[50]	28	3	26	0
Suspected BIFF, no motive[51]	6	2	0	0
Suspected BIFF, motive not political[52]	1	0	0	0
BIFF generally identified, no motive[53]	20	1	8	0
BIFF generally identified, motive not political[54]	2	3	0	2
BIFF specifically identified, no motive[55]	13	5	0	0
BIFF specifically identified, motive not political[56]	4	2	1	0
Total	**74**	**16**	**35**	**2**
Per respondents' summary	76	24	30	2
Incomplete Reports	1	0	0	0

[49] Annex "5" contains 76 entries. There were two double entries; hence,only 74 distinct incidents.

[50] *Id*. at 247-250, 254, 256-257, 259-260, 263-264, 266, 269-278 and 281-282.

[51] *Id*. at 248, 251,265, 269, 275 and 279.

[52] *Id*. at 272.

[53] *Id*. at 247-248, 253, 255-256, 258-263,265, 267, 271 and 278-280.

[54] *Id*. at 272 and 274.

[55] *Id*. at 248, 252, 257, 262, 267-271, 273 and 276-277.

[56] *Id*. at 264, 266 and 281.

Of these seventy-four (74) incidents attributed to the BIFF, thirty-five (35) entries either do not identify the perpetrators or identify them merely as "suspected BIFF" or "believed to be BIFF." Sixty-seven (67) entries either do not supply the motive or state that the motive is undetermined. Twenty-eight (28) of these entries neither identify the peipetrators nor supply the motive.

Only seven (7) entries supply both perpetrators and the motive. However, they are also equivocal as to the purpose:

1. The April 18, 2018 account of an ambuscade by "[more or less] 10 fully armed men led by Guinda Mamaluba and @ Walo, all members of BIFF under Duren Mananpan @ Marines" of a CAFGU member thereafter carting away the latter's cows. The stated motive is "**Rido**."[57]

2. The May 6, 2018 account of a firefight **between MILF and BIFF**, specifically, between "Cmdr @ Diego of 105th BC, MILF against Mando Manot BIFF Karialan Faction." The Report states that **Datu Manot opposed Taya placing his campaign tarp** because Datu believes Taya killed his brother Tatu. Further @ Diego, cousin of Datu, supports Taya.[58]

3. The July 24, 2018 account of arson committed by "unidentified armed men believed to be members of BIFF under unknown commander." The Report states that "**subject did not give into the mandatory zakat** to the armed group in the area during the harvest of his farm land."[59]

4. The July 23, 2018 account of a kidnapping. The Report described it as two (2) suspected assets of the operating

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[57] *Id*. at 264. Emphasis and underscoring supplied.

[58] *Id*. at 266. Emphasis and underscoring supplied.

[59] *Id.* at 272. Emphasis and underscoring supplied.

troops in Pidsandawan, Mamasapano allegedly kidnapped by "BIFF x x x **for interrogation**."[60]

5. The August 13, 2018 account of a liquidation involving a CAFGU member assigned at Ginatilan detachment together with a CVO member shot to death. The perpetrators were identified as the "group of Allan and Walo Bungay, both BIFF members under Durin Manampan @ Marines," the stated motive is "**personal grudge**."[61]

6. The October 15, 2018 account of a firefight between BIFF and Maliga, supporter of Vice Mayor Montawal. The Report identifies the groups involved as "combined groups of an estimated thirty (30) fully armed men of Gapor GUIAMLOD and Mastura BUDI, both followers of Buto SAND AY of BIFF against the group of Maliga GUIALAL who is known supporter of Vice Mayor Utto Montawal." The Report goes on to say, "**firefight is in relation to the harassment initiated by the group of Gapor against certain civilian** who is a resident of Brgy. Talapas, wherein the said group is also situated x x x."[62]

7. The October 18, 2018 account of a firefight between the "groups MILF, Task Force ITIHAD led by @ CMDR AKOB and @ CMDR BADRUDIN of 118BC against the group of BIFF led by Zainudin KIARO @ KIARO under Hassan INDAL." The stated reason is "**Rido** due to death o[f] the relative of ACOB family who was killed by the group of @ KIARO x x x sometime [in] August 2018."[63]

There is no entry or incident that shows the concurrence of the overt acts of rebellion and the specific political purpose

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[60] *Id*. Emphasis and underscoring supplied.

[61] *Id*. at 274. Emphasis and underscoring supplied.

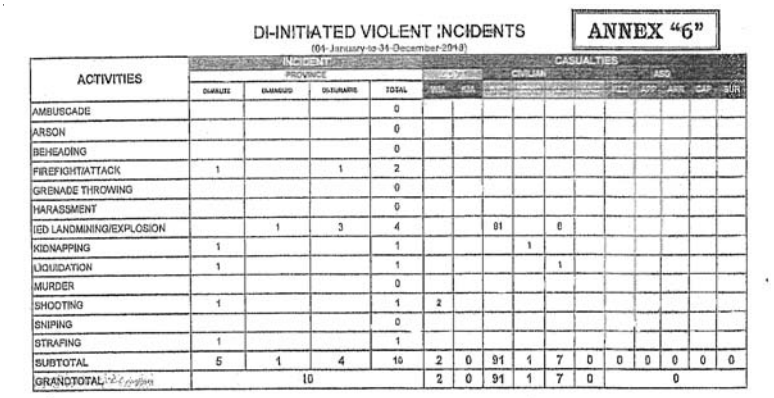
[62] *Id*. at 280. Emphasis and underscoring supplied.

[63] *Id*. at 281. Emphasis and underscoring supplied.

required by Article 134 in the recitation of violent incidents attributed to the BIFF.

DI-initiated violent incidents

Annex "6" consists of alleged DI-initiated violent incidents for the whole year of 2018 presented through a covering summary accompanied by specific reports therefor. The table[64] submitted by the respondents is replicated below, as follows:



DI-INITIATED VIOLENT INCIDENTS
(01 January to 31 December 2018)

ANNEX "6"

ACTIVITIES	INCIDENT PROVINCE				CASUALTIES										
					AFP		CIVILIAN		PNP		ASG				
				TOTAL	KIA	WIA	KIA	WIA	KIA	WIA	KIA	WIA	ARR	CAP	SUR
AMBUSCADE				0											
ARSON				0											
BEHEADING				0											
FIREFIGHT/ATTACK	1		1	2											
GRENADE THROWING				0											
HARASSMENT				0											
IED LANDMINING/EXPLOSION		1	3	4			91		6						
KIDNAPPING	1			1				1							
LIQUIDATION	1			1					1						
MURDER				0											
SHOOTING	1			1	2										
SNIPING				0											
STRAFING	1			1											
SUBTOTAL	5	1	4	10	2	0	91	1	7	0	0	0	0	0	0
GRANDTOTAL	10				2	0	91	1	7	0	0				

The table/summary shows a total often (10) incidents attributed to the DI that resulted in seven (7) persons dead, ninety-one (91) persons wounded, and one (1) person missing.

The specific reports, in turn, show ten (10) incidents resulting in six (6) persons dead (not 7), ninety-one (91) persons wounded, and one (1) person missing. For ease of reference, the totality of the data in Annex "6," when analyzed, shows:

DI-initiated Violent Incidents	No. of Reports	Reported Casualty		
		Dead	Wounded	Missing
No perpetrator, no motive[65]	5	5	91	0

[64] *Id*. at 283.

[65] *Id*. at 285-288.

Suspected DI, no motive[66]	1	0	0	1
Suspected DI, motive not political[67]	1	1	0	0
Perpetrators specifically identified, no motive[68]	3	0	0	0
Total Incidents	**10**	**6**	**91**	**1**
Incomplete Reports[69]	4	4	45	1
Per respondents' summary	10	7	93	1

Of the ten (10) incidents attributed to the DI, seven (7) entries either do not identify the perpetrators or identify them merely as "suspected DI" or "believed to be DI." Eight (8) entries do not supply the motive. From the context of one report, the motive appears to have been given but the text was incomplete.

Only three (3) reports specifically identified the perpetrators. These three incidents include: (1) the strafing of the residence of a Barangay Chairman by two identified suspects, although there is nothing to show that they are members of DI;[70] (2) an incident described as "harassment" involving an exchange of fire between groups of MILF Commanders and groups of Maranaos and Maguindanaoans;[71] and (3) a firefight between "groups of Salahudin HASSAN @ ORAK" and "group of Gani SALINGAN.[72] It is not clear whether either of these groups were DI or government forces. No casualties were stated for these incidents.

Of the seven (7) remaining incidents, two (2) identified the DI as the suspected perpetrators:

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[66] *Id*. at 285.

[67] *Id*. at 284.

[68] *Id*. at 286-287.

[69] *Id*. at 284-286, 288.

[70] *Id*. at 286.

[71] *Id*. at 287.

[72] *Id*.

1. The May 13, 2018 account of a liquidation incident involving an incumbent barangay chairman candidate who was shot to death in his house identified the perpetrators as "[more or less] 10 armed men believed to be LTG (DI Maute Group)" with "[possible motives[:] [(1)] **long[-]time political rivalry** with the family of Samer SULTAN, a noted DI/Maute Group supporter;" and [(2)] "he was **suspected as military informant** and x x x was also seen talking in public near the highway x x x with unidentified persons believed to be government Intelligence operatives."[73] This is the extent of what can be gathered from the incomplete entry.

2. The May 6, 2018 account of a kidnapping incident involving the abduction of a man "by the group" in relation to the May 13, 2018 liquidation.[74] The text tends to show that the motive was given in the cut-off part of the entry.

In the other five (5) incidents, which included all the IED explosions attributed to the DI, including the Brgy. Apopong and two Isulan, Sultan Kudarat explosions[75] that the President cited in his letter to Congress requesting for the Martial Law extension, **neither the identity of the perpetrators nor their motive was identified**. These incidents with unidentified perpetrators accounted for almost all the casualties in DI-initiated violent incidents, resulting in five (5) persons dead and ninety-one (91) wounded.

Following the oral arguments, the PNP submitted its Report on these incidents.[76] It stated that cases were filed against Bungos and Karialan for the Brgy. Apopong explosion[77] and a certain Salipudin Lauban Pasandalan was charged with two (2) counts

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[73] *Id*. at 284. Emphasis and underscoring supplied.

[74] *Id*. at 285.

[75] *Id*. at 285-286. Emphasis and underscoring supplied.

[76] *Rollo* (G.R. No. 243522), Vol. 2, pp. 861-881.

[77] *Id*. at 880.

of murder and thirty-four (34) counts of frustrated murder from the explosion near firecracker vendors in a mall in Cotabato City.[78] The PNP generally[79] attributes the two Isulan, Sultan Kudarat explosions to the BIFF.[80]

After considering all the foregoing submissions of the respondents relating to violent incidents attributed to DI, ***all IED explosions attributed to DI*** (*i.e.*, all IED entries in Annex "6") ***were subsequently attributed by the PNP either specifically or generally to the BIFF***.[81]

Given that all the evidence in Annex "6" appear to be equivocal as to purpose or point to common crimes committed for private purpose, or the incidents were subsequently attributed to the BIFF, **the unavoidable conclusion is that there is no DI-initiated incident that sufficiently shows an overt act of rebellion or the political purpose. In fine, no substantial evidence exists to support the claim of an ongoing DI rebellion. The fact that the crimes of murder and frustrated murder were filed instead of rebellion under Article 134 of the RPC against the DI members shows the lack of political motive to qualify them as rebellion.**

NPA-initiated violent incidents

Annex "7"[82] consists of NPA-initiated violent incidents for the whole year of 2018:

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[78] *Rollo* (G.R. No. 243522), Vol. 1, p. 288.

[79] In relation to these incidents, the identification by the PNP data took this form: "**The incident was perpetrated by the BIFF."**

[80] *Rollo* (G.R. No. 243522), Vol. 2, p. 880.

[81] See *id.*

[82] *Rollo* (G.R. No. 243522), Vol. 1, p. 289.

ANNEX "7"

RECAPITULATION OF NPA-INITIATED VIOLENT INCIDENTS (NIVIs)

TYPE OF INCIDENT	01 Jan to 22 May 2017	23 May to 23 Oct 2017	24 Oct to 31 Dec 2017	TOTAL 2017	01 Jan to 31 Dec 2018
A. GUERILLA OPNS					
AMBUSH	12	24	9	45	30
RAID	15	8	1	24	8
NUISANCE HARASSMENT	75	71	24	170	79
HARASSMENT	50	49	20	119	59
DISARMING	8	8	1	17	7
LANDMINING	13	13	0	26	10
SPARU OPNS	12	20	5	37	42
SUB-TOTAL	185	193	60	438	252
B. TERRORIST ACTVS					
LIQUIDATION	35	32	14	81	61
KIDNAPPING	18	23	2	43	8
ROBBERY/HOLD-UP	6	2	1	9	1
BOMBING	1	1	0	2	2
ARSON	54	33	7	94	44
SABOTAGE	1	0	0	1	1
SUB-TOTAL	115	91	24	230	117
GRAND TOTAL	300	284	84	668	369

RECAPITULATION OF NPA-INITIATED VIOLENT INCIDENTS (NIVIs) IN MINDANAO

TYPE OF INCIDENT	01 Jan to 22 May 2017	23 May to 23 Oct 2017	24 Oct to 31 Dec 2017	TOTAL 2017	01 Jan to 31 Dec 2018
A. GUERILLA OPNS					
AMBUSH	5	6	4	15	10
RAID	6	2	0	8	6
NUISANCE HARASSMENT	50	53	13	116	41
HARASSMENT	43	20	15	80	30
DISARMING	4	5	0	9	5
LANDMINING	10	7	0	17	10
SPARU OPNS	6	12	0	20	21
SUB-TOTAL	126	113	32	271	130
B. TERRORIST ACTVS					
LIQUIDATION	17	9	9	35	24
KIDNAPPING	17	18	2	37	7
ROBBERY/HOLD-UP	6	2	0	8	1
BOMBING	1	1	0	2	2
ARSON	42	21	6	69	29
SABOTAGE	1	0	0	1	0
SUB-TOTAL	84	51	16	151	63
GRAND TOTAL	210	164	48	422	193

The tables above, along with statements from Jose Maria Sison, founding Chairman of the CPP, and the accounts of surrender of CPP-NPA persons and firearms in the monthly reports of the implementation of martial law, make up the entirety of the government's submission on the factual basis on the ground of the CPP-NPA's ongoing rebellion. These statements by Sison include:

> The people's army can launch tactical offensives against the increasingly more vulnerable points of the enemy forces whenever these are overstretched and spread thinly in campaigns of suppression. The enemy armed forces does not have enough armed strength to concentrate on and destroy the Party and the people's army in any region, without those in other regions launching offensives to relieve their comrades in the region under attack.
>
> x x x x x x x x x
>
> As of the latest report, 75 of the total 98 maneuver battalions of the reactionary armed forces are concentrated in Mindanao under conditions of martial law. Forty-four battalions are deployed against the NPA areas and 31 against Bangsamoro groups. x x x[83]

And

> x x x [T]he Communist Party of the Philippines is relevant. It is leading a vibrant revolutionary movement. The CPP itself has grown from only 80 members in 1968 to tens of thousands now, and it has organized [the] New People's Army, and the New People's Armies all over the country like the Communist Party. The CPP and NPA and the mass organizations have created the local organs of political power which constitutes the people's government. So, that's a lot of achievement. The revolutionary movement has grown strong because it has the correct line.[84]

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[83] *Rollo* (G.R. No. 243522), Vol. 1, p. 168, citing Jose Maria Sison, "Great achievements of the CPP in 50 years of waging revolution," available at <https://josemariasison.org/great-achievements-of-the-cpp-in-50-years-of-waging-revolution/> (last accessed February 19, 2019). Underscoring omitted.

[84] *Id*. at 169-170, citing ABS-CBN News, "Early Edition: Joma Sison

During the oral arguments, the respondents were asked whether they would be submitting additional details with respect to the rebellion by the NPA. **Despite their assurance that they would submit, no additional submissions were made in their Memorandum.**

As it stands, therefore, the evidence of the respondents as to the NPA rebellion consist only of (1) the tables above, **totally unsupported by any specific reports or details that will allow a reasonable review by the Court**, (2) reports of surrender of persons and firearms in the monthly reports and (3) what can only be considered as celebratory and aspirational claims of a private person.

Moreover, even if it is conceded that the CPP is actively engaged in rebellion, there is no showing of any damage to property, security or loss of life by which a determination on the requirement of public safety can be made. **All told, the evidence presented does not discharge the burden to show by substantial evidence the persistence of a communist rebellion that endangers public safety to a degree that requires the extension of martial law in Mindanao.**

Reports of Harassment Incidents

It is acknowledged that the Reports contain accounts of harassment against military or government installations and personnel. Analyzed, the data in the specific reports with respect to harassment are shown in the following table:

Harassment	ASG	Reported Casualty		BIFF	Reported Casualty		DI	Reported Casualty		Total	Total Reported Casualty	
		D	W		D	W		D	W		D	W
No. of incidents per cover summary	*16*	*7*	*5*	*40*	*3*	*7*	*0*	*0*	*0*	*56*	*10*	*12*

Based on specific reports

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on 50th anniversary of the CPP" (December 25, 2018), available at: <https://www.youtube.com/watch?v=m2LM5wZa2q8> (last accessed February 19, 2019).

Against other armed groups[85]	0	0	0	0	0	0	1	0	0	1	0	0
Against civilians/open spaces[86]	3	4	1	1	0	0	0	0	0	4	4	1
Against military/ CAFGU/BPAT personnel[87]	1	0	0	5	0	2	0	0	0	6	0	2
Against military detachments/posts[88]	**7**	**0**	**6**	**34**	**4**	**9**	**0**	**0**	**0**	**41**	**4**	**15**
No. of incidents per specific reports	11	4	7	40	4	11	1	0	0	52	8	18

Legend: D-Dead W-Wounded

While these violent incidents are to be condemned, **the commission of the acts without identifying any political motive constitutes lawless violence, and is not sufficient to prove the persistence of rebellion in Mindanao**.

For one, of the fifty-two (52) incidents tagged by the respondents as "harassment," the three (3) that supply the motive appear equivocal or inconsistent with the political purpose of rebellion:

(1) The February 4, 2018 account of harassment committed by an "undetermined number of Ajang-Ajang Group" against the detachment of 5Coy, PA under NIWANE. The stated motive is that "**related to the planned atrocities of ASGSL Hatib Hadjan SAWADJAAN** tapping the Ajang-Ajang Group to conduct harassments and liquidations to military installations and personnel as well as informants x x x."[89]

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[85] *Id*. at 287.

[86] *Id*. at 224, 231, 235 & 253.

[87] *Id*. at 243 and 271.

[88] *Id*. at 226-227, 237-238, 242, 244, 247-248, 251, 253, 255-263, 265, 267-271, 275-280 and 282.

[89] *Id*. at 219. Emphasis and underscoring supplied.

(2) The February 28, 2018 account of a harassment against BPAT and LGU conducting road construction projects by "MOL [ten (10)] fully armed ASG led by ASGSL Abdullah Jovel INDANAN @ GURO." The Report explains that "@ GURO has a **family feud** with the incumbent [Brgy.] Chairman of Dugaa" where the shooting happened.[90]

(3) The March 30, 2018 account of a brief firefight between the Latih Detachment and "MOL forty (40) fully armed ASG members led by ASGSL Hajan SAWADJAAN" for the reason "x x x [t]he ASG's harassment of Latih Detachment **was to avenge the death of ASG member** Roger SAMLAON who was killed last [March 15], 2018 after encounter with government troops."[91]

In his Clarificatory Letter for Solicitor General Calida which was submitted to the Court, Major General Lorenzo explains,

> The word 'harassment' is a military term for a type of armed attack where the perpetrators fire at stationary military personnel, auxiliaries, or installations for a relatively short period of time (as opposed to a full armed attack) for the purpose of inflicting casualties, as a diversionary effort to deflect attention from another tactical undertaking, or to project presence in the area. At times, like in the case of the November 10, 2018 incident in Marogong, Lanao del Sur, harassments or attacks are directed against the MILF or any group perceived to be an ally or is supportive to the government. Harassments are undertaken not in isolation but as part of a bigger military strategy. This is a common tactic employed by the Communist Terrorist Group, the ASG, DI, and BIFF.[92]

Elsewhere in the letter, he explains,

> x x x motive is not an element of rebellion; it is not necessary to show motive to prove that there are groups presently waging a rebellion in Mindanao. As long as the perpetrators are associated with the mentioned rebel groups and they engage in armed attacks against government forces and civilians for the purpose of overthrowing

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[90] *Id*. at 224. Emphasis and underscoring supplied.

[91] *Id*. at 227. Emphasis and underscoring supplied.

[92] *Rollo* (G.R. No. 243522), Vol. 2, pp. 853-854.

the government, a reasonable mind would consider these acts as having been committed in furtherance of rebellion.[93]

Unfortunately, however, this legal argument cannot take the place of proof. In this case, the burden of the government is to establish, at the first instance, the persistence of rebellion. Since the government has not yet proven the existence or persistence of an ongoing rebellion, then the requisite of proving each incident as an act of rebellion has not been dispensed with. The determination of whether an act is "in furtherance of rebellion," or a distinct or separate crime in itself, precisely contemplates a situation where there is an ongoing rebellion the evidence of which is sorely missing here.

Second, **the fact that the government has not charged any person of rebellion during the second extension militates against the presumption that these acts, on their own, constitute substantial evidence of a persisting rebellion in Mindanao**.

Based on the submission of the OJ2 of the DND dated December 13, 2018,[94] which lists the arrested personalities during the declaration and extension of martial law, there were only four (4) persons arrested during the second extension from January 1, 2018 to December 31, 2018. **The table below shows that no one has been captured, arrested, or charged with rebellion during the entire second extension.**

NAME	DATE OF ARREST	PLACE OF ARREST/ APPREHENDING UNIT	STATUS	REMARKS
Abdelhakim Labdi Adib	22 January 2018	Basilan	CHARGED	On 24 January, filed case for illegal possession of explosives (c/o CPT POPANES)
[Najiya Dilangalen Karon Maute]	23 January 2018	Cotabato	RELEASED	Released for insufficiency of evidence

[93] *Id*. at 858.

[94] *Rollo* (G.R. No. 243522), Vol. 1, pp. 72-85.

Jamar Abdulla Mansul	22 January 2018	NAIA	RELEASED	Released for lapse of period
[Fehmi Lassqued]	16 February 2018	Malate, Manila	FOR INQUEST	Pending Preliminary Investigation for Illegal Possession of Firearms, Illegal Possession of Explosives[95]

This was also confirmed by the PNP data submitted by the respondents which shows that there were no charges filed against the persons identified to have participated in the harassment of military or government installations or personnel.[96]

On the other hand, during the original period of Proclamation No. 216 and its first extended period ending in December 31, 2017, a total of thirty-nine (39) persons were charged with rebellion.[97] The submission shows that out of these thirty-eight (38) persons, twenty-eight (28) cases were filed in June 2017, eight (8) cases in July 2017 and three (3) cases in August 2017.[98]

The government's omission in filing rebellion charges against those identified to have attacked military or government facilities and personnel is in the nature of an admission that even by the determination of the Executive department, there was no probable cause to indict the persons involved with rebellion.

Lastly, as for the other violent incidents described in the respondents' submissions that are not designated as harassment, the AFP explains,

x x x On the other hand, kidnapping is undertaken particularly by the ASG to finance its operational and administrative expenses in

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[95] *Id.* at 85.

[96] See *rollo* (G.R. No. 243522), Vol. 2, pp. 861-881. Annexes "2-A" to "2-U", Reports of charges filed did not relate to any of the incidents tagged as "Harassment" in Annexes "4" to "7" of the OSG Comment.

[97] *Rollo* (G.R. No. 243522), Vol. 1, pp. 73-80 and 84.

[98] *Id.*

waging rebellion. As shown in the presentation during the oral arguments, the ASG has amassed an estimated PhP41.9 million in ransom proceeds for 2018 alone. With regard to arson, the tactic is commonly used by the same rebel groups for various purposes such as intimidating people who are supportive of the government, as punitive action for those who refuse to give in to extortion demands, or simply to terrorize the populace into submission. All these activities are undoubtedly undertaken in furtherance of rebellion.[99]

Again, this explanation is not sufficient because without a single incident wherein the purpose and overt act of rebellion concur, rebellion does not *legally* exist.[100] Hence, there is no room to argue that any common crime is undertaken in furtherance of rebellion.

Totality of evidence

The evidence readily shows certain gaps that needed to either be completed or supplemented in order to make a showing of relevance and comprehensibility.

1. As adverted to above, fifteen (15) incomplete entries[101] do not allow the Court the full information on these reports.

2. There were reports that did not identify the perpetrators. Of the one hundred fifty (150) incidents, the entries on fifty-four (54)[102] incidents did not identify the perpetrators.

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[99] *Rollo* (G.R. No. 243522), Vol. 2, p. 854.

[100] *People v. Geronimo*, 100 Phil. 90 (1956) [*En Banc*, per *J.* J.B.L. Reyes].

[101] For ASG-attributed incidents, there are ten (10) incomplete entries. For BIFF-attributed incidents, there is one (1) incomplete entry. For DI-attributed incidents, there are four (4) incomplete reports.

[102] These are: Twenty-one (21) entries of the sixty-six (66) incidents attributed to the ASG; twenty-eight (28) entries of the seventy-four (74) incidents attributed to the BIFF; and five (5) entries of the ten (10) incidents attributed to the DI.

3. Almost ninety percent (90%) of the entries, or one hundred thirty-three (133) entries,[103] do not identify the motive or state that the motive is undetermined.

4. Fifty-three (53) entries[104] neither identify the perpetrators nor supply the motive.

5. For the eighteen (18) total entries that do identify the perpetrators as members or suspected members of the said groups and supplies the motive, in at least sixteen (16)[105] of these entries, the specific details supplied tend to show that these crimes were committed for private motives or purposes or without the political motivation required in rebellion.

During the oral arguments, these gaps were painstakingly identified by some members of the Court to allow the respondents to address them. The respondents were even given a list of these incidents and were requested to complete or supplement them in their Memorandum.

Remarkably, the AFP Letter in response to the Court's request for additional information explained the paucity of information of some reports on account of them being "spot reports" that contain information that are only available at that given reporting time window.[106] It went on to state that "[subsequent

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[103] These are: Fifty-seven (57) entries of the sixty-six (66) incidents attributed to the ASG; sixty-seven (67) entries of the seventy-four (74) incidents attributed to the BIFF; and nine (9) entries of the ten (10) incidents attributed to the DI.

[104] These are: Twenty (20) entries of the sixty-six (66) incidents attributed to the ASG; twenty-eight (28) entries of the seventy-four (74) incidents attributed to the BIFF; five (5) entries of the ten (10) incidents attributed to the DI.

[105] For ASG-attributed incidents, of the nine (9) entries that supply both perpetrators and motive, seven (7) are equivocal as to the political purpose. For BIFF-attributed incidents, all seven (7) entries that supply both perpetrators and the motive are equivocal as to the political purpose. For DI-attributed incidents, the single (1) entry that supplies both perpetrators and motive is equivocal as to political purpose.

[106] *Rollo* (G.R. No. 243522), Vol. 2, p. 848.

developments are communicated through 'progress reports' and detailed 'special reports.'"[107]

Unfortunately, nothing in the Memorandum of the respondents was submitted to complete the incomplete entries. As well, even as the Court requested an update on these "spot reports," no reports designated as "progress reports" or "special reports" were submitted. Neither did the respondents attempt to even explain how a fair amount of these incidents were attributed, or could be attributable, to what the respondents called "rebels" — despite the fact that the reports do not identify the perpetrators or the motive, or supply the identity of the perpetrators, **all of which point to the conclusion that these are common crimes committed for private purposes**. The respondents only explained that "[i]nquiries made with informants thereafter have become the basis in ascribing these violent activities to a particular threat group."[108]

The Court cannot make this leap for the respondents.

While the Court does not now presume to impose a mathematical or mechanical formula to determine sufficiency of factual basis, the totality of the respondents' submissions in support of the extension in this case does not constitute substantial evidence to show that rebellion persists in Mindanao.

A.2. Whether or not public safety is imperiled and requires the third extension of Proclamation No. 216 which imposed Martial Law and suspended the privilege of the writ of habeas corpus in the whole Mindanao

The petitioners in G.R. No. 243522 (*Lagman Petition*) argue that public safety was not imperiled, and thus should not justify or necessitate the third extension of martial law.[109] Petitioners

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[107] *Id.*

[108] *Id*. at 852.

[109] *Rollo* (G.R. No. 243522) Vol. 1, p. 37.

therein posit that "the existence of actual invasion or rebellion does not necessarily actualize the requirement of public safety because rebellion can be effectively contained outside of populated communities or in isolated or remote areas where public safety is not imperiled or the overwhelming presence of superior government forces forestalls the danger to public safety."[110]

Meanwhile, the petitioners in G.R. No. 243677 (*Makabayan Bloc Petition*) advances the theory that there is a distinction between the threat to public safety that justifies the imposition of martial law, and one that simply triggers the President's calling out powers. According to them, the threat to public safety, in order to justify the imposition of martial law, "must have risen to a level that government cannot sufficiently or effectively govern, as exemplified by the closure of courts or government bodies, or at least the extreme difficulty of courts, the local government and other government services to perform their functions."[111] They further explain:

> x x x If there is rebellion or invasion but government continues to function nonetheless, the calling out powers may be employed by the President, but not martial law or the suspension of the privilege of the writ of *habeas corpus*. Only in cases where the rebellion or invasion has made it extremely difficult, if not impossible, for the government (or the courts) to function, to the extent that government or the local government in the area affected by the rebellion can no longer assure public safety and the delivery of government services, that the imposition of martial law is constitutionally permissible.[112]
>
> x x x x x x x x x
>
> x x x It must be reiterated that while government may assert that all rebellions threaten the safety of the public, this generic definition of public safety is not the same as the definition of public safety that triggers the imposition of martial law. Otherwise, there is no difference at all between the rebellion that necessitates the imposition of martial

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[110] *Id*. at 38.

[111] *Rollo* (G.R. No. 243677), p. 22.

[112] *Id*. Emphasis omitted.

law, from the rebellion that merely triggers the calling out powers. x x x[113]

Petitioners therein then add that the letter of the President dated December 6, 2018 requesting Congress to extend martial law in Mindanao from January 1, 2019 to December 31, 2019 did not allege that the situation had deteriorated to the extent that the civilian government no longer functioned effectively.[114] Thus, the petitioners conclude that public safety was not imperiled, and consequently, the further extension of martial law was void.

The arguments of petitioners in the G.R. No. 243745 (*Monsod Petition*) are similar to the arguments of petitioners in the *Makabayan Bloc Petition*. They argue that martial law — being an extraordinary power of the President — may only be declared, or extended, in the context of a "theater of war."[115] They contend that the existence of an actual rebellion is not the only requirement to validly declare martial law, and that the public safety requirement means "that the civilian government is unable to function,"[116] such that it is necessary to declare martial law.

The respondents, on the other hand, argue that threats to public safety exist, such that it was necessary for martial law to be extended. In its Memorandum, the OSG cited the following instances as concrete proof that public safety is imperiled:

a. No less than 181 persons in the martial law Arrest Orders have remained at large.

b. Despite the dwindling strength and capabilities of the local terrorist rebel groups, the recent bombings that transpired in Mindanao that collectively killed 16 people and injured 63 others in less than 2 months is a testament on how lethal and ingenious terrorist attacks have become.

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[113] *Id*. at 17.

[114] *Id*. at 18.

[115] *Rollo* (G.R. No. 243745), p. 22.

[116] *Id.*

c. On October 5, 2018, agents from the Philippine Drug Enforcement Agency (PDEA) who conducted an anti-drug symposium in Tagoloan II, Lanao del Sur, were brutally ambushed, in which five (5) were killed and two (2) were wounded.

d. The DI continues to conduct radicalization activities in vulnerable Muslim communities and recruitment of new members, targeting relatives and orphans of killed DI members. Its presence in these areas immensely disrupted the government's delivery of basic services and clearly needs military intervention.

e. Major ASG factions in Sulu and Basilan have fully embraced the DAESH ideology and continue their express kidnappings. As of December 6, 2018, there are still seven (7) remaining kidnap victims under captivity.

f. Despite the downward trend of insurgency parameters, Mindanao remains to be the hotbed of communist rebel insurgency in the country. Eight (8) out of the 14 active provinces in terms of communist rebel insurgency are in Mindanao.

g. The Communist Terrorist Rebel Group in Mindanao continues its hostile activities while conducting its organization, consolidation and recruitment. In fact, from January to November 2018, the number of Ideological, Political and Organizational (IPO) efforts of this group amounted to 1,420, which indicates their continuing recruitment of new members. Moreover, it is in Mindanao where the most violent incidents initiated by this group transpire. Particularly, government security forces and business establishments are being subjected to harassment, arson and liquidations when they defy their extortion demands.

h. The CTRG's exploitation of indigenous people is so rampant that Lumad schools are being used as recruiting and training grounds for their armed rebellion and anti-government propaganda. On November 28, 2018, Satur Ocampo and 18 others were intercepted by the Talaingod PNP checkpoint in Davao del Norte for unlawfully taking into custody 14 minors who are students of a learning school in Sitio Dulyan, Palma Gil in Talaingod town. Cases were filed against Ocampo's camp for violations of Republic Act (R.A.) No. 10364, in relation to R.A. No. 7610, as well as violation of Article 270 of the Revised Penal Code (RPC), due to the Philippine National Police's (PNP)

> reasonable belief that the school is being used to manipulate the minds of the students' rebellious ideas against the government.[117]

As previously held by the Court in *Lagman v. Medialdea*, the parameters for determining the sufficiency of the factual basis for the declaration of martial law are set by no less than the Constitution itself.[118] Section 18, Article VII provides that to justify the declaration of martial law, two requisites must **concur**: (1) actual invasion or rebellion, and (2) public safety requires the exercise of such power.[119] In *Lagman v. Medialdea*, the Court held that "[w]ithout the concurrence of the two conditions, the President's declaration of martial law and/or suspension of the privilege of the writ of *habeas corpus* must be struck down."[119a] Thus, the mere fact of a persisting rebellion or existence of rebels, standing alone, cannot be the basis for the extension.[120]

In the same case, the Court unequivocally held that "[i]nvasion or rebellion alone may justify resort to the calling out power **but definitely not the declaration of martial law or suspension of the privilege of the writ of *habeas corpus***."[121]

It is thus clear that the requirement that public safety is imperiled is a separate and distinct requirement that the respondents have the burden to prove. Indeed, "the requirement of actual rebellion serves to **localize** the scope of martial law to cover only the areas of armed public uprising. Necessarily, the initial scope of martial law is the place where there is actual

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[117] *Rollo* (G.R. No. 243522), Vol. 2, pp. 832-833. Citations omitted.

[118] *Supra* note 8, at 182.

[119] *Id.*

[119a] *Id.*

[120] *J.* Caguioa, Dissenting Opinion in *Lagman v. Pimantel III*, *supra* note 12, at 3.

[121] *Lagman v. Medialdea*, *supra* note 8, at 197. Emphasis and underscoring supplied.

rebellion, meaning, concurrence of the normative act of armed public uprising and the intent. **Elsewhere, however, there must be a clear showing of the requirement of public safety necessitating the inclusion.**"[122]

In the present case, the respondents failed to prove that the public safety of the whole of Mindanao is imperiled.

Again, in *Lagman v. Medialdea*, the Court defined public safety as that which "involves the prevention of and protection from events that could endanger the safety of the general public from significant danger, injury/harm, or damage, such as crimes or disasters."[123] The Court therein likewise discussed that public safety is an abstract term, and thus, its range, extent, or scope could not be physically measured by metes and bounds.[124] The Court therein expounded:

> In fine, it is difficult, if not impossible, to fix the territorial scope of martial law in *direct proportion* to the "range" of actual rebellion and public safety simply because rebellion and public safety have no fixed physical dimensions. Their transitory and abstract nature defies precise measurements; hence, the determination of the territorial scope of martial law could only be drawn from arbitrary, not fixed, variables. The Constitution must have considered these limitations when it granted the President wide leeway and flexibility in determining the territorial scope of martial law.[125]

It is well, however, to qualify that while rebellion and public safety indeed have no fixed physical dimensions — and that, as a result, the Executive is given sufficient leeway to determine the scope of the territory covered by martial law in light of the information before him — the said discretion granted by the Constitution cannot be so broad so as to render nugatory the specific limitations placed by it to justify the imposition of the extraordinary power.

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[122] *J.* Caguioa, Dissenting Opinion in *Lagman v. Medialdea*, *supra* note 8, at 661.

[123] *Supra* note 8, at 207.

[124] *Id.*

[125] *Id*. at 208-209.

This limited, although sufficient, discretion is precisely the rationale for the power granted to, *and duty* imposed upon, the Court, under Section 18, Article VII of the Constitution, to check the sufficiency of the factual basis for the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus*. To state once more, Section 18 is a neutral and straightforward fact-checking mechanism that serves the functions of (1) preventing the concentration in one person — the Executive — of the power to put in place a rule that significantly implicates civil liberties, (2) providing the sovereign people a forum to be informed of the factual basis of the Executive's decision, or, at the very least, (3) assuring the people that a separate department independent of the Executive may be called upon to determine for itself the propriety of the declaration of martial law and suspension of the privilege of the writ of *habeas corpus*.[126]

Thus, the Court — in the performance of the afore-discussed constitutionally-granted power and duty — was called upon to hold that public safety no longer requires the extension of martial law **in the whole of Mindanao from January 1, 2019 to December 31, 2019** for the following reasons:

First, by the respondents' own submissions,[127] the supposed attacks that compromised public safety were limited only to certain cities and municipalities in the following provinces in Mindanao: Basilan, Sulu, Tawi-Tawi, Zamboanga Sibugay, Zamboanga del Norte, Maguindanao, North Cotabato, Lanao del Sur, and Sultan Kudarat. **This means that <u>for the entirety of 2018, there were no attacks in other provinces</u> such as Agusan del Norte, Agusan del Sur, Bukidnon, Camiguin, Isabela, Compostela Valley, Davao del Norte, Davao del Sur, Davao Occidental, Davao Oriental, Dinagat Islands, Lanao del Norte, Misamis Occidental, Misamis Oriental, Sarangani,**

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[126] J. Caguioa, Dissenting Opinion in *Lagman v. Medialdea*, *supra* note 122, at 644-645.

[127] Annexes "4" to "7", OSG Comment, *rollo* (G.R. No. 243522), Vol. 1, pp. 215-289.

South Cotabato, Surigao del Norte, Surigao del Sur, and Zamboanga del Sur.

In fact, during the Joint Session of Congress held on December 12, 2018, no less than the Secretary of the Department of Interior and Local Government (DILG), Secretary Eduardo M. Año (Año), unequivocally confirmed that the government has already "restricted x x x the movement of the armed groups and x x x **restored order fin Mindanao], especially in the most affected areas**."[128]

When asked about the current public safety situation in Mindanao during the Joint Session, DILG Secretary Año clearly and categorically pronounced that "**[n]ot all in Mindanao are actually affected**"[129] and that the people of Mindanao can already "**go around without fear of being subjected to violence** x x x"[130] and "**feel more secured and safer**."[131]

Hence, with the Executive department itself revealing that the people of Mindanao can now go around without fear, feeling more secure and safe, and with order already being restored especially in the most affected areas, it is clear that the current public safety situation in Mindanao does not warrant the further extension of martial law and the suspension of the privilege of the writ of *habeas corpus*.

Second, the respondents cite the following attacks perpetrated in the year 2018 as concrete proof that public safety was compromised, such that it is necessary to extend martial law for the whole Mindanao for the entire year of 2019: (1) 66 attacks by the ASG, (2) 74 attacks by the BIFF, and (3) 10 attacks by the DI. **However, as already shown, all of these were not duly proven by the respondents.**

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[128] *Rollo* (G.R. No. 243522), Vol. 2, pp. 521-522. Emphasis and underscoring supplied.

[129] *Id*. at 522. Emphasis supplied.

[130] *Id*. at 521. Emphasis supplied.

[131] *Id*. Emphasis supplied.

For instance, the PNP data submitted by the respondents admitted to having no record of thirty-three (33) of the sixty-six (66) attacks they alleged to have been committed by the ASG,[132] and likewise admitted that one (1) of the attacks cited was not connected to the "ongoing rebellion."[133]

For the attacks claimed to have been perpetrated by the BIFF, the respondents were, as previously mentioned, asked to expound upon and provide proof for fifty-one (51) of the seventy-four (74) attacks whose perpetrators were unidentified but were nevertheless attributed to the BIFF.[134] Despite the Court's request, the respondents failed to explain how these attacks were attributable to the BIFF,[135] and with the PNP data even admitting to having no record of three (3) of these incidents.[136]

Of the ten (10) attacks attributed to DI, the respondents did not identify the perpetrators for four (4) of these attacks. They were likewise requested to provide further information regarding these attacks.[137] The respondents, however, again failed to do so, and even admitted that "the above excerpts of the reports do not identify the perpetrators and their motives as these were basically extracted from spot reports."[138] The respondents only offered a blanket claim that "[i]nquiries made with informants thereafter have become the basis in ascribing these violent activities to a particular threat group."[139]

These blanket generic claims do not, as they cannot, constitute substantial evidence that the attacks cited were

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[132] See Annexes "2-A" to "2-U", OSG Memorandum, *id*. at 861-881.

[133] *Id*. at 854.

[134] *Id*. at 851.

[135] Respondents did not address bullet K in either Annex "1" or Annexes "2-A" to "2-U" of the OSG Memorandum.

[136] *Rollo* (G.R. No. 243522), Vol. 2, p. 881.

[137] *Id*. at 852.

[138] *Id*

[139] *Id.*

connected with the supposed rebellion, and that, consequently, public safety was endangered thereby.

The respondents argue:

> Lastly, it is significant to point out that the AFP is dealing with irregular rebel forces that have no formal organizational structure and whose members have no formal appointment papers. For security purposes, they commonly use aliases to hide their real identity. Therefore, establishing the identities of perpetrators for every attack takes time. The intelligence community, in validating the participation of the perpetrators of violence in the rebellion, cannot be reasonably expected to operate on the basis of the strict rules of evidence. The asymmetric warfare being waged by the rebel groups allows them to thrive despite lopsided force disparity in favor of the military. Unlike government security forces, the rebels' actions are not constrained by legal restrictions. They are largely anonymous and can easily merge with the population when confronted by the military.[140]

The respondents' point is well-taken. Investigations do take time — and for that exact reason, the respondents were given sufficient time and opportunity to submit reports on the outcome of further investigations, and to clarify or ascertain unclear entries (that showed incidents as early as January of 2018). In addition, that these various groups use aliases in their operations is acknowledged. That is why the Court accepted, for instance, that the report only states that "around 10 ASG elements led by @ ABU DARDA" were the perpetrators for the August 18, 2018 Ambuscade in Ungkaya Pukan, Basilan.[141] In this instance, the respondents were requested only to explain the attack's connection with the supposed rebellion, for the report itself only stated, without more, that the victim was a Barangay Peacekeeping Action Team (BPAT) member.

Thus, contrary to the claim of the respondents, they are not expected to "operate on the basis of the strict rules of evidence." The difficulty in establishing who the perpetrators of these attacks

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[140] *Id*. at 858-859.

[141] *Rollo* (G.R. No. 243522), Vol. 1, p. 241.

were is recognized. Yet, despite this recognition, the Court is called upon to be a trier of fact in the context of a Section 18 proceeding. **Therefore, the Court must be provided with proof — it must be convinced by evidence duly offered — that these attacks have indeed happened, and that they were in connection with an ongoing rebellion.** As amply put by Justice Francis Jardeleza in his Dissenting Opinion in *Lagman v. Pimentel III*:

> x x x Indeed, when our Framers tasked the Court to determine the sufficiency of the factual basis for the proclamation of martial law or suspension of the privilege of the writ of *habeas corpus*, it certainly did not mean for the Court to verify only the factual bases for the alleged rebellion and "permissively" rely on the President's assessment of the public safety requirement given the facts presented.
>
> For the Court to take such an approach goes against the very reason why it was given the specific mandate under Section 18, Article VII in the first place. Such an approach defeats the deliberate intent of our Framers to "shift [the] focus of judicial review to determinable facts, as opposed to the manner or wisdom of the exercise of the power" and "[create] an objective test to determine whether the President has complied with the constitutionally prescribed conditions."[142]

At the risk of being repetitive, a Section 18 proceeding, such as the present case, ***is a fact-checking mechanism***. Thus, the Court expects and requires a certain level of proof, and blanket claims of "according to informants", "suspected ASG", "believed to be BIFF" would not suffice.

In light of the foregoing failure of the respondents to substantiate a significant number of the attacks they claim to have imperiled public safety, the inevitable conclusion is that public safety does not require the further extension of martial law and suspension of the privilege of the writ of *habeas corpus* for the entire year of 2019.

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[142] *J.* Jardeleza, Dissenting Opinion in *Lagman v. Pimentel III*, *supra* note 9, at 15-16.

A.3. Whether the further extension of Martial Law has been necessary to meet the situation in Mindanao

Lest it be misunderstood, the foregoing discussion does not mean that I am turning a blind eye to the situation in Mindanao. While the facts do fall short of qualifying the situation into an existing rebellion, they do indicate that there is a threat thereof. ***However***, the Constitution requires an *actual* rebellion or invasion, along with a concurrent real threat to public safety, in order for the President to declare martial law — a threat of rebellion, no matter how imminent, cannot be a ground to declare martial law or extend such declaration.

To be sure, in the drafting of the present Constitution, the phrase "imminent danger" of insurrection or rebellion as ground for the declaration of martial law and suspension of the privilege of the writ of *habeas corpus* had been removed. This was because the phrase was "fraught with possibilities of abuse" and that in any case, the framers have recognized that the calling out power of the President is "sufficient for handling imminent danger."[143]

Verily, martial law is a law of necessity. "Necessity creates the conditions for martial law and at the same time limits the scope of martial law."[144] In this context, the necessity of martial law is dictated not merely by the gravity of the rebellion sought to be quelled, but also by the necessity of martial law to address the exigencies of a given situation.[145]

Thus, the President's exercise of extraordinary powers must be measured against the scale of necessity and calibrated

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[143] *Lagman v. Medialdea*, *supra* note 8, at 159, citing Bernas, Joaquin, G., *THE INTENT OF THE 1986 CONSTITUTION WRITERS*, 1995 ed., pp. 456-458.

[144] *Lagman v. Pimentel III*, *supra* note 9, at 59, citing Bernas, Joaquin, G., *THE 1987 CONSTITUTION OF THE PHILIPPINES*, A COMMENTARY, 2009 ed., p. 903.

[145] *J.* Caguioa, Dissenting Opinion in *Lagman v. Pimentel III*, *supra* note 12, at 19-20.

accordingly. The Court's determination of insufficiency of factual basis implies that the conditions for the use of such extraordinaiy power are absent. This does not mean, in any manner whatsoever, that the Court assumes to do such calibration in the President's stead. Rather, the Court merely checks the said calibration in hindsight, in accordance with its power and mandate under the Constitution.

Necessity in the context of martial law should be understood in the concept envisioned by the framers of the 1987 Constitution, *i.e.*, a theater of war. In *Lagman v. Medialdea*, the Court cited the following portions of the Constitutional deliberations discussing the conditions existing in a theater of war:

> FR. BERNAS. That same question was asked during the meetings of the Committee: What precisely does martial law add to the power of the President to call on the armed forces? The first and second lines in this provision state:
>
> > A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies...
>
> The provision is put there, precisely, to reverse the doctrine of the Supreme Court. I think it is the case of *Aquino v. COMELEC* where the Supreme Court said that in times of martial law, the President automatically has legislative power. So these two clauses denied that. A state of martial law does not suspend the operation of the Constitution; therefore, it does not suspend the principle of separation of powers.
>
> The question now is: During martial law, can the President issue decrees? The answer we gave to that question in the Committee was: **During martial law, the President may have the powers of a commanding general in a theatre of war**. In actual war when there is fighting in an area, the President as the commanding general has the authority to issue orders which have the effect of law but strictly in a theater of war, not in the situation we had during the period of martial law. In other words, there is an effort here to return to the traditional concept of martial law as it was developed especially in American jurisprudence, where martial law has reference to the theater of war.

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FR. BERNAS. This phrase was precisely put here because **we have clarified the meaning of martial law; meaning, limiting it to martial law as it has existed in the jurisprudence in international law, that it is a law for the theater of war**. In a theater of war, civil courts are unable to function. If in the actual theater of war civil courts, in fact, are unable to function, then the military commander is authorized to give jurisdiction even over civilians to military courts precisely because the civil courts are closed in that area. But in the general area where the civil courts are open then in no case can the military courts be given jurisdiction over civilians. This is in reference to a theater of war where the civil courts, in fact, are unable to function.

MR. FOZ. **It is a state of things brought about by the realities of the situation in that specified critical area.**

FR. BERNAS. That is correct.

MR. FOZ. And it is not something that is brought about by a declaration of the Commander-in-Chief.

FR. BERNAS. **It is not brought about by a declaration of the Commander-in-Chief.** The understanding here is that the phrase 'nor authorize the conferment of jurisdiction on military courts and agencies over civilians' has reference to the practice under the Marcos regime where military courts were given jurisdiction over civilians. We say here that we will never allow that except in areas where civil courts are, in fact, unable to function and it becomes necessary for some kind of court to function.[146]

Consequently, the necessity of martial law requires a showing that it is necessary for the military to perform civilian governmental functions or acquire jurisdiction over civilians to ensure public safety. As further stated in *Lagman v. Medialdea*:

The powers to declare martial law and to suspend the privilege of the writ of *habeas corpus* involve curtailment and suppression of civil rights and individual freedom. Thus, **the declaration of martial**

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[146] *Supra* note 8, at 159-161, citing II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 398 and 402 (1986). Emphasis and underscoring supplied.

law serves as a warning to citizens that the Executive Department has called upon the military to assist in the maintenance of law and order, and while the emergency remains, the citizens must, under pain of arrest and punishment, not act in a manner that will render it more difficult to restore order and enforce the law. As such, **their exercise requires more stringent safeguards by the Congress, and review by the Court**.[147]

While the standard of necessity may appear exacting, it should not be seen as an undue restraint on the powers that the President may exercise in the given exigencies. As already explained, the President is equipped with broad and expansive powers to suppress acts of lawless violence, and even actual rebellion or invasion in a theater of war, through the calling out power — a power which neither requires any concurrence by the legislature nor is subject to judicial review.

Indeed, the Court in *Lagman v. Medialdea* recognized that the extraordinary powers are conferred by the Constitution with the President as Commander-in-Chief; hence, it follows that the power to choose which among these extraordinary powers to wield in a given set of conditions is a judgment call on the part of the President. ***However***, the Court therein emphasized that this power to choose is only *initially* vested in the President, stating that "the power and prerogative to determine whether the situation warrants a mere exercise of the calling out power; or whether the situation demands suspension of the privilege of the writ of *habeas corpus*; or whether it calls for the declaration of martial law, also lies, **at least initially**, with the President."[148] **This means that the choice of the President, particularly as regards martial law, is not unfettered and immune to subsequent review. Indeed, the President's power to declare martial law is qualified by the Legislature's concurrence and the Court's review and the same must satisfy the requirements set forth by the Constitution.**

Thus, a finding by the Court that the President need not declare martial law as the situation in Mindanao may be addressed by

[147] *Id*. at 159. Emphasis and underscoring supplied.

[148] *Supra* note 8, at 162. Emphasis supplied.

the calling out powers is not by any means an encroachment on the Executive's prerogative in the exercise of the extraordinary powers. On the contrary, the Court would be merely doing its Constitutionally-mandated duty of ensuring that the declaration of martial law, or the extension thereof, has been made in accordance with the limits prescribed by the Constitution, *i.e.*, that actual invasion or rebellion exists (or persists) and that public safety requires the imposition of martial law and the suspension of the privilege of the writ of *habeas corpus*.

In this case, the respondents have failed to prove that rebellion persists and that public safety has been imperiled to the extent necessitating the extension of martial law and the suspension of the privilege of the writ of *habeas corpus*. As mentioned earlier, the events and circumstances, while worthy of stern condemnation and military reprisal, do not show the existence of an actual rebellion in a theater of war — at most, they merely indicate a threat or imminent danger. Thus, in the absence of an armed public uprising which imperils the operation of the civilian government, a declaration of martial law or any extension thereof necessarily fails the test of sufficiency, as such absence negates not only the existence of an actual (or persisting) rebellion, but also refutes the respondents' assertion that said declaration or extension is necessitated by the requirements of public safety.[149]

Through these pronouncements, the mistaken notion that martial law is required to quell the rebellion, or to empower the military and the police to engage the lawless elements in Mindanao is addressed. As already stated, the Executive is fully empowered to deploy the armed forces as necessary to suppress lawless violence, and even rebellion, whether actual or imminent, without martial law. **That the extension of martial law is to be nullified does not mean that the government is suddenly rendered powerless to address the complex problems in Mindanao.** The following exchange during the oral arguments

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[149] *J.* Caguioa, Dissenting Opinion in *Lagman v. Pimentel III*, *supra* note 12, at 27.

between Justice Marvic M.V.F. Leonen and the counsel for petitioners illustrates this point:

JUSTICE LEONEN:
Yes, by a protracted declaration of martial law which means the military rules regardless of whether or not it is benign, there is an implicit message that local governments cannot do it, is that not correct?

ATTY. DIOKNO:
That is the case, yes.

JUSTICE LEONEN:
And the danger there is recognized by our Constitution because, therefore, it said that martial law is only exigent and contingent, is that not correct?

ATTY. DIOKNO:
I think it's clear, Your Honor, that the martial law is really intended to be a temporary to address an emergency.

JUSTICE LEONEN:
And to win against one thousand six hundred (1600) communists and five hundred seventy-five (575), I will not even say Muslim, I will say Salafis, I will say violent extremists, will take not only the might of the military no matter how professional they are, but good governance, is that not correct?

ATTY. DIOKNO:
That is so true, Your Honor, no... (interrupted)

JUSTICE LEONEN:
And martial law is antithetical to good governance, is that not correct?

ATTY. DIOKNO:
That is the case, Your Honor.

JUSTICE LEONEN:
Because we do not give an opportunity to civilian authorities to catch up, is that not correct?

ATTY. DIOKNO:
Yes, Your Honor.

JUSTICE LEONEN:
Okay, may I ask you, can checkpoints be set up without martial law?

ATTY. DIOKNO:
Yes, Your Honor.

JUSTICE LEONEN:
Can busses (*sic*) be searched without martial law?

ATTY. DIOKNO:
Yes, Your Honor.

JUSTICE LEONEN:
Saluday vs. People under the ponentia (*sic*) of Justice Carpio, unanimous Court said it can, very recently, 2018 only. Can the attendance of LGUs be checked without martial law?

ATTY. DIOKNO:
Of course, yes, Your Honor.

JUSTICE LEONEN:
In fact, will they, will the local governments in the ARMM be more fearful and attend to their duties if it is ordered by the President himself rather than simply the military?

ATTY. DIOKNO:
Yes, I believe so.

JUSTICE LEONEN:
Who is more feared, the president or the military?

ATTY. DIOKNO:
(Chuckles) I'm not sure, Your Honor.

JUSTICE LEONEN:
Well, I guess people will say the Commander-in-Chief is more powerful than the military. So, what we need really is a serious program to counter violent extremism, as well as a serious program to build good governance rather than martial law, is that not correct?

ATTY. DIOKNO:
That is true, Your Honor.

JUSTICE LEONEN:
Because no matter the numbers of fighting forces and firearms, it will always recur if the root causes are not addressed, is that not correct?

ATTY. DIOKNO:
That is correct.[150]

To reiterate, martial law is an emergency governance response — the least benign of the emergency powers — that is directed against the civilian population, thereby allowing the military to perform what are otherwise civilian government functions and vesting military jurisdiction over civilians. It is through this lens that the Court determines the sufficiency of the basis for the extension of martial law. However, as already mentioned, the respondents have failed to prove the requisites, along with the necessity, for the extension of martial law and the suspension of the privilege of the writ of *habeas corpus*.

B. Whether Proclamation No. 216 has become functus officio with the cessation of the Marawi Siege that it may no longer be extended

The four petitions assert that the martial law declared in Proclamation No. 216 has become *functus officio* with the cessation of the Marawi siege. These petitions argue that Proclamation No. 216 and the President's Report dated May 25, 2017 pronounced that the sole objective or purpose of the proclamation of martial law and the suspension of the privilege of the writ of *habeas corpus* in Mindanao was to quell the Maute-Abu Sayyaf rebellion.[151] With the siege having been quelled, the petitioners now argue that the objective or purpose of the proclamation has already been achieved, and therefore an extension thereof is no longer necessary.[152]

Meanwhile, the respondents contend that while it may be admitted that Proclamation No. 216 specifically cited the attack of the Maute group on Marawi City as the basis for the declaration of martial law, the Court has recognized in *Lagman v. Pimentel III* that the rebellion in Mindanao, which the proclamation seeks

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[150] TSN, January 29, 2019, pp. 109-111.

[151] *Rollo* (G.R. No. 243522), Vol. 2, p. 772.

[152] *Rollo* (G.R. No. 243522), Vol. 1, p. 173.

to address, was not necessarily ended by the cessation of the Marawi siege.[153] The Court recognized the fact that the attack on Marawi City has spilled over to the areas in Mindanao and has spurred attacks from other rebel and terrorist groups.[154]

The respondents further advance that the issue of whether Proclamation No. 216 has become *functus officio* was consequently and indirectly rejected by the Court in affirming the second extension based on the same grounds cited for the third extension now in question.[155]

Today, the Court was called upon to finally definitively rule that Proclamation No. 216 has become *functus officio* with the cessation of the Marawi siege; thus, it may no longer be extended.

Functus officio is the Latin phrase for "having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force or authority."[156] It is applied to an officer whose term has expired, and who has consequently no further official authority; and also to an instrument, power, agency, which has fulfilled the purpose of its creation, and is therefore of no further virtue or effect.[157]

In this relation, the Dissenting Opinion of Senior Associate Justice Antonio T. Carpio in *Lagman v. Pimentel III* is illuminating:

> The Constitution provides that Congress, voting jointly, may extend the period of martial law and the suspension of the privilege of the writ "if the x x x rebellion shall persist." **Literally and without need of constitutional construction, the word "persist" means the continued existence of the same invasion or rebellion when martial law was initially proclaimed or the privilege of the writ was initially suspended.** In the deliberations of the Constitutional

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[153] *Id*. at 174.

[154] *Id.*

[155] *Id*. at 175.

[156] <https://thelawdictionary.org/functus-officio/> (last accessed February 19, 2019).

[157] *Id*.

Commission, the framers understood that the extension could be justified "if the invasion (or rebellion) is still going on." The authority of Congress to extend martial law and the suspension of the privilege of the writ is, therefore, limited to the same rebellion persisting at the time of the extension. **In other words, the rebellion used by Congress as justification to extend martial law and the suspension of the privilege of the writ must be the same rebellion identified in the initial proclamation of the President.**

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Indeed, the authority of Congress to extend the proclamation of martial law and the suspension of the privilege of the writ must be strictly confined to the rebellion that "persists," the same rebellion cited by President Duterte in Proclamation No. 216. Hence, the end of the Maute rebellion marked the end of the validity of Proclamation No. 216. Any extension pursuant thereto is unconstitutional since the Maute rebellion already ceased, with the death of its leader Isnilon Hapilon and the liberation of Marawi City. To uphold the extension of martial law and the suspension of the privilege of the writ when the Maute rebellion no longer persists, in Marawi City or anywhere else in Mindanao, would sanction a clear violation of Section 18, Article VII of the Constitution.[158]

The Constitution cannot be any clearer: the Congress may extend the President's proclamation of martial law if **the same** rebellion necessitating such proclamation shall persist.[159]

To recall, the relevant portion of Proclamation No. 216 reads:

WHEREAS, part of the reasons for the issuance of Proclamation No. 55 was the **series of violent acts committed by the Maute terrorist group** such as the attack on the military outpost in Butig, Lanao del Sur in February 2016, killing and wounding several soldiers, and the mass jailbreak in Marawi City in August 2016, freeing their arrested comrades and other detainees;

WHEREAS, today 23 May 2017, the **same Maute terrorist group**has taken over a hospital in Marawi City, Lanao del Sur,

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[158] *J.* Carpio, Dissenting Opinion in *Lagman v. Pimentel III*, *supra* note 9, pp. 6-7, 10. Citations omitted; emphasis and underscoring supplied.

[159] *J.* Caguioa, Dissenting Opinion in *Lagman v. Pimentel III*, *supra* note 12, at 14.

established several checkpoints within the City, burned down certain government and private facilities and inflicted casualties on the part of Government forces, and started flying the flag of the Islamic State of Iraq and Syria (ISIS) in several areas, thereby openly attempting to remove from the allegiance to the Philippine Government this part of Mindanao and deprive the Chief Executive of his powers and prerogatives to enforce the laws of the land and to maintain public order and safety in Mindanao, constituting the crime of rebellion; and

WHEREAS, **this recent attack shows the capability of the Maute group** and other rebel groups **to sow terror, and cause death and damage to property** not only in Lanao del Sur but also in other parts of Mindanao.[160]

With the foregoing, it is clear that Proclamation No. 216 was issued to quell the Marawi siege as perpetrated by the Maute group. The third extension, on the other hand, as advanced by the respondents themselves, is based on the alleged ongoing rebellion perpetrated by the LTRGs and the CTRGs. This cannot be, as violent attacks by different armed groups could easily form the basis of an endless chain of extensions, so long as there Eire overlaps in the attacks.[161] This dangerously supports the theoretical possibility of perpetual martial law.[162] Thus, by clear mandate of the Constitution that Congress may extend the President's proclamation of martial law only if the **same** rebellion necessitating such proclamation shall persist, then Proclamation No. 216 has become *functus officio* with the cessation of the Marawi Siege.

Nevertheless — and this point is crucial — even if the attacks by the LTRGs and the CTRGs were to be considered, the extension still fails the test of sufficiency of factual basis, as both the (a) existence of an actual rebellion or invasion, and (b) that public safety necessitates such declaration or suspension, do not exist.

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[160] Emphasis supplied.

[161] *J.* Caguioa, Dissenting Opinion in *Lagman v. Pimentel III*, *supra* note 12, at 15.

[162] *Id.*

C. Whether or not grave abuse of discretion was attendant in the manner by which Congress approved the extension of martial law and the suspension of the privilege of the writ of habeas corpus is a political question and thus not reviewable by the Court

As to whether the Court may take cognizance of the petitioners' argument that Congress, in joint session, committed grave abuse of discretion amounting to lack or excess of jurisdiction with respect to the manner by which it approved the extension of martial law and the suspension of the privilege of the writ of *habeas corpus*, the answer is in the negative.

First and foremost, there can be no serious doubt that the instant petitions were brought "under the third paragraph of Section 18 of Article VII of the 1987 Constitution x x x."[163]

The constitutional mandate under Section 18, Article VII is to delve into both factual and legal issues indispensable to the final determination of the sufficiency of the factual basis of the extension of martial law and suspension of the privilege of the writ of *habeas corpus*.

As a neutral and straightforward fact-checking mechanism, the Court's role prescinds independently from how the Legislature evaluated the President's request. **The Court's role in Section 18 is to make *its own* determination.** This necessarily means that a Section 18 review does not concern itself with the correctness or wrongness of the assessment made by Congress.

In other words, the question of whether there is sufficient basis for extending Martial Law is to be resolved by the Court under the aegis and within the parameters only of Section 18 — without regard to the question of whether or not Congress

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[163] See *rollo* (G.R. No. 243522), Vol. 1, p. 3; *rollo* (G.R. No. 243677), p. 5; *rollo* (G.R. No. 243745), p. 7.

committed grave abuse of discretion. **The Court fulfills its role under Section 18 totally independent of whatever Congress may have said.**

In the fairly recent case of *Baguilat, Jr. v. Alvarez*,[164] citing *Defensor-Santiago v. Guingona*,[165] the Court held that the Constitution "vests in the House of Representatives the sole authority to determine the rules of its proceedings."[166] Hence, as a general rule, "[t]his Court has no authority to interfere and unilaterally intrude into that exclusive realm, without running afoul of [C]onstitutional principles that it is bound to protect and uphold x x x. Constitutional respect and a becoming regard for the sovereign acts of a coequal branch prevents the Court from prying into the internal workings of the [House of Representatives]."[167] The Constitutional grant to Congress to determine its own rules of proceedings has generally been "traditionally construed as a grant of full discretionary authority to the Houses of Congress in the formulation, adoption and promulgation of its own rules. As such, the exercise of this power is generally exempt from judicial supervision and interference x x x."[168]

Hence, as Congress is bestowed by the Constitution the power to formulate, adopt, and promulgate its own rules, the Court will not hesitate to presume good faith on the part of Congress with respect to the rules it adopted in deliberating the extension of martial law and the suspension of the privilege of the writ of *habeas corpus*.

In contrast, however, good faith belief is irrelevant in the Court's duty under a Section 18 review. To be sure, a nullification

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[164] G.R. No. 227757, July 25, 2017, 832 SCRA 111 [*En Banc*, per *J.* Perlas-Bernabe].

[165] 359 Phil. 276, 300 (1998) [*En Banc*, per *J.* Panganiban].

[166] *Baguilat, Jr. v. Alvarez*, *supra* note 164, at 132-133.

[167] *Id*. at 133.

[168] *Spouses Dela Paz v. Senate Committee on Foreign Relations*, 598 Phil. 981, 986 (2009) [*En Banc*, per *J.* Nachura].

resulting from a Section 18 review does not ascribe any grave abuse to the actors involved in the declaration of martial law or the suspension of the privilege of the writ of *habeas corpus* or the extension thereof. Stated differently, the declaration or suspension, or the extension thereof may fail to pass constitutional muster under Section 18 despite the good faith belief of the actors. The test of sufficient factual basis — the establishment of the twin requirements — goes beyond a showing of good faith belief. Good faith belief would not be far removed from the standard of grave abuse in *Lansang v. Garcia*[169] (*Lansang*) which is decidedly no longer the standard of a Section 18 review under the 1987 Constitution.[170] The independent review of the Court, being akin to administrative fact-finding, must either be supported by substantial evidence[171] or pass the test of reasonableness[172] in order to hurdle the standard of Section 18.

Accordingly, the test of grave abuse, even the existence thereof in the declaration, suspension, or extension, will not be determinative of the outcome of a Section 18 review by the Court. If the government can show sufficient factual basis for the proclamation, suspension, or extension — meaning that it presents to the Court substantial evidence to support the existence or persistence of rebellion and the requirement of public safety, as the case may be, — then the assailed action will be upheld even without having to determine whether or not there is a showing of grave abuse. Conversely, no amount of good faith belief will save a declaration, suspension, or extension from being nullified if the government fails to meet its burden to adduce substantial evidence to the Court in a Section 18 review proving the twin requirements for the declaration, suspension, or extension.

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[169] 149 Phil. 547 (1971) [*En Banc*, per *C.J.* Concepcion].

[170] *Lagman v. Medialdea*, *supra* note 8 and *Lagman v. Pimentel III*, *supra* note 9.

[171] *J.* Caguioa, Dissenting Opinion in *Lagman v. Medialdea*, *supra* note 122, at 647.

[172] *J.* Jardeleza, Dissenting Opinion in *Lagman v. Pimentel III*, *supra* note 142, at 2.

In this regard, jurisprudence has defined a political question as involving "those questions which, under the Constitution, are to be *decided by the people* in their sovereign capacity, or in regard to which *full discretionary authority* has been delegated to the Legislature or executive branch of the Government."[173]

Hence, with the Constitution granting Congress express authority to promulgate its own internal rules in the conduct of its deliberations, the issues raised by the petitioners as to the propriety of the time limits imposed upon members of Congress in making interpellations and explaining their individual votes, the failure of Congress to provide to its members certain documents, figures, and other data, as well as other procedural issues surrounding the Congress' manner of conducting the deliberations, are political questions not cognizable by the Court.

The Constitution does not provide specific rules as to the time limits to be observed by the members of Congress in conducting its deliberations, as well as with respect to the quality and quantity of documents and data that must be furnished to the members of Congress during the deliberations. Hence, as Section 18 is silent as to the procedural rules that Congress must observe in conducting its deliberations, Congress, as an independent branch of government, is given some leeway in determining how it should conduct its deliberations for the extension of martial law and the suspension of the privilege of the writ of *habeas corpus*.

Further, there is no specific procedural rule on the deliberations for the extension of martial law and the suspension of the privilege of the writ of *habeas corpus* laid down in the most recent version of the Rules of the House of Representatives promulgated by the House.[174] Hence, not only are the rules on time limits and the insufficient furnishing of documents raised by the petitioners not contrary to the existing Rules of the House, but, even

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[173] *Tañada v. Cuenco*, 103 Phil. 1051, 1067 (1957) [*En Banc*, per *J.* Concepcion].

[174] <www.congress.pov.ph/download/docs/hrep.house.rules.pdf> (last accessed February 19, 2019).

assuming for the sake of argument that the conduct observed by Congress during the joint session digressed from the existing Rules of the House, such would still not be invalid as the Court, as long as no constitutional provision is violated, "will not interfere with the right of Congress to amend its own rules."[175]

Therefore, considering the foregoing, the manner by which Congress approved the extension of martial law and the suspension of the privilege of the writ of *habeas corpus* is beyond the scope of the Court's review in a Section 18 petition, and is a political question that is not reviewable by the Court.

Nevertheless, as already exhaustively discussed, the political question doctrine does not impact on the duty of the Court to discharge its own duty under Section 18 to determine, for itself, whether or not there is sufficient basis to extend martial law. Consequently, as to this determination by the Court, the Congress cannot interfere.

At this juncture, I would like to take the opportunity to clarify certain fundamental points where I wholly disagree with the *ponencia*:

I. On the scope of a Section 18 review

The *ponencia* rules that the sufficiency of factual basis for the extension must be determined from the facts or information contained in the President's request supported by the reports made by his alter ego to Congress.[176] The *ponencia* also rules that the Court cannot expect exactitude and preciseness of the facts or information stated in the written Report as the Court's review is confined to the sufficiency and not the accuracy thereof.[177]

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[175] *Pimentel, Jr. v. Senate Committee on the Whole*, 660 Phil. 202, 220 (2011) [*En Banc*, per *J.* Carpio].

[176] *Ponencia*, p. 15.

[177] See *id.*

As I have previously observed in *Lagman v. Pimentel III*, this view is not a reasonable interpretation of the extent of review contemplated in Section 18. Suppose that the reports given to Congress were insufficient, but the political departments are ready and able to submit evidence of sufficient factual basis during a subsequent Section 18 review. Is the Court then bound to invalidate based on a lack of sufficient factual basis before Congress?

All submissions of the government in this case have been considered. The need for accuracy in the information is not difficult to grasp. Section 18 is a judicial proceeding. Thus, when the government is tasked to show **sufficient factual basis** to the Court, it must be through evidence. Evidence, in turn, is the means of ascertaining in a judicial proceeding the truth respecting a matter of **fact**.[178] Evidence must at the very least be accurate[179] in order to serve its purpose.

Otherwise, if the political departments are excused from presenting accurate information, if even the most lenient standards of an administrative fact-finding do not apply in Section 18 as Justice Ramon Paul L. Hernando suggests, then the Court is merely going through the motions in a Section 18 review. For what value does it carry for the Court to find sufficient inaccurate factual basis?

In layman's terms, how can something that is inaccurate and untrue be considered sufficient? Thus, the repeated insistence and talismanic reliance on the phrase "accuracy is not equivalent to sufficiency" amounts to nothing more than a complete and total abdication by the Court of its duty under Section 18. The recurrent use of the foregoing pronouncement renders nugatory the power and duty of the Court under Section 18, for it binds the Court to view as gospel truth — whether supported by evidence or otherwise — any claim of untoward incidents put forth by the Executive and the military to justify the existence

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[178] RULES OF COURT, Rule 128, Sec. 1.

[179] Preferably complete, comprehensible, and credible.

of rebellion and the perils to public safety. **If this is the majority's formulation, Section 18 can just as well be deleted from the Constitution as it is totally useless within the checks and balances framework of the Constitution.**

This mindset — that the Court should not require correctness or accuracy in the reports submitted by the Executive — makes little to no sense in a review of sufficiency of factual basis of an **extension** of martial law, as compared to its initial declaration. This pronouncement may have been understandable in the initial declaration of martial law through Proclamation No. 216 as the Executive indeed had to respond to an urgent situation, *i.e.*, the Marawi siege. Hence, in the ensuing emergency, it was understandable that the Executive no longer had the opportunity to verify the claims before acting accordingly. **It cannot be said, however, that this same urgency exists for the extension, especially the one in the case at hand wherein a third extension is sought, for the Executive and the military have had ample time (all of a year, if not more) to compile information and further investigate, if necessary, so that their claims may qualify as "evidence" in court.** This is the reason why, as I stated earlier, blanket claims of "according to informants," "suspected ASG," and "believed to be BIFF" would not suffice.

Going back to the case at hand, the review of the sufficiency of the factual basis extended beyond the facts and information contained in the President's request and the supporting reports — the more generous interpretation being precisely to allow the government a fuller opportunity to show to the Court and to the people sufficient factual basis for the extension. The political departments were even given the opportunity to complete, correct, and supplement their submissions. **Notwithstanding that all submissions, no matter if incomplete, inconsistent, or unintelligible, were considered, the totality of the evidence was still not constitutive of substantial evidence to prove the persistence of rebellion or the requirement of public safety to justify the third extension.**

II. On the false dichotomy between probable cause and substantial evidence

The *ponencia* draws an apparent distinction between probable cause and substantial evidence, as if probable cause is a lower standard compared to substantial evidence. When a probable cause determination reaches the Court, as it does in a Section 18 review, the evidence required to support probable cause is substantial evidence. **This is rudimentary.**

When the Court reviews the probable cause determination of the Ombudsman, the threshold is substantial evidence:

> x x x It is well-settled that courts do not interfere with the Ombudsman's discretion in determining probable cause whose findings, when **supported by substantial evidence** and in the absence of grave abuse of discretion or any capricious, whimsical and arbitrary judgment as to amount to an evasion of a positive duty, are entitled to great weight and respect, as in this case.[180]

And:

> x x x It is settled that the Ombudsman's determination of whether or not probable cause exists is entitled to great weight and respect, and should stand so long as supported by substantial evidence x x x.[181]

When the Court or a judge reviews the probable cause determination of the prosecutor, the threshold is substantial evidence:

> The general rule of course is that the judge is not required, when determining probable cause for the issuance of warrants of arrests, to conduct a *de novo* hearing. The judge only needs to personally review the initial determination of the prosecutor finding a probable cause **to see if it is supported by substantial evidence**.

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[180] *Tolentino, Jr. v. Jallores*, G.R. No. 242051, November 5, 2018 (Unsigned Resolution). Citation omitted; emphasis supplied.

[181] *Sandoval II v. Office of the Ombudsman*, G.R. No. 241671, October 1, 2018 (Unsigned Resolution). Citation omitted.

But here, the prosecution conceded that their own witnesses tried to explain in their new affidavits the inconsistent statements that they earlier submitted to the Office of the Ombudsman. Consequently, it was not unreasonable for Judge Yadao, for the purpose of determining probable cause based on those affidavits, to hold a hearing and examine the inconsistent statements and related documents that the witnesses themselves brought up and were part of the records. Besides, she received no new evidence from the respondents.[182]

When the third extension is validated by the majority based on the existence of probable cause divorced from substantial evidence, there is basic misunderstanding of the quantum of evidence continuum. **When the fundamental requirements in the most permissive of judicial and administrative proceedings are held not to apply to review the factual basis for the extension of martial law, then is this not basically saying that the Court is willing to accept even a scintilla of evidence?** This is simply egregious error.

III. Totality versus piecemeal examination of the evidenc

The *ponencia* attempts to discredit any in-depth analysis of the government submissions as "piecemeal." It states, "[i]n finding sufficiency of the factual basis for the third extension, the Court has to give due regard to the military and police reports which are not palpably false, contrived, or untrue; consider the full complement or totality of the reports submitted, and not make a piecemeal or individual appreciation of the facts and the incidents reported."[183] Elsewhere, it continues, "[t]he absence of motives indicated in several reports does not mean that these violent acts and hostile activities committed are not related to rebellion which absorbs other common crimes."[184]

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[182] *People v. Dela Torre-Yadao*, 698 Phil. 471, 487-488 (2012) [*En Banc*, per *J*. Abad]. Citations omitted; emphasis supplied.

[183] *Ponencia*, p. 16.

[184] *Id*. at 19.

Herein lies another crucial flaw in the *ponencia*'s reasoning, not less important than the Court's failure to exact some level of accuracy.

The rule remains the same as in *Lagman v. Pimentel III*: the government is required to show two things in a Section 18 review of an extension of martial law: (1) the persistence of the original rebellion, and (2) demand of public safety.

To show the persistence of rebellion, the government is required to prove, **at least one incident** wherein the overt act of rebellion (*i.e.*, rising up publicly and taking arms against the government) and the specific political purpose of rebellion (*i.e.*, removing from the allegiance to said government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or other armed forces, or of depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives) concur.

When the *ponencia* concedes that there is absence of motive in several reports, what it really thus concedes is that it failed to find a single report that presents convincingly an act of rebellion with a rebellious purpose. This dissent presents all reports that state the motive. **However, none of these reports presents convincingly an act of rebellion with a rebellious purpose.**

Accordingly, when the *ponencia* does not find in one, it says it finds in the totality of the evidence — this is simply nonsensical. Any close examination of the evidence is accused of missing the forest for the trees. The *ponencia*, however, illogically finds a forest where there is not a single tree. The examination of all the violent incidents can only show, at most, a demand of public safety arising from a proliferation of private crimes. It is well to emphasize that the requirement of public safety is separate from the requirement of an actual rebellion.

IV. On the reliance upon Montenegro v. Castañeda and other inapplicable cases to defer to the determination of the political

departments and excusing them from showing accuracy in the factual basis presented

The *ponencia* also rules that "the Court need not make an independent determination of the factual basis for the proclamation or extension of martial law and the suspension of the privilege of the writ of *habeas corpus*. x x x It would be impossible for the Court to go on the ground to conduct an independent investigation or factual inquiry, since it is not equipped with resources comparable to that of the Commander-in-Chief to ably and properly assess the ground conditions."[185]

Citing a passage in *Montenegro v. Castañeda*[186] (*Montenegro*) to compare the machinery of the Court and the Executive branch and that the former "cannot be in a better position to ascertain or evaluate the conditions prevailing in the Archipelago,"[187] the *ponencia* then concludes, "[t]he Court need not delve into the accuracy of the reports upon which the President's decision is based, or the correctness of his decision to declare martial law or suspend the writ, for this is an executive function. The threshold or degree of sufficiency is, after all, an executive call."[188] Furthermore, it cites the decision of the Court in *David v. Macapagal-Arroyo*[189] citing the case of *Integrated Bar of the Philippines (IBP) v. Zamora*,[190] that the Court cannot undertake an independent investigation beyond the pleadings.[191]

I strongly disagree. The danger of recklessly citing *Montenegro* cannot be overstated.

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[185] *Ponencia*, p. 15.

[186] 91 Phil. 882, 887 (1952) [*En Banc*, per *J.* Bengzon].

[187] *Ponencia*, p. 16.

[188] *Id*.

[189] 522 Phil. 705 (2006) [*En Banc*, per *J.* Sandoval-Gutierrez].

[190] 392 Phil. 618 (2000) [*En Banc*, per *J.* Kapunan].

[191] *Ponencia*, p. 16.

Montenegro involved the validity of Proclamation No. 210, s. 1950 suspending the privilege of the writ of *habeas corpus*, **operating under the 1935 Constitution**.[192] Completing the picture of the passage quoted by the *ponencia*, the ultimate basis for that *ratio* in *Montenegro* is its reliance upon the decisions of the United States Supreme Court that were likewise used as basis for the holding in *Barcelon v. Baker, Jr.*[193] (*Barcelon*):

> And we agree with the Solicitor General that in the light of the views of the United States Supreme Court thru, Marshall, Taney and Story quoted with approval in *Barcelon vs. Baker* (5 Phil., 87, pp. 98 and 100) the authority to decide whether the exigency has arisen requiring suspension belongs to the President and "his decision is final and conclusive" upon the courts and upon all other persons.
>
> Indeed as Justice Johnson said in that decision, whereas the Executive branch of the Government is enabled thru its civil and military branches to obtain information about peace and order from every quarter and corner of the nation, the judicial department, with its very limited machinery can not be in better position to ascertain or evaluate the conditions prevailing in the Archipelago.
>
> But even supposing the President's appraisal of the situation is merely *prima facie*, we see that petitioner in this litigation has failed to overcome the presumption of correctness which the judiciary accords to acts of the Executive and Legislative Departments of our Government.[194]

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[192] The Commander-in-Chief Clause in the 1935 Constitution reads:

ARTICLE VII.—EXECUTIVE DEPARTMENT

SEC. 11. (2) The President shall be commander-in-chief of all armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it, he may suspend the privileges of the writ of *habeas corpus*, or place the Philippines or any part thereof under martial law.

There was no counterpart provision to the third paragraph of Section 18 for a review by the Court.

[193] 5 Phil. 87 (1905) [*En Banc*, per *J.* Johnson].

[194] *Montenegro v. Castañeda*, *supra* note 186, at 887.

Turning our attention to *Barcelon*, it is instantly apparent that it cannot be basis for the Court to anchor its findings in a Section 18 review to the determination of the political departments on account of the latter's far more superior information-gathering machinery. The Court in *Barcelon* refused to review the factual basis of the suspension of the privilege of the writ of *habeas corpus* for being a political question:

> We are of the opinion that the only question which this department of the Government can go into with reference to the particular questions submitted here are as follows:
>
> (1) Admitting the fact that Congress had authority to confer upon the President or the Governor-General and the Philippine Commission authority to suspend the privilege of the writ of *habeas corpus*, was such authority actually conferred? and
>
> (2) Did the Governor-General and the Philippine Commission, acting under such authority, act in conformance with such authority?
>
> If we find that Congress did confer such authority and that the Governor-General and the Philippine Commission acted in conformance with such authority, then this branch of the Government is excluded from an investigation of the facts upon which the Governor-General and the Philippine Commission acted, and upon which they based the resolution of January 31, 1905, and the executive order of the Governor-General of the same date. *Under the form of government established in the Philippine Islands, one department of the Government has no power or authority to inquire into the acts of another, which acts are performed within the discretion of the other department.*[195]

Relying upon decisions of the United States Supreme Court to this effect, *Barcelon* concludes:

> We base our conclusions that this application should be denied upon the following facts:
>
> x x x x x x x x x
>
> Fourth. That the conclusion set forth in the said resolution and the said executive order, as to the fact that there existed in the Provinces

[195] *Barcelon v. Baker, Jr.*, *supra* note 193, at 96-97. Italics in the original.

of Cavite and Batangas open insurrection against the constituted authorities, was a conclusion entirely within the discretion of the legislative and executive branches of the Government, after an investigation of the facts.

Fifth. That one branch of the United States Government in the Philippine Islands has no right to interfere or inquire into, for the purpose of nullifying the same, the discretionary acts of another independent department of the Government.

Sixth. Whenever a statute gives to a person or a department of the Government discretionary power, to be exercised by him or it, upon his or its opinion of certain facts, such statute constitutes him or it the sole and exclusive judge of the existence of those facts.

Seventh. The act of Congress gave to the President, or the Governor-General with the approval of the Philippine Commission, the sole power to decide whether a state of rebellion, insurrection, or invasion existed in the Philippine Archipelago, and whether or not the public safety required the suspension of the privilege of the writ of *habeas corpus*.

Eighth. This power having been given and exercised in the manner above indicated, we hold that such authority is exclusively vested in the legislative and executive branches of the Government and their decision is final and conclusive upon this department of the Government and upon all persons.[196]

Verily, this has not been the state of the law for close to thirty-three (33) years - counted from the adoption of the 1987 Constitution, and close to fifty (50) years if counted from Lansang.

Even the deferential Court in *Lansang* abandoned *Barcelon* and exercised some level of review of the factual basis of the suspension.[197] Most discretionary acts of the political departments

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

[197] In *Lansang*, the Court stated: "The first major question that the Court had to consider was whether it would adhere to the view taken in *Barcelon v. Baker* and reiterated in *Montenegro v. Castañeda*, pursuant to which, 'the authority to decide whether the exigency has arisen requiring suspension (of the privilege or the writ of *habeas corpus*) belongs to the President and

are now subject to the Court's expanded power of judicial review,[198] with the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus* and the extension thereof being subject to the test for sufficiency of factual basis under Section 18. **To be sure, the *ponencia* unwarrantedly seeks to rewrite the 1987 Constitution, and unduly reverts back to the 1935 and 1973 Constitutions.**

Any presumption of correctness in a Section 18 proceeding will be in violation of the express provision of the Constitution. This is why the two earlier Section 18 decisions were silent as to the applicability of the presumption of regularity in the performance of official functions. This is why the totality of the government's submissions is examined.

As for the cases of *David v. Macapagal-Arroyo* and *IBP v. Zamora*, a reading of the cases reveals that these do not purport to make a rule with respect to a Section 18 review of the declaration of martial law, suspension of the privilege of the writ of *habeas corpus*, or the extension thereof. **Both cases deal with the exercise of the calling out powers of the President.**

In *David v. Macapagal-Arroyo*, the issue was the constitutionality of President Arroyo's Presidential Proclamation No. 1017 and General Order No. 5 that "declare[d] a [s]tate of [n]ational [e]mergency" and "call[ed] upon the AFP and the PNP to prevent and suppress acts of terrorism and lawless violence in the country," respectively.[199]

In *IBP v. Zamora*, the issue was the validity of President Estrada's Letter of Instruction 02/2000 and the deployment of

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his "decision is final and conclusive" upon the courts and upon all other persons.' x x x Upon mature deliberation, a majority of the Members of the Court had, however, reached, although tentatively, a consensus to the contrary, and decided that the Court had authority to and should inquire into the existence of the factual bases required by the Constitution for the suspension of the privilege of the writ; x x x." (*Lansang v. Garcia*, *supra* note 169, at 577).

[198] 1987 CONSTITUTION, Art. VIII, Sec. 1.

[199] *Supra* note 189, at 740 and 741-742.

the Philippine Marines. To place the *ponencia*'s premise within its proper context, the *ratio* for the Court's statement that the Court cannot undertake an independent investigation beyond the pleadings was only to support the ultimate conclusion that "[t]here is a clear textual commitment under the Constitution to bestow on the President full discretionary power to call out the armed forces and to determine the necessity for the exercise of such power."[200] The Court then clearly drew a distinction between the review of the power to call on the armed forces as against the power to declare martial law or suspend the privilege of the writ of *habeas corpus* — primarily, that the review of the exercise of calling out powers may prove unmanageable for the Courts on account of lack of textual standards, as opposed to that of the less benign powers subject to the conditions of Section 18. Prefaced with the text of Section 18, the Court explained:

> Under the foregoing provisions, Congress may revoke such proclamation or suspension and the Court may review the sufficiency of the factual basis thereof. However, there is no such equivalent provision dealing with the revocation or review of the President's action to call out the armed forces. The distinction places the calling out power in a different category from the power to declare martial law and the power to suspend the privilege of the writ of *habeas corpus*, otherwise, the framers of the Constitution would have simply lumped together the three powers and provided for their revocation and review without any qualification. *Expressio unius est exclusio alterius*. Where the terms are expressly limited to certain matters, it may not, by interpretation or construction, be extended to other matters. That the intent of the Constitution is exactly what its letter says, *i.e.*, that the power to call is fully discretionary to the President, is extant in the deliberation of the Constitutional Commission. x x x
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> The reason for the difference in the treatment of the aforementioned powers highlights the intent to grant the President the widest leeway and broadest discretion in using the power to call out because it is

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[200] *Supra* note 190, at 640.

considered as the lesser and more benign power compared to the power to suspend the privilege of the writ of *habeas corpus* and the power to impose martial law, both of which involve the curtailment and suppression of certain basic civil rights and individual freedoms, and thus necessitating safeguards by Congress and review by this Court.

Moreover, under Section 18, Article VII of the Constitution, in the exercise of the power to suspend the privilege of the writ of *habeas corpus* or to impose martial law, two conditions must concur: (1) there must be an actual invasion or rebellion and, (2) public safety must require it. These conditions are not required in the case of the power to call out the armed forces. The only criterion is that "whenever it becomes necessary," the President may call the armed forces to prevent or suppress lawless violence, invasion or rebellion. **The implication is that the President is given full discretion and wide latitude in the exercise of the power to call as compared to the two other powers.**

If the petitioner fails, by way of proof, to support the assertion that the President acted without factual basis, then this Court cannot undertake an independent investigation beyond the pleadings. The factual necessity of calling out the armed forces is not easily quantifiable and cannot be objectively established since matters considered for satisfying the same is a combination of several factors which are not always accessible to the courts. **Besides the absence of textual standards that the court may use to judge necessity, information necessary to arrive at such judgment might also prove unmanageable for the courts.** Certain pertinent information might be difficult to verify, or wholly unavailable to the courts. In many instances, the evidence upon which the President might decide that there is a need to call out the armed forces may be of a nature not constituting technical proof.

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Thus, it is the unclouded intent of the Constitution to vest upon the President, as Commander-in-Chief of the Armed Forces, full discretion to call forth the military when in his judgment it is necessary to do so in order to prevent or suppress lawless violence, invasion or rebellion. Unless the petitioner can show that the exercise of such discretion was gravely abused, the President's exercise of judgment deserves to be accorded respect from this Court.[201]

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[201] *Id*. at 642-644. Emphasis and underscoring supplied.

There is no question that the political departments have the machinery to determine the conditions on the ground, but this is not basis to hold that the standard of review in this case is the same as that in *David v. Macapagal-Arroyo* and *IBP v. Zamora*. **This far superior information-gathering machinery of the Executive department is *precisely* why the Court has held, in the past Section 18 proceedings before it, that the government bears the burden of proof to show the factual basis. That is why burden of proof is upon the respondents. Let them meet their burden. If the Court is not able to determine the accuracy or the existence of the factual basis of the extension of martial law, then it only means that the government did not meet its burden.**

This far superior information-gathering machinery is *precisely* the reason why, in my view, the evidence presented in this case — unsubstantiated, uncorroborated, and based on conjectures, rumor and hearsay — is unacceptable.

V. On the holding that rebellion that allows the exercise of Commander-in-Chief powers is more expansive than that defined in the RPC

The *ponencia* states that "rebellion contemplated in the Constitution as essential to the declaration of martial law has an expansive scope and cannot be confined to the definition of rebellion as a crime under the Revised Penal Code. Therefore, it is not restricted to the time and locality of actual war nor does it end when actual fighting in a particular area has ceased. It refers to a state or condition resulting from the commission of a series or combination of acts and events, past, present and future, primarily motivated by ethnic, religious, political or class divisions which incites violence, disturbs peace and order, and pose threat to the security of the nation."[202]

It continues, "martial law cannot be restricted only to areas where actual fighting continue to occur,"[203] premised by citations

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[202] *Ponencia*, p. 20.

[203] *Id*. at 22.

of the *Amicus Curiae Brief* of Fr. Joaquin Bernas in *Fortun v. Macapagal-Arroyo*[204] (*Fortun*), *In the Matter of the Petition for Habeas Corpus of Benigno S. Aquino v. Enrile*[205] (*Aquino v. Enrile*), and Montenegro because "rebels have become more cunning and instigating rebellion from a distance is now more attainable, perpetrating acts of violence clandestinely in several areas of Mindanao."[206]

First, as explained above, jurisprudence prior to the 1987 Constitution such as *Aquino v. Enrile* and *Montenegro* cannot conclusively serve as precedents.

Second, by no stretch of the imagination can *Fortun* be considered as rule-setting in a Section 18 review. *Fortun* involved the question of constitutionality of Proclamation No. 1959, s. 2009 issued by former President Gloria Macapagal-Arroyo to declare martial law and suspend the privilege of the writ of *habeas corpus* in Maguindanao. The Proclamation was withdrawn after just eight days, before the Congress could even convene in joint session. The Court's decision issued three years later, or in 2012, dismissed the consolidated petitions for having become moot and academic. **Because of the dismissal for mootness, there was no discussion as to the scope of martial law and the proper interpretation of "rebellion" under the Constitution.**

While the oft-cited *Amicus Brief* of Fr. Bernas is offered to advance a more "lenient" definition of rebellion, being qualified by the prudential estimation of the demand of public safety, **this portion of the brief is to advance the position that the proof of rebellion required for the purpose of exercising the President's Commander-in-Chief powers is not proof beyond reasonable doubt**.

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[204] Cited in *J.* Velasco, Dissenting Opinion in *Fortun v. Macapagal-Arroyo*, 684 Phil. 526, 629-630 (2012).

[205] 158-A Phil. 1 (1974) [*En Banc*, per *C.J.* Makalintal].

[206] *Ponencia*, p. 22.

This was in fact discussed in the Dissenting Opinion of Senior Associate Justice Carpio who opined that "probable cause of the existence of either invasion or rebellion suffices and satisfies the standard of proof for a valid declaration of martial law and suspension of the writ."[207] **This was the standard adopted in *Lagman v. Medialdea* and *Lagman v. Pimentel III* that rebellion in Section 18 is the same rebellion in the Revised Penal Code.** This is also supported by an opinion just as astute as Fr. Bernas. In the *Amicus Memorandum* of Justice Vicente V. Mendoza in *Fortun*, he submitted that rebellion in the Constitution is the same rebellion in the RPC, thus:

Whether the term "rebellion" in Section 18, Article VII of the 1987 Constitution has the same meaning as the term "rebellion" is defined in Article 134 of the Revised Penal Code.

The term "rebellion" has always been understood in this country as an armed public uprising against the government for the purpose of seizing power. This has always been the meaning of the crime of rebellion since the enactment of Act No. 292, Sec. 3, from which Art. 134 of the present Revised Penal Code was taken. Hence, the term "rebellion" in Art. VII, Sec. 18 of the Constitution must be understood as at present defined in Art. 134 of the Revised Penal Code, consisting of —

> [the] rising publicly and taking [of] arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or other armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.

Like "treason," "bribery, graft and corruption" in the Impeachment Clause, the Constitution has left the meaning of "rebellion" in the Commander in Chief Clause to be defined by law.

Indeed, it is with the crime of rebellion as defined in the penal law that petitioners in the *habeas corpus* cases of *Barcelon v. Baker, Montenegro v. Castañeda*, and *Lansang v. Garcia* were charged. It

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[207] *J.* Carpio, Dissenting Opinion in *Fortun v. Macapagal-Arroyo*, *supra* note 204, at 597.

is the same crime with which some of the accused in the Maguindanao massacre are charged in the prosecutors' offices and in trial court

With this meaning of "rebellion," the members of the Constitutional Commission were familiar. There was an attempt to provoke a discussion of the nature of rebellion in the Constitutional Commission the discussion ended in a reiteration of the concept of rebellion as a public uprising against the government for the purpose of seizing power. It was pointed out that any other armed resistance against the government would only be either sedition or tumultuous affray, not justifying the imposition of martial law or the suspension of the privilege of the writ of habeas corpus. Thus, in the deliberations of the Commission on July 29, 1986 the following discussion took place:

> MR. DE LOS REYES. May I ask some questions of the Committee.
>
> One of the significant changes in Section 15 is that the phrase imminent danger thereof was deleted, including the word "insurrection." [I] would like to be clarified as to the reason for the deletion of the phrase "or imminent danger thereof in justifying the imposition of martial law and suspension of the privilege of the writ of habeas corpus
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> MR. REGALADO. [T]he gentleman will recall that in the 1935 Constitution the phrase imminent danger thereof did not appear in the Bill of Rights. However, the framers of the 1973 Constitution wanted to have a strong President and they added the phrase imminent danger thereof in the provision on Commander-in-Chief.[208] [B]ut recent events have shown that the phrase is fraught with possibilities of abuse. Where the President states that there is an imminent danger of rebellion, it appears that he would have to rely on his word because he could always say that this is the military intelligence report. [E]ven with the Supreme Court trying to look into their factual basis under the proposed Constitution, can still be thwarted because the Supreme Court cannot just disregard a so-called classified, highly reliable intelligence report coming from different agencies which for all we know could easily be contrived in the hands of a scheming President...

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[208] *J.* V.V. Mendoza Amicus Memorandum in *Fortun*, p. 11. He adds: The phrase "imminent danger thereof" was already in the Commander in Chief Clause. What was done was to write it also in the Bill of Rights.

MR. DE LOS REYES. As I see now, the Committee envisions actual rebellion and no longer imminent rebellion. Does the Committee mean there should be actual shooting or actual attack on the legislature or Malacanang, for example? Let us take for example a contemporary event - this Manila Hotel incident, ... would the Committee consider that an act of rebellion?

MR. REGALADO. If we consider the definition of rebellion under Article 134 and 135 of the Revised Penal Code, that presupposes actual assemblage of men in an armed public uprising for the purposes mentioned in Article 134 and by the means employed under Article 135. I am not trying to pose as an expert about this rebellion that took place in the Manila Hotel. [I] do not know whether we consider that there was really an armed public uprising. Frankly I have my doubts on that because we are not privy to the investigation conducted here.

MR. DE LOS REYES. I ask that question because I think modern rebellion can be carried out nowadays in a more sophisticated manner because of the advance of technology, mass media and others. Let us consider this for example: There is an obvious synchronized or orchestrated strike in all industrial firms, then there is a strike of drivers so that employees and students cannot attend school nor go to their places of work, practically paralyzing the government. Then in some remote barrios, there are ambushes by so-called subversives, so that the scene is that there is an orchestrated attempt to destabilize the government and ultimately supplant the constitutional government.

Would the Committee call that an actual rebellion, or is it an imminent rebellion?

MR. REGALADO. At the early stages where there was just an attempt to paralyze the government or some sporadic incidents in other areas, but without armed public uprising, that would amount to sedition under Article 138, or it can be considered tumultuous disturbance.

. . . . . .

MR. REGALADO. It [then] becomes a matter of appreciation. If ... there is really an armed uprising although not all over the country, not only to destabilize but to overthrow the government, that would already be considered within the ambit of rebellion. If the President considers it, it is not yet necessary to suspend

> the privilege of the writ. It is not yet necessary to declare martial law because he can still resort to the lesser remedy of just calling out Armed Forces for the purpose of preventing or suppressing lawlessness or rebellion. (Sic)[209]

Thus, only an actual rebellion is contemplated in the Constitution as ground for declaring martial law or suspending the privilege of the writ of habeas corpus. Short of that, an incident may only justify using the Armed Forces for the purpose of suppressing lawless violence. This is the consequence of deleting "imminent danger [of rebellion]" and "insurrection" in our two previous Constitutions as grounds for declaring martial law or suspending the privilege of the writ.

Mere allegations — without more — that "heavily armed groups in the province of Maguindanao have established positions to resist government troops, thereby depriving the Executive of its powers and prerogatives to enforce the law and to maintain public order and safety," and that "condition of peace and order in the province of Maguindanao has deteriorated to the extent that the local judicial system and other government mechanism in the province are not functioning, thus endangering public safety" are insufficient to constitute an allegation of actual rebellion that alone can justify the declaration of martial law and/or the suspension of the privilege of the writ of habeas corpus.

That "rebellion" in the Commander in Chief Clause means the crime of rebellion as defined in Art. 134 of the Revised Penal Code is clear from Art. VII, Sec. 18 which provides that "The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion." One can only be "judicially charged" with rebellion only if one is suspected of having committed acts defined as rebellion in Art. 134 of the Revised Penal Code.

The government's interpretation of the term "rebellion" would broaden its meaning and defeat the intention of the Constitution to reduce the powers of the President as Commander in Chief.[210]

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[209] *Id*. at 11-12, citing II RECORD OF THE CONSTITUTIONAL COMMISSION: PROCEEDINGS AND DEBATES, pp. 411-413 (1986).

[210] *Id*. at 9-13.

The *ponencia*'s holding in fact amounts to an abandonment of the holding in *Lagman v. Medialdea* and *Lagman v. Pimentel III* that required an actual rebellion, albeit not necessarily that which was covered in the original proclamation. **Unbelievably, the decision reached by the majority today does not even contain a standard of what amorphous rebellion is sufficient for a Section 18 review.**

VI. On the finding that the reports of violent incidents submitted by the government constituted a consistent pattern of rebellion in Mindanao.

The *ponencia* states, "[w]hile the primary justification for the President's request for extension is the on-going rebellion in Mindanao, the situation remains the same despite the death of the leaders, and the addition of rebel groups whose activities were intensified and pronounced after the first and second extensions."[211]

It continues, "[t]he factual basis for the extension of martial law is the continuing rebellion being waged in Mindanao by Local Terrorist Rebel Groups (LTRG) — identified as the ASG, BIFF, DI, and other groups that have established affiliation with the ISIS/DAESH, and by the Communist Terrorist Rebel Groups (CTRG) - the components of which are the Communist Party of the Philippines (CPP), New People's Army (NPA), and the National Democratic Front (NDF).[212] x x x The cited events demonstrate the spate of violence of rebel groups in Mindanao in pursuit of the singular objective to seize power over parts of Mindanao or deprive the President or Congress of their power and prerogatives over these areas.[213] x x x [T]hese violent incidents should not be viewed as isolated events but in their totality, showing a consistent pattern of rebellion in Mindanao."[214]

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[211] *Ponencia*, p. 17.

[212] *Id*.

[213] *Id.* at 19.

[214] *Id*.

That the activities of "addition[al] rebel groups" "intensified and [became] pronounced after the first and second extensions" is not borne by the records. In fact, the government has consistently stated that there is a downward trend in crime, capability of violent groups, and even proliferation of drugs. A clear reduction in number of violent incidents in 2018 is shown by the specific reports in the Annexes when examined on a monthly basis. The monthly reports in the implementation of martial law in fact show a consistent upward trend in the number of "local terrorist groups (LTGs) [members]" and "CPP-NPA Terrorists (CNTs)" getting neutralized, the number of LTG and CNT members having surrendered, and the number of loose firearms being surrendered.[215] This same upward trend is apparent in the efforts of the military and the police in the establishment of Barangay Intelligence Networks and security patrols that insulate unaffected areas, the conduct of checkpoint operations, joint AFP-PNP operations and joint intelligence operations, even in the campaign against illegal drugs. **The *ponencia's* statements or reasons are therefore bereft of any basis, if not totally contradicted by, the respondents' assertions.**

There is no disagreement that the reports paint a violent picture of Mindanao. Where, however, the majority finds a "consistent pattern of rebellion," only a consistent pattern of lawless violence, or an imminent threat of rebellion, in reality exists.

As exhaustively examined in the body of this opinion, each and every incident was examined to see if in any one of these incidents the overt act of rebellion and the political purpose of rebellion concur. **There was not one incident that was positively shown to have been committed for the purpose of removing from the allegiance to the government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or other armed forces, or depriving the Chief Executive or the Legislature, wholly or partially,**

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[215] See AFP Monthly Reports on the implementation of Martial Law in Mindanao from January to December 2018.

of any of their powers and prerogatives as required by Article 134 of the RPC.

Without an actual rebellion therefore, no amount of lawless violence can justify martial law.

This same question had already been clearly raised in the resurrected *Barcelon*. More than a century ago, Justice Willard, dissenting, asked:

> The question in the case is this: **Have the Governor-General and the Commission power to suspend the writ of *habeas corpus* when no insurrection in fact exists?** If tomorrow they should suspend the writ in Manila, would that suspension be recognized by the courts?
>
> That in such a case they ought not to suspend the writ and that where no insurrection in fact exists they would have no right to do so, are propositions which have no bearing upon the case. The question is, Have they the power to do it?
>
> Prior to the passage of the act of Congress of July 1, 1902, the Commission had that power. They could suspend the writ, take it away entirely from certain provinces, or repeal entirely the law which authorized it to be issued. They had absolute control over it. (*In re* Calloway, 1 Phil. Rep., 11.)
>
> By the decision of the majority in this case the Governor-General and the Commission still have that power. The effect of this decision is to give them the same power which the Commission exercised before the passage of the act of Congress of July 1, 1902. In other words, that part of the act which relates to the writ of *habeas corpus* has produced no effect. It is repealed by this decision, and Congress accomplished nothing by inserting it in the law. No construction which repeals it should be given to this article. If a given construction leads to that result it seems to me that it must be certain that the construction is wrong. No other argument to prove that it is wrong is needed. Congress must have intended that this provision should produce some effect. To hold that it has produced no effect is to defeat such intention.
>
> But it is said that by the terms of the act, while the Governor-General and the Commissioners have the power to suspend the writ, they should not do it except in cases where insurrection in fact exists, and they, being men of character and integrity, would not do it except

in such cases. As the Government is at present constituted, this is undoubtedly true. This argument, however, is fully answered by what was said by the Supreme Court of the United States in the case of *Ex parte* Milligan (4 Wallace 2, 125):

> "This nation, as experience has proved, can not always remain at peace, and has no right to expect that it will always have wise and humane rulers, sincerely attached to the principles of the Constitution. Wicked men, ambitious of power, with hatred of liberty and contempt of law, may fill the place once occupied by Washington and Lincoln."[216]

VII. On the ratio that because rebellion is a continuing crime, it continues despite the cessation of the armed public uprising

The *ponencia* states "[c]lashes between rebels and government forces continue to take place in other parts of Mindanao. Kidnapping, arson, robbery, bombings, murder — crimes which are absorbed in rebellion — continue to take place therein. These crimes are part and parcel of the continuing rebellion in Mindanao. The report of the military shows that the reported IED incidents, ambuscade, murder, kidnapping, shooting, and harassment in 2018 were initiated by ASG members and the BIFF."[217]

The *ponencia* explains further, "[b]e it noted that rebellion is a continuing crime. It does not necessarily follow that with the liberation of Marawi, rebellion no longer exists. It will be a tenuous proposition to confine rebellion simply to a resounding clash of arms with government forces."[218]

Taken together with the refusal to exact some level of accuracy in evidence, this lackadaisical legal standard for rebellion is so unworkable that it can admit of martial law for as long as

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[216] *Barcelon v. Baker, Jr.*, *supra* note 193, at 118-119. Emphasis and underscoring supplied.

[217] *Ponencia*, p. 27.

[218] *Id.*, citing *Lagman v. Pimentel III*, *supra* note 9, at 43 and 44.

the political departments claim that rebellion found to have existed during the initial declaration persists. **This rule prevents any intelligent and functional Section 18 review.** Again, the *ponencia* may just as well have deleted Section 18 from the Constitution.

The jurisprudence on rebellion as a continuing crime, predominantly *Umil v. Ramos*[219] (*Umil*), was made in the context of warrantless arrests. Instead of being in support for the proposition that martial law may be declared and extended in areas where there is no armed public uprising, *Umil*, while I hesitate to speak of its lingering applicability, is precisely an argument against declaring or extending martial law anywhere and everywhere rebels may be without the demand of public safety because, to reiterate, **martial law is not necessary to run after rebels even outside the areas of armed uprising**.

Rebellion is not a continuing crime in the sense that once it has been determined to have existed, rebellion becomes *res judicata*. The floodgates have been opened for a perpetual martial law in *Lagman v. Pimentel III*, and we are seeing the results now.

This is unfortunate, because there has been no dearth of opinions attempting to place "rebellion as a continuing crime" in its proper context — which is demonstrably entirely separate from the question presented in Section 18, that is, whether a rebellion found in Section 18 continues to exist. Justice Florentino Feliciano registered his opinion in *Umil*, thus:

> 9.1 respectfully submit that an examination of the "continuing crimes" doctrine as actually found in our case law offers no reasonable basis for such use of the doctrine. More specifically, that doctrine, in my submission, does *not* dispense with the requirement that overt acts recognizably criminal in character must take place in the presence of the arresting officer, or must have just been committed when the arresting officer arrived, if the warrantless arrest it to be lawful. The "continuing crimes" doctrine in our case law (*before* rendition of *Garcia-Padilla vs. Enrile* does not sustain warrantless arrests of person

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[219] 279 Phil. 266 (1991) [*En Banc*, *Per Curiam*].

who, *at the time of the actual arrests*, were performing *ordinary acts of day-to-day life*, upon the ground that the person to be arrested is, as it were, merely resting in between specific lawless and violent acts which, the majority conclusively presumes, he *will* commit the moment he gets an opportunity to do so.

Our case law shows that the "continuing crimes" doctrine has been used basically in relation to two (2) problems: the first problem is that of determination of whether or not a particular offense was committed within the territorial jurisdiction of the trial court; the second problem is that of determining whether a single crime or multiple crimes were committed where the defense of double jeopardy is raised.

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12. My final submission, is that, the doctrine of "continuing crimes," which has its own legitimate function to serve in our criminal law jurisprudence, cannot be invoked for weakening and dissolving the constitutional guarantee against warrantless arrest. Where no overt acts comprising all or some of the elements of the offense charged are shown to have been committed by the person arrested without warrant, the "continuing crime" doctrine should not be used to dress up the pretense that a crime, begun or committed elsewhere, continued to be committed by the person arrested in the presence of the arresting officer. The capacity for mischief of such a utilization of the "continuing crimes" doctrine, is infinitely increased where the crime charged does not consist of unambiguous criminal acts with a definite beginning and end in time and space (such as the killing or wounding of a person or kidnapping and illegal detention or arson) but rather of such problematic offenses as membership in or affiliation with or becoming a member of, a subversive association or organization. For in such cases, the overt constitutive acts may be morally neutral in themselves, and the unlawfulness of the acts a function of the aims or objectives of the organization involved.[220]

In the context of validity of warrantless arrests, Justice Santiago Kapunan also sought to clarify the import and applicability of *Umil* in the later case of *Lacson v. Perez*[221] (*Lacson*):

[220] *Id*. at 328-331.

[221] 410 Phil. 78 (2001) [*En Banc*, per *J*. Melo].

Petitioners were arrested or sought to be arrested without warrant for acts of rebellion ostensibly under Section 5 of Rule 113. Respondent's theory is based on *Umil vs. Ramos*, where this Court held:

> The crimes of rebellion, subversion, conspiracy or proposal to commit such crimes, and crimes or offenses committed in furtherance thereof or in connection therewith constitute direct assault against the State and are in the nature of *continuing crimes*.

Following this theory, it is argued that under Section 5(a), a person who "has committed, is actually committing, or is attempting to commit" rebellion and may be arrested without a warrant at any time so long as the rebellion persists.

Reliance on *Umil* is misplaced. The warrantless arrests therein, although effected a day or days after the commission of the violent acts of petitioners therein, were upheld by the Court because at the time of their respective arrests, they were members of organizations such as the Communist Party of the Philippines, the New Peoples Army and the National United Front Commission, then outlawed groups under the Anti-Subversion Act. Their mere membership in said illegal organizations amounted to committing the offense of subversion which justified their arrests without warrants.

In contrast, it has not been alleged that the persons to be arrested for their alleged participation in the "rebellion" on May 1, 2001 are members of an outlawed organization intending to overthrow the government. Therefore, to justify a warrantless arrest under Section 5(a), there must be a showing that the persons arrested or to be arrested has committed, is actually committing or is attempting to commit the offense of rebellion. In other words, there must be an overt act constitutive of rebellion taking place in the presence of the arresting officer. x x x[222]

Again, this was still the context when the doctrine of rebellion as a continuing crime was touched upon in the 2004 case of *Sanlakas v. Reyes*.[223] In her Separate Opinion, Justice Consuelo Ynares-Santiago explains this doctrine in *Umil* and *Lacson*:

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[222] *Id*. at 105-106. Citations omitted; emphasis supplied.

[223] 466 Phil. 482 (2004) [*En Banc*, per *J*. Tinga].

Rebellion has been held to be a continuing crime, and the authorities may resort to warrantless arrests of persons suspected of rebellion, as provided under Section 5, Rule 113 of the Rules of Court. However, this doctrine should be applied to its proper context — *i.e.*, relating to subversive armed organizations, such as the New People's Army, the avowed purpose of which is the armed overthrow of the organized and established government. Only in such instance should rebellion be considered a continuing crime.[224]

Verily, there is no pretense at precedent that can support the proposition that rebellion continues when it has not been shown to exist.

As for the argument that these violent acts are "part and parcel of rebellion," "in furtherance of rebellion," or "absorbed by rebellion," this is placing the cart before the horse; plainly an egregious error. Here as well, the context of cited jurisprudence was whether violent acts are separate, complexed or absorbed by rebellion — very clearly divorced from the question of whether rebellion exists. Violent acts that are absorbed in rebellion for being considered as having been committed in furtherance thereof, requires the existence of a rebellion in the first place.

The requirement of concurrence of overt act and political purpose in a specific intent felony of rebellion is not new. *People v. Geronimo*[225] is instructive on this point:

x x x As in treason, where both intent and overt act are necessary, the crime of rebellion is integrated by the coexistence of both the armed uprising for the purposes expressed in article 134 of the Revised Penal Code, *and* the overt acts of violence described in the first paragraph of article 135. **That *both* purpose and overt acts are essential components of one crime, and that without either of them the crime of rebellion legally does not exist, is shown by the absence of any penalty attached to article 134.**It follows, therefore that any or all of the acts described in article 135, when committed as a *means* to or *in furtherance* of the subversive ends described in article 134, become absorbed in the crime of rebellion, and can not be regarded or penalized as distinct crimes in themselves.

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[224] *Id*. at 532.

[225] *Supra* note 100.

In law they are part and parcel of the rebellion itself, and can not be considered as giving rise to a separate crime that, under article 48 of the Code, would constitute a complex one with that of rebellion.[226]

At the risk of being repetitive — but if only to belabor the truth that the majority have closed their eyes to — ***there is no sinsle incident in the government's submissions wherein the purpose and overt act of rebellion concur***. Hence, in this case, as instructed by *People v. Geronimo*, the Court should have found that rebellion does not exist (or persist). Without a political purpose, these ambuscades, murder, kidnapping, shooting and other violent incidents are common crimes committed for private purposes, as is clearly shown by the reports themselves. **The Court cannot find the persistence of rebellion by supplying the political or rebellious purpose where the government itself did not show any.**

VIII. On taking into consideration public clamor in a Section 18 review

The *ponencia* states, "[t]he Resolutions coming from the [Regional and Provincial Peace and Order Councils] x x x reflect the public sentiment for the restoration of peace and order in Mindanao. [Having been] initiated by the people x x x who live through the harrows of war, x x x importance must be given to these resolutions as they are in the best position to determine their needs."[227]

Moreover, "[t]he Court must remember that We are called upon to rule on whether the President, and this time with the concurrence of the two Houses of Congress, acted with sufficient basis in approving anew the extension of martial law. We must not fall into or be tempted to substitute Our own judgment to that of the People's President and the People's representatives. We must not forget that the Constitution has given us separate and quite distinct roles to fill up in our respective branches of government."[228]

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[226] *Id*. at 95. Citations omitted; emphasis supplied.

[227] *Ponencia*, p. 23

[228] *Id*. at 27.

Testing for constitutional compliance is *not* a question of popularity. The people in their sovereign capacity speak in and through the Constitution. There is nothing in Section 18 that takes into consideration the perceived public clamor for martial law. **The role of the Court in Section 18 is not to validate the extension of a popular martial law; but to validate the extension of martial law that has sufficient basis in fact and nullify one that does not.**

When the Court reviews the factual basis under Section 18, it merely discharges its duty under the Constitution; it does not substitute its own discretion to that of the "People's President and the People's representatives." As early as *The Federalist Papers*, Alexander Hamilton had already disabused this notion:

> Some perplexity respecting the rights of the courts to pronounce legislative acts void, because contrary to the Constitution, has arisen from an imagination that the doctrine would imply a superiority of the judiciary to the legislative power. It is urged that the authority which can declare the acts of another void, must necessarily be superior to the one whose acts may be declared void. As this doctrine is of great importance in all the American constitutions, a brief discussion of the ground on which it rests cannot be unacceptable.
>
> There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.
>
> If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed, that the Constitution could intend to enable the representatives of the people to substitute their WILL to that of their constituents. It is far more rational to suppose, that the courts

were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental.

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This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors, which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community. Though I trust the friends of the proposed Constitution will never concur with its enemies, in questioning that fundamental principle of republican government, which admits the right of the people to alter or abolish the established Constitution, whenever they find it inconsistent with their happiness, **yet it is not to be inferred from this principle, that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constituents, incompatible with the provisions in the existing Constitution, would, on that account, be justifiable in a violation of those provisions**; or that the courts would be under a greater obligation to connive at infractions in this shape, than when they

had proceeded wholly from the cabals of the representative body. **Until the people have, by some solemn and authoritative act, annulled or changed the established form, it is binding upon themselves collectively, as well as individually; and no presumption, or even knowledge, of their sentiments, can warrant their representatives in a departure from it, prior to such an act.** But it is easy to see, that it would require an uncommon portion of fortitude in the judges to do their duty as faithful guardians of the Constitution, where legislative invasions of it had been instigated by the major voice of the community.[229]

In this jurisdiction, this was very eloquently explained by Justice Jose Laurel in *Angara v. Electoral Commission*:[230]

But in the main, the Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government. The overlapping and interlacing of functions and duties between the several departments, however, sometimes makes it hard to say just where the one leaves off and the other begins. In times of social disquietude or political excitement, the great landmarks of the Constitution are apt to be forgotten or marred, if not entirely obliterated. In cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituent units thereof.

x x x x x x x x x

The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? **The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn**

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[229] Federalist No. 78, "The Judiciary Department," Alexander Hamilton, available at: <http://avalon.law.yale.edu/18th century/fed78.asp> (last accessed February 19, 2019). Citations omitted; emphasis supplied.

[230] 63 Phil. 139 (1936) [*En Banc*, per. *J.* Laurel].

and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them.[231]

When the Court is called upon to undertake a Section 18 review, it is obliged to measure the evidence of the government **as against positive constitutional requirements**. When the Court finds that there is noncompliance with constitutional requirements, the nullification arising from the finding is not a result of the Court replacing the discretion of the political departments with its own. It is, in fact, a result of the precedence of the Constitution over the acts of the "People's President and the People's representatives."

Summary of Points

In sum, the consolidated petitions must be granted because:

1) In the review of an extension of martial law under Section 18, the government bears the burden to show the persistence of rebellion and requirement of public safety must be separately proved by substantial evidence.

   a) The judgment in a Section 18 review is transitory; hence, both requirements must be proved anew.

   b) The rebellion must be that covered in the original Proclamation. Any pile-on rebellion prevents an intelligent Section 18 review.

   c) To prove the persistence of rebellion, the government must show at least one incident wherein the acts of rebellion and the political purpose thereof concur.

   d) To prove the demand of public safety, the endangerment of public safety must be shown to be at a scale that the lesser Commander-in-Chief powers are not sufficient to address the exigency of the situation.

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[231] *Id*. at 157-158. Emphasis and underscoring supplied.

2) There is lack of sufficient factual basis for the third extension of martial law.

   a) There is insufficient factual basis that the rebellion persists.

      i) Based on statements of the President and the military establishment, Marawi has been liberated. Proclamation No. 216 has thus become *functus officio*. In fact, the government's submissions do not contain a single evidence of an attack by the DI against military installations or facilities, much less an armed public uprising.

      ii) Even if violent incidents alleged to have been initiated by the ASG, BIFF and NPA are considered, there is no violent incident presented wherein the concurrence of the act of rebellion and political purpose thereof is shown. In this regard, ALL reports that stated a motive for the violent incident were either equivocal or clearly for a private purpose.

      iii) Even if activities of the NPA are considered rebellion, no sufficient information was given to show overt acts of rebellion and the scale of endangerment of public safety for any intelligent Section 18 review.

   b) There is insufficient factual basis that the demands of public safety necessitate the extension of martial law.

      i) The reports localize lawless violence as only having occurred in nine (9) out of twenty-seven (27) provinces in Mindanao.

      ii) Actions and statements by government organs show that endangerment of public safety has not reached a scale requiring martial law — elections are being conducted, people feel safe, investments have risen, and the monthly reports reveal a downward trend in the capability of terrorists.

Conclusion

Today, the Court reiterates the wholesale branding of common criminals and terrorists in Mindanao as "rebels," of acts of violence and lawlessness as "rebellion from several fronts," — all in an unbecoming deference to the political departments so inconsistent with the provisions of the present Constitution that it requires a hark back to cases that applied the very different provisions of the 1935 and 1973 Constitutions. The Court not only effectively reverted to *Lansang* that only tests for grave abuse, it regressed to *Barcelon* and *Montenegro* where the determination of the basis for the suspension of the privilege of the writ of *habeas corpus* was a political question. Again, all to justify the third extension of martial law over the whole of Mindanao in the face of a clear paucity — nay, total absence — of factual basis.

If indeed, the challenge posed by each of these groups — ASG, BIFF, DI, NPA — is sufficient to warrant the declaration of martial law then, by all means, the President can declare martial law citing the same as the basis. But this in no way allows a declaration that identifies one rebellion, and pile-on additional, different "rebellions" by any and all common criminals who happen to capitalize on the perceived precarious peace and order situation obtaining in a subsisting declaration as basis for its extension. This also in no way allows the government to rely on a previous finding of actual rebellion to meet the burden of proving the persistence of that actual rebellion such that the mere showing of violent incidents by "rebels" is enough to validate an extension. The Court cannot make a rule that prevents a reasoned discharge of its role under Section 18.

The issue can no longer be framed so simplistically as that of the President's decisive action in an emergency. Almost two years no longer counts as a blink of an eye. Even Fr. Bernas's position in the oft-cited Dissent of Justice Presbitero Velasco, Jr. in *Fortun* recognizes a shift in focus in a Section 18 review:

> It may be noted, however, that Section 18, Article VII of the 1987 Constitution requires the Honorable Court to resolve the petitions

challenging martial law within thirty days. More than thirty days have elapsed since the filing of the petitions. Does this therefore mean that the Court is now bereft of power to review the proclamation of martial law?

The answer to this question depends on the purpose of the thirty[-]day limit prescribed by the Constitution. **The purpose is for the Court to be able to put an end, at the soonest possible time, to the continuing effects of martial law should the Court find the proclamation to be unconstitutional.** It should be obvious, however, that once martial law is lifted the thirty[-]day limit no longer serves any purpose. **There no longer is any rush to terminate an emergency. The Court therefore is already afforded the luxury of a more leisurely study of whatever issues there might be that need to be resolved.**[232]

Thus, two years in, the Court's Section 18 review should have already transcended well beyond the question of whether the President correctly declared martial law. That train left the station in *Lagman v. Medialdea*. Two years in, it is no longer unreasonable to ask for complete, consistent, and accurate information to support a claim that there is sufficient factual basis for a **third** extension of martial law.

True, the demands of Section 18 are not so unreasonable as to demand a city taken over or overrun, or a certain number of deaths and injuries or amount of property damage before the President can exercise his Commander-in-Chief powers.

But Section 18 is also not so accommodating as to not ask, when martial law — the least benign of the Commander-in-Chief powers — is sought to be kept in place for an extended period, why: (1) the government insists on martial law still without having identified what additional powers are sought to be exercised; (2) the government claims there is a persisting rebellion, but did not charge a single person with rebellion during the last extension; (3) despite the request of the Court to update the factual basis submitted, the AFP is still confined to "spot

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[232] Fr. Joaquin Bernas, Brief of Amicus Curiae in *Fortun v. Macapagal-Arroyo*, p. 7. Emphasis and underscoring supplied.

reports" that detail incidents that happened as early as thirteen months ago, in January of 2018; (4) in 2019, the PNP still has no record of most of the violent incidents in 2018 that form the basis of the President's request for extension to the Congress; (5) despite the massive gains the government achieved in making Mindanao safe enough for people to move about freely, for investments to grow, for the conduct of free and honest elections and plebiscites, it is still not safe enough to return to normalcy.

The government's whole of nation approach to national security is working. The monthly reports in the implementation of martial law and the statements of the Executive functionaries during the joint session of Congress confirm this. **The insufficiency of factual basis for the third extension of martial law is not a failure on the part of the President or Congress; it is a continuing testament to the unwavering heroism of our military, police and civilian auxiliaries, and the commendable resilience of the people in Mindanao.**

Accordingly, I vote to **GRANT** the consolidated petitions and **DECLARE** that the third extension of Martial Law over the whole of Mindanao does not have sufficient factual basis.

FIRST DIVISION

[G.R. No. 211105. February 20, 2019]

RUBY C. DEL ROSARIO, *petitioner, vs.* **CW MARKETING & DEVELOPMENT CORPORATION/KENNETH TUNG,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT;

REQUISITES THAT MUST CONCUR FOR A VALID DISMISSAL FROM EMPLOYMENT.— Two requisites must concur to constitute a valid dismissal from employment: (1) the dismissal must be for any of the causes expressed in Article 282 (now Article 297) of the Labor Code; and (2) the employee must be given an opportunity to be heard and to defend himself. Article 282 (now Article 297) of the Labor Code lists loss of trust and confidence in an employee, who is entrusted with fiducial matters, or with the custody, handling, or care and protection of the employer's property, as a just cause for an employee's dismissal. In these cases, We have recognized the employer's authority to sever the relationship with an employee. The right to terminate employment based on just and authorized causes stems from a similarly protected constitutional guarantee to employers of reasonable return on investments.

2. **ID.; ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE TO BE A VALID GROUND FOR DISMISSAL, EXPLAINED.—** Loss of confidence as a just cause for termination of employment is premised on the fact that an employee concerned holds a position of trust and confidence. x x x We cannot overemphasize that, although loss of trust and confidence constitutes a valid cause for termination, it must, nonetheless, rest on solid grounds that reasonably evince an actual breach thereof by an employee. The burden of proof lies on the employer to first convincingly establish valid bases for that loss of trust and confidence. x x x [L]oss of trust and confidence, to be a valid cause for dismissal, ought to be work-related such as would show the employee concerned to be unfit to continue working for the employer. The loss of trust must be based on a willful breach of trust and founded on clearly established facts. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently. The loss of trust and confidence must spring from the voluntary or willful act of the employee, or by reason of some blameworthy act or omission on the part of the employee.

3. **ID.; ID.; ID.; ID.; ID.; THE TOTALITY OF PETITIONER'S ACTS AS SALES SUPERVISOR, INCLUDING HER NEGLIGENCE AND WANT OF CARE FOR COMPANY PROPERTY ENTRUSTED TO HER AS WELL AS HER KNOWLEDGE THAT SOME OF HER SUBORDINATES**

WERE FALSIFYING DOCUMENTS USING COMPANY PROPERTY DEMONSTRATE THAT SHE IS NOT WORTHY OF HER POSITION; PETITIONER'S DISMISSAL, UPHELD.— In this case, Del Rosario herself unwittingly provided proof of her infractions. At the outset and repeatedly thereafter, Del Rosario admitted to the assignment to her of the main computer connected to a shared network and a printer/scanner which became her accountability. She then admitted knowledge and awareness of others' usage of her computer; the edited and falsified documents authored by her subordinates through the same computer; and even their submission of these falsified documents to HSBC in connection with their credit card applications. Del Rosario attempted to extricate herself from liability by insisting that she never falsified any of the questioned documents and that only her subordinates who used her computer effected the falsification thereof. Unfortunately for Del Rosario, the charge against her is not the criminal act of falsification but the totality of her acts as supervisor, including her negligence and want of care for company property entrusted to her. At the very least, this nonchalance caused CW Marketing damage to its reputation and standing with banks since the individuals pretending to be in its employ, or have higher salaries, might have no real capacity to pay for purchases made with the credit card. Worse, CW Marketing may even be held liable by the credit card companies for allowing the falsifications. x x x [W]hile the actions of Del Rosario do not point to her direct participation in the fraudulent scheme, which negatively bore on CW Marketing's reputation and credit standing with banks, in general, and HSBC in particular, her actions evinced that she knew fully well that some of her subordinates were falsifying documents using company property. From this point on, Del Rosario deliberately kept silent over her subordinates' actions resulting in damage to CW Marketing. Moreover, her awareness of the identities of the culprits and her insistence that she did not herself falsify documents demonstrate her sheer apathy to CW Marketing not worthy of her position as Sales Supervisor.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Arturo Dy for respondents.

D E C I S I O N

JARDELEZA, *J.*:

Petitioner Ruby C. Del Rosario (Del Rosario) appeals the Decision[1] dated October 9, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 126846, which affirmed the Decision[2] dated June 6, 2012 of the National Labor Relations Commission (NLRC) in NLRC-LAC-No-02-000791-12, dismissing her complaint for illegal dismissal against respondents CW Marketing & Development Corporation (CW Marketing) and Mr. Kenneth Tung. Initially, the Labor Arbiter (LA), in NLRC Case No. NCR-07-10542-11, granted the complaint of Del Rosario and ruled that she was illegally dismissed by CW Marketing.[3]

Since 2007, Del Rosario has been in the employ of CW Marketing, initially as Sales Consultant and eventually as Sales Supervisor, detailed at its Home Depot, Balintawak Branch. As Sales Supervisor, she was assigned a computer which is part of a shared network of computer users of CW Marketing and is connected to a printer/scanner.[4] Del Rosario alone was taught by CW Marketing's Information Technology (IT) personnel how to operate the machine[5] although the network connection enabled other computer users to print documents through the printer/scanner connected to Del Rosario's computer.[6]

Sometime in October 2010, CW Marketing received a report from Hongkong and Shanghai Banking Corporation (HSBC) that several individuals applying for credit cards submitted

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[1] *Rollo*, pp. 202-209; penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Presiding Justice Andres B. Reyes, Jr. (now a Member of the Court) and Associate Justice Rodil V. Zalameda.

[2] *Id.* at 143-153; rendered by Commissioner Angelo Ang Palana and concurred in by Presiding commissioner Herminio V. Suelo.

[3] *Id.* at 109-117; rendered by Labor Arbiter Michelle P. Pagtalunan.

[4] *Id.* at 202-204.

[5] *Id.* at 71.

[6] *Id.* at 144.

ostensibly falsified payslips and identification cards issued by CW Marketing's Balintawak Branch. The questionable documents indicated higher positions and salaries of purported CW Marketing employees.[7]

Based on the report prepared by its IT Department, which conducted an investigation on the information given by HSBC,[8] CW Marketing issued a Notice to Explain[9] dated November 4, 2010 addressed to Del Rosario. This notice gave her 48 hours to explain in writing her alleged participation in the falsification of various documents which pertain to her subordinates at Home Depot, namely Elaine Hernandez, Mary Rose Cruz, and Jomarie Cayco; and were obtained by the IT Department from her (Del Rosario's) computer.

The following day, November 5, 2010, Del Rosario wrote an email[10] to CW Marketing, addressed to the HR Manager, Barbara M. Aragon, with carbon copies (CCs) addressed to five of the company's officers. While Del Rosario admitted that she knew the three mentioned individuals and the occasions they used her computer and the printer/scanner, she denied that she had a hand in the falsification of the documents. In the vernacular, Del Rosario responded:

> Madam, for me bakit po ako ang binigyan ng sanction hindi naman po ako nag falsify ng document, nakikigamit sila ng computer ko kasi ako lang po binigyan ng access sa USB and Scanner ng IT. x x x Ang alam ko po si Ms. Ailene Duldulao and nag e-edit ng mga payslips ng Section Heads. Customer Service, Merchandiser at kahit asawa nya sya ang nag edit and with Ms. Cruz ang alam ko friend nya na hindi connected talaga sa depot ang ginawaan nya ng [ID] at payslip. Sila din po ang nag-kuwento sakin kaya ko nalaman mga pinag gagagawa nila. Sa kanila lahat nagsimula yan at wala po akong kinalalaman sa mga pinag gagagawa nila. Unfair naman po sa part ko na ako ang masusunctionan ng walang ginagawang mali. At hindi

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[7] *Id.* at 202-203.

[8] *Id.* at 71.

[9] *Id.* at 78.

[10] *Id.* at 79.

ako nag e-edit ng document or [ID] nila sila mismo ang nag scanned sa pc ko.[11]

CW Marketing issued a second Notice to Explain,[12] dated November 9, 2010, requiring her to answer why she should not be dismissed for additional violations of CW Marketing's Employee Handbook: (1) Section 3.5 - offenses against company property: negligence or misuse of company properties, machines, and equipment; and (2) Section 3.7 - unauthorized use or allowing unauthorized persons to use company supplies, materials, facilities, tools and/or equipment resulting in loss or damage. CW Marketing pointed out Del Rosario's presence on the floor, as allegedly seen on the CCTV footage, while the concerned individuals used the computer and printer/scanner assigned to Del Rosario to scan and print documents.

In another email[13] dated November 10, 2010, Del Rosario explained further that she did not falsify the questioned documents nor was she the sole user of the computer assigned to her:

> This refer [sic] to my explanation last November 5, 2010. I'm not the only one who is authorize [sic] to use the scanner and USB port, all of us can use the said scanner and USB port ako lang po ang nilagyan ng IT at Supervisor lang po ang pwedeng pagsaksakan ng USB dahil [tinanggal] na ng IT ang port ng consultant. Sa scanner/ printer naman po sa akin po naka [access] printer network [nila]. Hindi sila makakapag print [nang] hindi nakabukas pc ko kaya dapat bukas computer ko at puwede po sila mag scan any time since nakakabit sya sa pc ko at ako lang din po ang nilagyan ng IT. Sir Bryan of IT Dept. allocate [sic] the cs a folder of their scanned documents and they can send it to their pc through Shared Network. Based on CCTV nanduon po ako pero may ginagawa po ako at pa-alis-alis po ako sa area since nag-iisa lang po ako na supervisor hindi ko na po namonitor lahat ng ginagawa nila. Sila na po nag scan at gumagamit sa pc ko since pc ko na lang gumagana sa E-MAIL at SAP transaction at nandun yung scanner.[14]

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[11] *Id.*

[12] *Rollo*, p. 80.

[13] *Id.* at 81.

[14] *Id.*

On November 18, 2010, Del Rosario attended the administrative inquiry on the charges against her, signed her conformity on the handwritten minutes of the meeting, and made the following admissions:

1. She had no idea for the tampering of documents like payslips and [IDs] found in the computer assigned to her.
2. That the computer she is presently using is the same computer that was assigned to her in Ortigas.
3. That she was aware that the said computer was her accountability and any transaction/and or item found there in is her responsibility[.]
4. She knew and understood that she was the only one who was given access to the scanner, printer and connections by network place.
5. She allowed all CS Consultants/Coordinators to use her computer even if she was not around, because she claimed they can only access their outlook to her computer.
6. That she attended the coordination meeting dated July 2010 where in she was reminded that Supervisors are the only one who must have access to their computers.
7. That she was able to talked [sic] to Eric of HSBC agent only one time. However, she retracted her statement, when HR Candy Rubio mentioned that HR was able to verify with Mr. Eric of HSBC regarding her participation and/or the number of times [Del Rosario] spoke to him.
8. That she denied any involvement in convincing/distributing of HSBC credit card application forms to her co-employees.
9. That she gave her statement at her own free will and that she insisted that she should not be terminated and leave the final decision to the management on the negligent acts she committed.[15]

On November 30, 2010, CW Marketing found Del Rosario liable for three violations of its Employee Handbook and terminated her employment.[16]

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[15] *Rollo*, pp. 83-84.

[16] *Id.* at 85.

Forthwith, Del Rosario filed before the Arbitration Branch of the NLRC the complaint (NLRC Case No. NCR-07-10542-11) for illegal dismissal; non-payment of wages/salary, overtime pay, holiday pay, service incentive leave pay, 13th month pay, separation pay, emergency cost of living allowance (ECOLA), and commission; and other causes of action.[17]

Essentially, Del Rosario maintained that she did not falsify the documents reported by HSBC to CW Marketing[18] and that, although copies of the document were found in the computer assigned to her, she could not constantly monitor the use of her computer whilst she attended to her other responsibilities.[19]

CW Marketing countered, on the other hand, that it validly dismissed Del Rosario for gross incompetence, dishonesty, and negligence tantamount to loss of trust and confidence. It argued that the dismissal of Del Rosario for violating the said provisions of its Employee Handbook, which is punishable by lawful termination of employment, is a legitimate exercise of management prerogative. CW Marketing emphasized Del Rosario's sensitive position as a supervisor and her admission that she freely allowed others to use her computer and that she was aware of her subordinates' activities to fabricate employee documents in connection with their credit card applications. On the whole, it decried the falsification of documents which happened under the watch of Del Rosario and its negative effect to CW Marketing's reputation and credit standing with banks.[20]

As for Del Rosario's other money claims, CW Marketing denied her entitlement for the following reasons: (1) Del Rosario's outstanding obligation to CW Marketing in the amount of ₱24,083.20; and (2) her group's failure to reach the set quota for payment of commission.[21]

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[17] *Id.* at 109.

[18] *Id.* at 79.

[19] *Id.* at 46.

[20] *Id.* at 63-66.

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

In the Decision[22] dated January 25, 2012, the LA held that CW Marketing failed to establish that Del Rosario directly committed the falsification of the questioned documents. It granted the complaint of Del Rosario, ruling that her dismissal was illegal, and ordered CW Marketing to pay her backwages in the amount of ₱195,335.83 and separation pay in the amount of ₱65,000.00, in lieu of reinstatement. However, the LA denied Del Rosario's other money claims for "lack of particulars" and failure to deny CW Marketing's claim of her outstanding obligation in the amount of ₱24,083.20.[23]

Both CW Marketing and Del Rosario appealed the ruling of the LA to the NLRC, the former questioning the finding that it illegally dismissed Del Rosario, and the latter questioning the denial of her other money claims.[24]

As previously adverted to, the NLRC, in its Decision[25] dated June 6, 2012, reversed the ruling of the LA and found that CW Marketing correctly dismissed Del Rosario for loss of trust and confidence. Contrary to the LA's holding that there was no cause for Del Rosario's dismissal, the NLRC highlighted the following: (1) Del Rosario admitted accountability over the assigned computer, thus, her lack of participation in the falsification of the documents did not exculpate her from liability for the acts of her subordinates; (2) Del Rosario's negligence in handling and protecting company property; (3) Del Rosario's apathy towards the activities and acts of her subordinates relating to their use of company property assigned to her; and (5) the falsification of documents by her subordinates, which were effected without her supervision, would not have prospered had Del Rosario exercised care and control over the use of her computer. Ultimately, the NLRC held that Del Rosario's actions rendered her unworthy of the trust and confidence demanded by her position.[26]

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[22] *Id.* at 109-117.

[23] *Id.* at 114-116.

[24] *Id.* at 205.

[25] *Supra* note 2.

[26] *Rollo*, pp. 148-152.

Thereafter, Del Rosario filed a petition for *certiorari*[27] under Rule 65 of the Rules of Court before the CA, alleging grave abuse of discretion in the NLRC's reversal of the LA's ruling.

In its Decision[28] dated October 9, 2013, the CA ruled that there is no grave abuse of discretion in the NLRC's ruling that Del Rosario was validly dismissed for loss of trust and confidence. Echoing the pronouncements of the NLRC, the CA noted Del Rosario's awareness of the following facts: (1) the computer assigned to her was her accountability; (2) the transactions and documents found therein were her responsibility; (3) as supervisor, she was the lone employee given access to the printer/scanner; (4) yet, her subordinates were able to freely use the computer and printer/scanner unsupervised; and (5) the falsified documents were submitted by her subordinates to HSBC to support their credit card applications.[29]

For the CA, Del Rosario should have at least called the attention of the concerned subordinates and instructed them to stop using company property for personal transactions, more so for editing and falsifying documents issued by CW Marketing.[30]

Hence, this appeal by *certiorari* of Del Rosario under Rule 45 of the Rules of Court. Del Rosario is adamant that it was a grave error for the CA to affirm the NLRC's Decision to dismiss her complaint for illegal dismissal. In short, CW Marketing did not have just cause to dismiss her.

We deny the petition.

Two requisites must concur to constitute a valid dismissal from employment: (1) the dismissal must be for any of the causes

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[27] *Id.* at 26-40.

[28] *Supra* note 1.

[29] *Rollo*, pp. 206-208.

[30] *Id.* at 208.

expressed in Article 282 (now Article 297) of the Labor Code;[31] and (2) the employee must be given an opportunity to be heard and to defend himself.[32]

Article 282 (now Article 297) of the Labor Code lists loss of trust and confidence in an employee, who is entrusted with fiducial matters, or with the custody, handling, or care and protection of the employer's property, as a just cause for an employee's dismissal.[33] In these cases, We have recognized the employer's authority to sever the relationship with an employee.[34] The right to terminate employment based on just and authorized causes stems from a similarly protected constitutional guarantee to employers of reasonable return on investments.[35]

We are hard-pressed to reverse the NLRC's and the CA's uniform factual findings that, as Sales Supervisor, Del Rosario held a fiduciary position. The NLRC's finding was supported by substantial evidence, or such evidence as a reasonable mind might accept as adequate to support a conclusion. We have

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[31] Art. 282 (Now Art. 297). *Termination by Employer*. — An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

(e) Other causes analogous to the foregoing.

[32] See Sections 2 and 5, Rule XIV, Book V of the Omnibus Rules Implementing the Labor Code.

[33] *Condo Suite Club Travel, Inc. v. NLRC*, G.R. No. 125671, January 28, 2000, 323 SCRA 679, 688.

[34] *Moya v. First Solid Rubber Industries, Inc.*, G.R. No. 184011, September 18, 2013, 706 SCRA 58, 68-69.

[35] See fourth paragraph, Sec. 3, Art. XIII of the CONSTITUTION.

previously ruled that in the case of supervisors or personnel occupying positions of responsibility, loss of trust justifies termination.[36] Loss of confidence as a just cause for termination of employment is premised on the fact that an employee concerned holds a position of trust and confidence. Specifically in this instance, Del Rosario was entrusted with the custody, handling, or care and protection of the employer's property.[37] In fact, she was assigned the lone computer at the Home Depot Branch, which was connected to the printer/scanner, and as a result, she was the only user taught by the company's IT personnel how to operate the machine.

We cannot overemphasize that, although loss of trust and confidence constitutes a valid cause for termination, it must, nonetheless, rest on solid grounds that reasonably evince an actual breach thereof by an employee. The burden of proof lies on the employer to first convincingly establish valid bases for that loss of trust and confidence.[38]

In this case, Del Rosario herself unwittingly provided proof of her infractions.[39] At the outset and repeatedly thereafter, Del Rosario admitted to the assignment to her of the main computer connected to a shared network and a printer/scanner which became her accountability. She then admitted knowledge and awareness of others' usage of her computer; the edited and falsified documents authored by her subordinates through the same computer; and even their submission of these falsified documents to HSBC in connection with their credit card applications.

Del Rosario attempted to extricate herself from liability by insisting that she never falsified any of the questioned documents

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[36] *Moya v. First Solid Rubber Industries, Inc., supra* at 69.

[37] *Etcuban, Jr. v. Sulpicio Lines, Inc.*, G.R. No. 148410, January 17, 2005, 448 SCRA 516, 529.

[38] *Mapalo v. National Labor Relations Commission*, G.R. No. 107940, June 17, 1994, 233 SCRA 266, 271.

[39] *Rollo*, pp. 79, 81. See her emails dated November 5 and 10, 2010.

and that only her subordinates who used her computer effected the falsification thereof. Unfortunately for Del Rosario, the charge against her is not the criminal act of falsification[40] but the totality of her acts as supervisor, including her negligence and want of care for company property entrusted to her. At the very least, this nonchalance caused CW Marketing damage to its reputation and standing with banks since the individuals pretending to be in its employ, or have higher salaries, might have no real capacity to pay for purchases made with the credit card. Worse, CW Marketing may even be held liable by the credit card companies for allowing the falsifications.

On this point, We quote with favor the CA's reasoning:

> [Del Rosario] was not an ordinary rank-and-file employee. She was the supervisor of [CW Marketing's] Home Depot Balintawak Branch. In view of her delicate position, [Del Rosario] was the only one given a computer with USB port and scanner. Had [CW Marketing] wanted its other employees to have access to a USB port and scanner, then its IT Department could have easily arranged the matter. But as it is, it was never the intention of [CW Marketing] to provide its other employees with unbridled access to the USB port and scanner. [Del Rosario's] acquiescence to the unauthorized use of her computer is in violation of Sections 3.5 and 3.7 of [CW Marketing's] employee handbook.
>
> As gleaned from her admission in the administrative hearing on 18 November 2010, [Del Rosario] was aware that the said computer was her accountability and any transaction or item found therein is her responsibility; and that she knew and understood that she was the only one who was given access to the scanner. Nonetheless, she allowed others to use her computer. Per her Explanation dated 05 November 2010, she knew that different individuals scanned and edited pay slips and identification cards in the computer assigned to her. She was also aware that the edited [payslips] and identification cards were emailed to HSBC.[41]

In the case of *Etcuban, Jr. v. Sulpicio Lines, Inc.*,[42] We found the amount immaterial in determining the culpability of the

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[40] Art. 172 of the REVISED PENAL CODE.

[41] *Rollo*, pp. 207-208.

[42] *Supra* note 37.

employee for the fraudulent scheme on which his dismissal for loss of trust and confidence was based. Neither was the minuscule value of the financial prejudice to the employer considered, thus:

> Whether or not the respondent was financially prejudiced is immaterial. Also, what matters is not the amount involved, be it paltry or gargantuan; rather the fraudulent scheme in which the petitioner was involved, which constitutes a clear betrayal of trust and confidence. In fact, there are indications that this fraudulent act had been done before, and probably would have continued had it not been discovered.
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> Moreover, the records show that the petitioner is not as blameless as he claimed to be. In 1979 and 1980, he was suspended by the respondent for several company infractions, which the petitioner did not deny. It must also be stressed that when an employee accepts a promotion to a managerial position or to an office requiring full trust and confidence, he gives up some of the rigid guaranties available to an ordinary worker. Infractions which, if committed by others, would be overlooked or condoned or penalties mitigated may be visited with more serious disciplinary action.
>
> It cannot be over emphasized [sic] that there is no substitute for honesty for sensitive positions which call for utmost trust. Fairness dictates that the respondent should not be allowed to continue with the employment of the petitioner who has breached the confidence reposed on him. Unlike other just causes for dismissal, trust in an employee, once lost, is difficult, if not impossible, to regain. There can be no doubt that the petitioner's continuance in the extremely sensitive fiduciary position of Chief Purser would be patently inimical to the respondent's interests. It would be oppressive and unjust to order the respondent to take him back, for the law, in protecting the rights of the employee, authorizes neither oppression nor self-destruction of the employer.[43]

We are not unaware that loss of trust and confidence, to be a valid cause for dismissal, ought to be work-related such as would show the employee concerned to be unfit to continue working for the employer. The loss of trust must be based on a willful breach of trust and founded on clearly established

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[43] *Id.* at 532-533.

facts. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently. The loss of trust and confidence must spring from the voluntary or willful act of the employee, or by reason of some blameworthy act or omission on the part of the employee.[44]

Clearly, while the actions of Del Rosario do not point to her direct participation in the fraudulent scheme, which negatively bore on CW Marketing's reputation and credit standing with banks, in general, and HSBC in particular, her actions evinced that she knew fully well that some of her subordinates were falsifying documents using company property. From this point on, Del Rosario deliberately kept silent over her subordinates' actions resulting in damage to CW Marketing. Moreover, her awareness of the identities of the culprits and her insistence that she did not herself falsify documents demonstrate her sheer apathy to CW Marketing not worthy of her position as Sales Supervisor. Thus, the CA correctly ruled:

> As the supervisor, [Del Rosario] should have called the attention of those responsible tor the scanning and editing of [payslips] and identification cards. However, she kept her silence and only divulged her knowledge thereof when the results of the investigation pointed out that the tampered documents originated from her computer. Her failure to call her subordinates' attention and take the necessary precaution with regard to her computer, adversely reflected on her competence and integrity, sufficient enough for her employer to lose trust and confidence in her.[45]

WHEREFORE, the petition is **DENIED**. The Decision dated October 9, 2013 of the Court of Appeals in CA-G.R. SP No. 126846 is **AFFIRMED**. No costs.

SO ORDERED.

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

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[44] *Bluer than Blue Joint Ventures Company v. Esteban*, G.R. No. 192582, April 7, 2014, 720 SCRA 765, 775. Emphasis and citations omitted.

[45] *Rollo*, p. 208.

SECOND DIVISION

[G.R. No. 217668. February 20, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BENJIE CARANTO *y* AUSTRIA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); THE IDENTITY AND INTEGRITY OF THE SEIZED DRUGS MUST BE ESTABLISHED WITH MORAL CERTAINTY. — In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction. It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty. Thus, in order to obviate any unnecessary doubt on its identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to its presentation in court as evidence of the crime.

2. ID.; ID.; CHAIN OF CUSTODY RULE; REQUIREMENTS; DISCUSSED.— Section 21, Article II of RA 9165, the applicable law at the time of the commission of the alleged crime, outlines the procedure which the police officers must strictly follow to preserve the integrity of the confiscated drugs and/or paraphernalia used as evidence. The provision requires that: (1) the seized items be inventoried and photographed **immediately after seizure or confiscation**; (2) that the physical inventory and photographing must be done **in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the DOJ**, all of whom shall be required to sign the copies of the inventory and be given a copy of the same and the seized drugs must be turned over to a forensic laboratory within twenty-four (24) hours from confiscation for examination. The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be

made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. **In this connection, this also means that the three required witnesses should already be physically present at the time of the conduct of the inventory of the seized items which, again, must be immediately done at the place of seizure and confiscation — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.** Verily, a buy-bust team normally has sufficient time to gather and bring with them the said witnesses.

3. ID.; ID.; ID.; ID.; RULE IN CASE OF NON-COMPLIANCE. — The Court has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible; and, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid. However, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. It has been repeatedly emphasized by the Court that the prosecution has the positive duty to explain the reasons behind the procedural lapses. Without any justifiable explanation, which must be proven as a fact, the evidence of the *corpus delicti* is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt.

4. ID.; ID.; BUY-BUST OPERATION; REGARDED AS A SHAM AS THERE WAS DELIBERATE DISREGARD OF THE REQUIREMENTS OF THE LAW; CASE AT BAR.— A buy-bust operation is a form of entrapment in which the violator is caught *in flagrante delicto* and the police officers conducting the operation are not only authorized but duty-bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime. However, where there really was no buy-bust operation conducted, the elements of illegal sale of prohibited drugs cannot

be proved and the indictment against the accused will have no leg to stand on. This is the situation in this case. What puts in doubt the very conduct of the buy-bust operation is the police officers' deliberate disregard of the requirements of the law, which leads the Court to believe that the buy-bust operation against Benjie was a mere pretense, a sham. This is supported by the following circumstances: *First*, the three required witnesses were not present during the buy-bust operation when the alleged drug was seized from Benjie; x x x *Second*, although they claim to have marked the seized items at the place of arrest, the police officers unjustifiably failed to photograph the seized items at the place of arrest or at the police station in the presence of the other statutory witnesses which, again, is required to prevent planting, switching and contamination of evidence. *Third*, the police allegedly conducted surveillance the day before the buy-bust operation, however, the same utterly lacks details.

5. REMEDIAL LAW; EVIDENCE; THE PRESUMPTION OF REGULAR PERFORMANCE OF DUTY CANNOT OVERCOME THE STRONGER PRESUMPTION OF INNOCENCE UNTIL PROVEN GUILTY. — The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right. The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein. Here, reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the buy-bust team is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity. The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

This is an Appeal[1] under Section 13(c), Rule 124 of the Rules of Court from the Decision[2] dated September 26, 2014 of the Court of Appeals, Ninth Division (CA) in CA-G.R. CR-H.C. No. 05877, which affirmed the Decision[3] dated January 2, 2012 rendered by the Regional Trial Court, Branch 60, Baguio City (RTC) in Criminal Case No. 30936-R, finding herein accused-appellant Benjie Caranto *y* Austria (Benjie) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended.

The Facts

The Information[5] filed against Benjie for violation of Section 5, Article II of RA 9165 pertinently reads:

That on or about the 4th day of August, 2010, along the vicinity of Dr. Cariño St[.], Baguio City National High School, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, [and] feloniously sell, deliver, give away, and/or distribute one (1) heat[-]sealed plastic sachet containing methamphetamine hydrochloride weighing .07 gram which, after confirmatory test, was found positive for methamphetamine hydrochloride, a dangerous drug, to PO2 Christian

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[1] See Notice of Appeal dated October 28, 2014, *rollo*, p. 17.

[2] *Rollo*, pp. 2-16. Penned by Associate Justice Stephen C. Cruz with Associate Justices Magdangal M. De Leon and Eduardo B. Peralta, Jr., concurring.

[3] CA *rollo*, pp. 37-42. Penned by Judge Edilberto T. Claravall.

[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.

Romero Boado Regional Anti[-]Illegal Special Operation Task Group of the Cordilllera Administrative Region, in violation of the aforecited provision of law.

CONTRARY to SECTION 5, ART II OF REPUBLIC ACT 9165.[6]

Upon arraignment, Benjie pleaded not guilty to the offense charged.[7]

Version of the Prosecution

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

The prosecution presented three witnesses, namely: Police Senior Inspector Rowena Fajardo Canlas, PO2 Christian Boado, and SPO2 Raymund Tacio, in order to prove that in exchange for One Thousand (₱1,000.00) Pesos, Benjie delivered one (1) heat-sealed plastic sachet containing .07 gram of methamphetamine hydrochloride to PO2 Boado, acting as *poseur buyer*.

Through the testimony of these witnesses, the prosecution was able to establish the following facts:

PO2 Christian Boado of the Regional Anti-Illegal Drugs Special Operations Task Group (RAIDSOTG). On August 3, 2010, their office coordinated with the Philippine Drug Enforcement Authority-Cordillera Administrative Region (PDEA-CAR) in Camp Dangwa as evidenced by a Coordination Form. At around 1:00 o'clock in the afternoon of August 4, 2010, SPO4 Romeo Abordo received an information from a Confidential Informant (CI) that a certain Benjie was engaged in the sale of illegal drugs. At that time, Benjie, who may be found at Dr. Cariño Street, was looking for a prospective buyer of a certain amount of drugs valued at One Thousand (₱1,000.00) Pesos.

Upon learning this, a buy-bust operation was organized under the leadership of Superintendent Glen Lonogan. Thereafter, a buy-bust team was formed composed of Captain Melchor Ong as team leader; SPO1 Jones Tacayan as Evidence Custodian; SPO1 Albert Lag-ey as Investigator on case; SPO4 Romeo Abordo as second team leader,

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[6] *Id*.

[7] *Rollo*, p. 3.

and SPO2 Raymund Tacio as back-up operative. Superintendent Lonogan, then, instructed Captain Ong to brief the team about the operation. Capt. Ong designated PO2 Boado to act as *poseur buyer* and gave him two (2) Five Hundred (₱500.00)-Peso bills, with Serial Number HS576991 and AB342154, to serve as marked money. PO2 Boado photocopied the marked money immediately upon receipt thereof.

After their briefing, the buy-bust team proceeded from Camp Bado, Dangwa to Police Station 5 along Marcos Highway for coordination with PO2 Nelson Sad-ang. The private vehicles of SPO4 Abordo and SPO1 Lag-ey were used in the operation. PO2 Boado, the CI and a driver rode the vehicle of SPO4 Abordo while the other used the vehicle of SPO1 Lag-ey.

After said coordination, the buy-bust team left for Dr. Cariño Street, where Benjie may be found. Upon reaching said place, the CI exchanged text messages with Benjie informing the latter that he was already in the area. When Benjie showed up at the meeting place, the CI pointed at him so that PO2 Boado may be able to identify him. The car they were riding got closer to where Benjie was while their back-up team trailed them. After alighting from the vehicle, the CI approached Benjie and introduced PO2 Boado to him as the prospective buyer. Benjie asked for the money. PO2 Boado handed him two (2) Five Hundred (₱500.00)-Peso bills and Benjie gave him a plastic sachet containing *shabu*. PO2 Boado then removed his bull-cap, the pre-arranged gesture for the back-up team to assist him in the arrest of Benjie.

The back-up team composed of SPO2 Tacio and SPO1 Lag-ey approached Benjie, introduced themselves as police officers, and placed him under arrest. Benjie did not resist the arrest. Benjie was frisked for deadly weapons but what was recovered from him was a Nokia cellphone and two (2) Five Hundred (₱500.00)-Peso bills. PO2 Boado marked the items on the site with his initials. Benjie was then brought to Police Station 5 along with the confiscated items including the plastic sachet of *shabu* in PO2 Boado's possession which were brought for inventory as stated in a Certification thereto. The following individuals were present during the inventory: herein appellant Benjie; Prosecutor Ruth Bernabe, the representative of the DOJ; Danilo Patacsil, an elected Barangay official; and Roi Molina

of the BCBC, the media representative. After the inventory, PO2 Boado turned over the items to SPO1 Takayen, the designated Evidence Custodian, at Police Station 5. SPO1 Takayen then requested PO2 Boado to bring the plastic sachet of *shabu* to Police Senior Inspector Rowena Canlas (PSI Canlas) of the PNP Crime Laboratory at Camp Bado, Dangwa.

After the arrest, Benjie was brought to Baguio General Hospital for medico-legal examination and drug test.

SPO2 Raymund Tacio of the Regional Anti-Illegal Drugs Special Operations Task Group (RAIDSOTG). SPO2 Tacio clarified that their team conducted a surveillance in the afternoon of August 3, 2010 in response to the numerous complaints from concerned citizens of an alleged drug activity by a certain taxi driver. Prior to conducting their surveillance, their team coordinated with the PDEA in Camp Dangwa. The other portions of SPO2 Tacio's testimony merely corroborated the testimony of PO2 Boado.

The testimony of PSI Canlas, as summarized by the RTC is as follows:

> "**Police Senior Inspector Rowena Canlas** (PSI Canlas for brevity) is a Forensic Chemist at the PNP Regional Crime Laboratory-Cordillera. She was presented by the Prosecution as an expert witness. On August 4, 2010, PSI Canlas received a written request from Regional Anti-[Illegal] Drugs Special Operations Task Group (RAIDSOTG) to conduct a qualitative examination upon a certain specimen and an examination on the person of one Benjie Caranto. The items examined were delivered by PO2 Boado. PSI Canlas weighed the specimen and it yielded .07 grams. After which she conducted a chemical examination, using the ***Simon's*** and ***Marquiz Tests***, which gave a positive presumptive result for the presence of ***methamphetamine hydrochloride***. After conducting a confirmatory test, PSI Canlas concluded that the items submitted contain ***methamphetamine hydrochloride*** or also known as ***shabu***. These findings of PSI Canlas are reflected in Chemistry Report No. D-47-2010. PSI Canlas also conducted a urine test on Benjie Caranto and that upon examination of the urine sample taken from the latter, it gave a positive result for the presence of ***shabu*** which means that he uses the said substance. The urine test is reflected in Chemistry Report No. DT-17-21010.

After the said examination, the evidence were turned over by PSI Canlas to the evidence custodian."[8]

Version of the Defense

On the other hand, the defense's version, as summarized by the CA, is as follows:

To refute the testimony of the prosecution witnesses, the defense offered the testimonies of accused Benjie Caranto and that of his nephew, Al Caranto.

In his testimony, Benjie stated that he is a taxi driver employed by Intermenso Taxi. His reliever from taxi-driving duties is his nephew, Al Caranto.

On August 4, 2010, Benjie picked Al up at a Total gas station to be relieved from [his] driving duties. Al dropped Benjie off at Dr. Cariño Street where he resides. Since it was raining at that time, Benjie ran to a nearby house to shield himself from the rain. Suddenly, a male person who was about eight (8 m.) meters away, approached him and asked him if his name was "Amboy". Benjie told the male person that it was not his name. Three (3) other individuals approached him and invited him to their office and the first person to approach him ran away. Benjie was told that he was being invited to their office because there is a complaint against him, was handcuffed and was placed inside a vehicle.

Benjie was brought to Camp Dangwa, La Trinidad, Benguet. He was allegedly forced to admit ownership of a plastic sachet containing *shabu*. He claimed that he was interrogated for about three (3) hours. He also claimed that the men boxed him causing a tear in his white driver's uniform. Thereafter, he was brought to Police Station 5 and the men allegedly called for media persons to come over. Then he was brought to Baguio General Hospital for medico-legal examination. During his testimony, he denied having received a text message from any person regarding the buying and selling of *shabu* or having anything to do with the sale of *shabu*. He clarified that the plastic sachet of *shabu* and the two (2) Five Hundred (₱500.00)-Peso bills were only shown to him at the police officers' office in Camp Dangwa.

On cross-examination, Benjie stated that he does not recall having done anything which could have angered the arresting officers.

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[8] *Id*. at 5.

Al Caranto's testimony was admitted and stipulated on by the parties as follows:

1. That he is a driver-reliever of the accused Benjie Caranto;
2. That on August 4, 2010, he met Benjie Caranto at the Total Gasoline Station located at Legarda Road, Baguio City;
3. That he brought the accused, Benjie Caranto, to Carino Street and dropped him at that place; and
4. That after dropping the accused, he saw that he was approached by three male persons.[9]

Ruling of the RTC

In the assailed Decision dated January 2, 2012, the RTC held that all the elements of illegal sale of dangerous drugs had been proven by the prosecution.[10] The prosecution clearly and adequately presented in detail the transaction that took place between the accused and the poseur-buyer.[11] It further ruled that in the absence of proof of motive to falsely impute a serious crime against an accused, the presumption of regularity in the performance of official duty shall prevail over the accused's self-serving defense of denial and frame-up.[12] He was informed of his constitutional rights and the procedures in relation to the accused and the evidence obtained from him was presumed to have been properly observed absent any fact showing the contrary.[13]

The dispositive portion of the Decision reads:

WHEREFORE, the Court finds accused BENJIE CARANTO y AUSTRIA **GUILTY BEYOND REASONABLE DOUBT** of the crime charged. He is hereby sentenced to suffer the penalty of ***life***

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[9] *Id*. at 6-7.

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

[11] *Id*. at 41.

[12] *Id.*

[13] *Id*. at 41-42.

imprisonment and to pay the fine of **FIVE HUNDRED THOUSAND PESOS (₱500,000.00)** as provided for by **Section 5, Article II of Republic Act 9165**.

SO ORDERED.[14]

Aggrieved, Benjie appealed to the CA.

Ruling of the CA

In the assailed Decision dated September 26, 2014, the CA affirmed Benjie's conviction. The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing, the instant appeal is hereby **DENIED**. The Decision dated January 2, 2012 of the Regional Trial Court of Baguio City, Branch 60, in Criminal Case No. 30936-R which convicted accused-appellant Benjie Caranto y Austria for the sale of illegal drugs in violation of Sec. 5, Art. II of Republic Act No. 9165 is hereby **AFFIRMED**.

SO ORDERED.[15]

The CA ruled that the prosecution was able to sufficiently establish the presence of all the elements of illegal sale of dangerous drugs.[16] It further ruled that in cases involving violation of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they enjoy the presumption of having performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill-motive on their part or deviation from the regular performance of their duties.[17] Since no proof of such ill-motive on the part of the buy-bust team was adduced by Benjie, the RTC did not err in giving full faith and credence to the prosecution's account of the buy-bust operation.[18] Also, it held that the police officers' failure

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[14] *Id*. at 42.

[15] *Rollo*, p. 15.

[16] *Id*. at 8.

[17] *Id*. at 12.

[18] *Id*.

to take photographs of the seized items while in the presence of the accused, a member of the media, a representative of the Department of Justice (DOJ), and an elected Barangay official does not affect the admissibility of the seized drugs.[19] Lastly, it held that although the police officers did not strictly comply with the requirements of Section 21, Article II of RA 9165, their non-compliance did not affect the evidentiary weight of the drug seized from Benjie as the chain of custody of evidence was shown to be unbroken under the circumstances of the case.[20]

Hence, the instant appeal.

Issue

Whether or not Benjie's guilt for violation of Section 5 of RA 9165 was proven beyond reasonable doubt.

The Court's Ruling

The appeal is meritorious. The accused is accordingly acquitted.

In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense[21] and the fact of its existence is vital to sustain a judgment of conviction.[22] It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty.[23] Thus, in order to obviate any unnecessary doubt on its identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to its presentation in court as evidence of the crime.[24]

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[19] *Id*. at 14.

[20] *Id*. at 15.

[21] *People v. Sagana*, G.R. No. 208471, August 2, 2017, 834 SCRA 225, 240.

[22] *Derilo v. People*, 784 Phil. 679, 686 (2016).

[23] *People v. Alvaro*, G.R. No. 225596, January 10, 2018, p. 9.

[24] *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 5.

In this regard, Section 21, Article II of RA 9165,[25] the applicable law at the time of the commission of the alleged crime, outlines the procedure which the police officers must strictly follow to preserve the integrity of the confiscated drugs and/or paraphernalia used as evidence. The provision requires that: (1) the seized items be inventoried and photographed **immediately after seizure or confiscation**; (2) that the physical inventory and photographing must be done **in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the DOJ**, all of whom shall be required to sign the copies of the inventory and be given a copy of the same and the seized drugs must be turned over to a forensic laboratory within twenty-four (24) hours from confiscation for examination.[26]

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest

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[25] The said section reads as follows:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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

[26] See RA 9165, Art. II, Sec. 21 (1) and (2).

office of the apprehending officer/team.[27] **In this connection, this also means that the three required witnesses should already be physically present at the time of the conduct of the inventory of the seized items which, again, must be immediately done at the place of seizure and confiscation — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.** Verily, a buy-bust team normally has sufficient time to gather and bring with them the said witnesses.

The Court, however, has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible;[28] and, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid. However, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.[29] It has been repeatedly emphasized by the Court that the prosecution has the positive duty to explain the reasons behind the procedural lapses.[30] Without any justifiable explanation, which must be proven as a fact,[31] the evidence of the *corpus delicti* is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt.[32]

The buy-bust team failed to comply with the mandatory requirements under Section 21.

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

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

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

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

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

[32] *People v. Gonzales*, 708 Phil. 121, 123 (2013).

In the present case, the buy-bust team failed to strictly comply with the mandatory requirements under Section 21, paragraph 1 of RA 9165.

First, the arresting officers failed to photograph the seized items at the place of arrest and seizure and at the precinct where the mandatory witnesses were present. Neither did they offer any explanation as to why they did not take photographs of the seized items.

Second, **not one** of the three required witnesses was present at the time of arrest of the accused and marking of the seized items at the place of arrest. The three witnesses were only "called-in" to the police station to witness the inventory of the seized items and sign the inventory receipt. The belated participation of the three witnesses after the arrest and seizure defeats the purpose of the law in having these witnesses so as to prevent or insulate against the planting of drugs. As testified by SPO2 Raymund Tacio (SPO2 Tacio) himself:

Q After you read [to] him his Constitutional Rights, what else happened at the place where the suspect was arrested?

A The evidence was marked by SPO2 Boado.

Q After that, what happened next?

A We conducted an initial inventory and then we proceeded to Station 5 for the actual inventory.

Q At Station 5, who arrived there during the actual inventory?

A It was Prosecutor Bernabe and then the elected Barangay Official that is Patacsil, then a media representative from ABS CBN, Ron Molina.[33]

It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*,[34]

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[33] TSN, May 31, 2011, pp. 70-71.

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

the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*,[35] without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 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

[35] 736 Phil. 749 (2014).

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]

Second, the buy-bust team failed to offer any explanation for their failure to strictly comply with the requirements of Section 21.

It is evident that the police officers had more than ample time to secure the presence of the required witnesses at the place of arrest and seizure. As admitted by SPO2 Tacio, they were conducting a surveillance of the area on August 3, 2010, a day prior to the actual alleged buy-bust operation.[37] On said date, they could have already instructed the three mandatory witnesses to join them in their buy-bust operation the following day. Moreover, it was not the first time that PO2 Christian Boado (PO2 Boado) acted as a poseur-buyer in a buy-bust operation.[38] Thus, he and his team already knew the standard procedure in a bust operation. Hence, they should have had the foresight to do all the necessary preparations for it.

It bears stressing that the prosecution has the burden of (1) proving their compliance with Section 21, RA 9165, and (2) providing a sufficient explanation in case of non-compliance. As the Court *en banc* unanimously held in the recent case of *People v. Lim*,[39]

> It must be **alleged** and **proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:
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> (1) **their attendance was impossible because the place of arrest was a remote area;** (2) **their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf;** (3) **the elected official**

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

[37] TSN, May 31, 2011, p. 82.

[38] TSN, May 10, 2011, p. 53.

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

> **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**.[40] (Emphasis in the original and underscoring supplied)

The saving clause does not apply to this case.

As earlier stated, following the IRR of RA 9165, the courts may allow a deviation from the mandatory requirements of Section 21 in exceptional cases, where the following requisites are present: **(1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team**.[41] If these elements are present, the seizure and custody of the confiscated drug shall not be rendered void and invalid regardless of the noncompliance with the mandatory requirements of Section 21. In this regard, it has also been emphasized that the State bears the burden of proving the justifiable cause.[42] Thus, for the said saving clause to apply, the prosecution must first recognize the lapse or lapses on the part of the buy-bust team and justify or explain the same.[43]

Breaches of the procedure outlined in Section 21 committed by the police officers, left unacknowledged and unexplained

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[40] *Id*. at 13, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17.

[41] COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, as amended by RA 10640, Sec. 21(1).

[42] *People v. Beran*, 724 Phil. 788, 822 (2014).

[43] *People v. Reyes*, 797 Phil. 671, 690 (2016).

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.[44] As the Court explained in *People v. Reyes*:[45]

> Under the last paragraph of Section 21 (a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. **To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism.** Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. **The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti*.** With the chain of custody having been compromised, the accused deserves acquittal. x x x[46] (Emphasis supplied)

In the present case, the prosecution neither recognized, much less tried to justify or explain, the police's deviation from the procedure contained in Section 21. The police officers did not offer any justifiable reason for the absence of the required witnesses during the buy-bust operation itself, especially where, as here, they had more than sufficient time to secure their presence prior to the planned arrest.

The integrity and evidentiary value of the *corpus delicti* has thus been compromised, thus necessitating the acquittal of Benjie.

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.[47] The burden lies

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[44] *People v. Sumili*, 753 Phil. 342, 352 (2015).

[45] *Supra* note 43.

[46] *Id*. at 690.

[47] CONSTITUTION, Art. III, Sec. 14, par. (2): "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

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.[48]

Here, reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the buy-bust team is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity.[49] The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.[50] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[51]

In this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165. The Court has ruled in *People v. Zheng Bai Hui*[52] that it will not presume to set an *a priori* basis what detailed acts police authorities might credibly undertake and carry out in their entrapment operations. However, given the police operational procedures and the fact that buy-bust is a planned operation, it strains credulity why the buy-bust team could not have ensured the presence of the required witnesses pursuant to Section 21 or at the very least marked, photographed and inventoried the seized items according to the procedures in their own operations manual.

All told, the prosecution failed to prove the *corpus delicti* of the offense of sale of illegal drugs due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody, and handling of the seized drug.

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[48] *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

[49] *People v. Mendoza*, *supra* note 35, at 770.

[50] *Id*.

[51] *People v. Catalan*, 699 Phil. 603, 621 (2012).

[52] 393 Phil. 68, 133 (2000).

In other words, the prosecution was not able to overcome the presumption of innocence of Benjie.

The buy-bust operation was merely fabricated.

A buy-bust operation is a form of entrapment in which the violator is caught *in flagrante delicto* and the police officers conducting the operation are not only authorized but duty-bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime.[53] 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.[54]

This is the situation in this case.

What puts in doubt the very conduct of the buy-bust operation is the police officers' deliberate disregard of the requirements of the law, which leads the Court to believe that the buy-bust operation against Benjie was a mere pretense, a sham. This is supported by the following circumstances:

First, the three required witnesses were not present during the buy-bust operation when the alleged drug was seized from Benjie; hence, there were no unbiased witnesses to prove the veracity of the events that transpired on the day of the incident or whether the said buy-bust operation actually took place. They were only "called-in" during the inventory of the items at the police station.

Second, although they claim to have marked the seized items at the place of arrest, the police officers unjustifiably failed to photograph the seized items at the place of arrest or at the police station in the presence of the other statutory witnesses[55] which,

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[53] *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).

[54] *People v. De la Cruz*, 666 Phil. 593, 605 (2011).

[55] *Rollo*, p. 14.

again, is required to prevent planting, switching and contamination of evidence.

Third, the police allegedly conducted surveillance the day before the buy-bust operation, however, the same utterly lacks details. At the time they conducted the alleged surveillance on August 3, 2010, the police officers did not know yet any relevant information about the accused, such as the plate number, kind of vehicle and trade name of the taxi he was driving.[56] They even went back to the police station with a "negative result."[57] Further, the police officers coordinated the buy-bust operation with the Philippine Drug Enforcement Agency (PDEA) even though they had no information yet from the confidential informant of the identity of the seller of *shabu*.[58] The ante-dated pre-coordination report with the PDEA and the fact that they supposedly coordinated with the PDEA without receiving any information or tip yet from the confidential informant seriously casts doubt on whether they actually conducted a buy-bust operation.

In sum, these circumstances lend credence to Benjie's testimony, **which was corroborated by Al Caranto (Al)**, that Benjie was merely dropped off by Al at Dr. Cariño Street and that while he was shielding himself from the rain at a nearby house, three (3) individuals suddenly approached him and invited him to Camp Dangwa telling him that there was a complaint filed against him. He was then forced to admit ownership of a plastic sachet containing *shabu*.

Benjie claimed that he was interrogated for about three (3) hours. His claim that the men boxed him causing a tear in his white driver's uniform has the ring of truth to it. Thereafter, he was brought to the Police Station 5 and the men allegedly called for media persons to come over.[59] In addition, both SPO2

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[56] TSN, May 31, 2011, pp. 82-83.

[57] *Id*. at 60.

[58] TSN, May 10, 2011, pp. 44-45.

[59] *Rollo*, p. 6.

Tacio and PO2 Boado did not personally read the text messages between the accused and the confidential informant.[60] Neither did they present as witness the investigator who allegedly read the text messages between the confidential informant and the accused. Verily, the testimony of the accused, corroborated by Al, deserves more credit than the testimonies of the police officers who, it must be stressed anew, did not follow any of the standard procedures provided by law to prove the veracity of their alleged buy-bust operation.

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.[61] This is despicable. Thus, the Court reminds the trial courts to exercise extra vigilance in trying drug cases and directs the Philippine National Police to conduct an investigation on this incident and other similar cases, lest an innocent person is made to suffer the unusually severe penalties for drug offenses.

Finally, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended, and its IRR, which is fundamental in preserving the integrity and evidentiary value of the *corpus delicti*. **To the mind of the Court, the procedure outlined in Section 21 is straightforward and easy to comply with.** In the presentation of evidence to prove compliance therewith, the prosecutors are enjoined to recognize any deviation from the prescribed procedure and provide the explanation therefor as dictated by available evidence. Compliance with Section 21 being integral to every conviction, the appellate court, this Court included, is at liberty to review the records of the case to satisfy itself that the required proof has been adduced by the prosecution whether the accused has raised, before the trial or appellate court, any issue of non-compliance. If deviations are observed and no justifiable reasons are provided, the conviction must be overturned, and the innocence of the accused affirmed.[62]

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[60] TSN, May 10, 2011, p. 47, TSN, May 31, 2011, p. 91.

[61] *People v. Daria, Jr.*, 615 Phil. 744, 767 (2009).

[62] See *People v. Jugo*, G.R. No. 231792, January 29, 2018.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated September 26, 2014 of the Court of Appeals, Ninth Division in CA-G.R. CR-H.C. No. 05877, is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **Benjie Caranto *y* Austria** 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.

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

THIRD DIVISION

[G.R. No. 217949. February 20, 2019]

GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS), *petitioner, vs.* **REYNALDO P. PALMIERY,** *respondent.*

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[*] Designated additional Member per Special Order No. 2630 dated December 18, 2018.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; THE GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS) ACT OF 1997 (RA 8291); CONDITIONS BEFORE A MEMBER MAY BECOME QUALIFIED TO RECEIVE BENEFITS.— The current governing law for retirees in the government service is R.A. No. 8291, otherwise known as "*The Government Service Insurance System Act of 1997*." It amended P.D. No. 1146, or the "*Revised Government Service Insurance Act of 1977*." Under this law, all government employees who have not reached the mandatory retirement age are compulsorily required to become members of the GSIS. This membership entitles employees, except those in the judiciary and constitutional commissions, to life insurance, retirement, and other benefits (*e.g.* disability, survivorship, separation, and unemployment). For retirement benefits, in particular, R.A. No. 8291 provides the following conditions before a member may become qualified to receive this benefit, *viz.*: (a) the employee must have rendered at least 15 years of service; (b) the employee must be at least 60 years old at the time of retirement; and (c) the employee must not be receiving a monthly pension as a result of permanent total disability.

2. ID.; ID.; RA 8291 *VIS-À-VIS* THE LAW CREATING AND ESTABLISHING A GOVERNMENT SERVICE INSURANCE SYSTEM (C.A. NO. 186); ABSENCE OF SIMILAR PROVISION IN RA 8291 DOES NOT MEAN THAT THE LAW HAS ABANDONED SECTION 12 (g) OF C.A. NO. 186 WHICH EXPLICITLY PROVIDES FOR GIVING FULL CREDIT TO THE PRIOR YEARS OF SERVICE UPON THE REFUND OF THE BENEFITS PREVIOUSLY RECEIVED.— While it is true that Section 12(g) of C.A. No. 186 explicitly provides for giving full credit to the prior years of service upon the refund of benefits previously received, **the absence of a similar provision in R.A. No. 8291 does not necessarily mean that the law has abandoned this policy**. A review of Section 12 of C.A. No. 186 shows that it covered the conditions for retirement. This provision prescribed the requirements for an employee-member to avail of the retirement benefits under C.A. No. 186, as well as the specific benefits to which such member may be entitled, given the various

enumerated conditions. Section 12(g) of C.A. No. 186 specifically makes reference to Section 12(f), which disqualifies separated employees *receiving the annuity under Section 11* of C.A. No. 186, from being appointed to another appointive position, unless he or she possesses special qualifications. During the period of new employment, the annuity payment is suspended. Payment of the annuity resumes only after the termination of the employment. But under Section 12(g) of C.A. No. 186, the GSIS should give full credit to the services rendered prior to the reinstatement, if such separated employee is *not receiving the annuity* mentioned in Section 11. The full credit of services is conditioned upon the refund of contributions for retirement, and the benefits previously received under any pension or retirement plan. Thus, taken in its proper context, Section 12(g) of C.A. No. 186 applies to a specific category of employees and their corresponding benefits. The provision's subsequent absence in R.A. No. 8291 is attributable to the revised conditions for retirement under the new law, which was streamlined to only three (3) requirements for eligibility. The Court cannot interpret its absence in R.A. No. 8291 as an express prohibition against refunding previously received benefits for purposes of claiming retirement benefits under the law. The GSIS, therefore, erroneously relied on the absence of this provision to deny the claim of Reynaldo.

3. ID.; ID.; ID.; IN COMPUTING THE YEARS OF SERVICE, THE PRESENT GSIS LAW EXCLUDES ONLY SERVICES CREDITED FOR RETIREMENT FOR WHICH THE CORRESPONDING BENEFITS HAVE BEEN AWARDED; THOSE WHO REFUNDED THEIR RETIREMENT BENEFITS TO THE GSIS AFTER THEY RE-ENTERED GOVERNMENT SERVICE SHOULD BE ALLOWED TO INCLUDE THEIR PRIOR YEARS OF SERVICE; PRINCIPLE, APPLIED IN CASE AT BAR.— [A] plain reading of Section 10(b) of R.A. No. 8291 reveals that employees who already received the retirement benefits under R.A. No. 8291, or the other laws, cannot credit their years of service prior to their re-entry in the government. **Conversely, this means that employees who have *not* received their retirement benefits are entitled to full credit of their service.** In this regard, those similarly situated, or those who refunded their retirement benefits to the GSIS after they re-entered government

service should be allowed to include their prior years of service in the computation of their eligibility and retirement benefits. This is consistent with the legal precept against double compensation, which prohibits payment for the same services covering the same period. Thus, if the employee has not received his/her retirement benefits, or has returned them to the GSIS, as the case may be, then the prohibition against double retirement benefits cannot apply. For this reason, giving full credit to Reynaldo's years of service in the government does not contravene any existing statute or policy, especially since it is undisputed that Reynaldo refunded his previously received benefits to the GSIS.

4. ID.; ID.; ID.; THE CLAIM FOR RETIREMENT BENEFITS IN THIS CASE CANNOT BE JEOPARDIZED BY THE GSIS' NEW INTERPRETATION OF RA 8291; GRANTING FULL CREDIT TO RESPONDENT'S YEARS OF SERVICE IS NEITHER UNJUST ENRICHMENT NOR VIOLATIVE OF THE PRINCIPLE OF DOUBLE COMPENSATION.— [T]he GSIS did not dispute Reynaldo's refund. The GSIS accepted the amount and even issued a receipt in his favor. Reynaldo's request to suspend the payment of his monthly pension was also granted, as a result of which, the monthly pension under R.A. No. 660 was suspended effective October 1, 2001. Pending the suspension of his monthly pension, Reynaldo made succeeding refunds of the amounts he received from the GSIS. His total refund thus amounted to Php 920,566.72. In accepting the refund of Reynaldo, the GSIS cannot subsequently apply PPG No. 183-06, which adopts a new policy prejudicial to the retiree. The GSIS is the primary agency tasked with administering the government's retirement system. Reynaldo, thus, correctly assumed that when the GSIS accepted the refund of his retirement benefits, the agency would grant full credit to his years of service in the government. x x x Granting full credit to Reynaldo's years of service is neither unjust enrichment nor violative of the principle against double compensation. There is no express prohibition under R.A. No. 8291 against crediting the years of service upon the refund of previously received retirement benefits. In this case, Reynaldo refunded his retirement pay and monthly pension; and, from the time his monthly pension was suspended, Reynaldo no longer received the benefits due him. Denying his claim is, therefore,

tantamount to depriving Reynaldo of his compensation for the years of service he rendered to the government, despite being eligible under the law.

APPEARANCES OF COUNSEL

GSIS Legal Services Group for petitioner.
Factoran & Associates Law Office for respondent.

D E C I S I O N

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

By their very nature, retirement laws are humanitarian in character. They reward an employee's loyalty and long service to their employer. For government service in particular, the retirement benefits are meant to attract qualified individuals and promote longevity in the government. Most important is their function to support retirees, especially those who are in their twilight years; during which time, gainful employment is not only difficult to find, but also impractical. The administration of retirement laws should, therefore, always lean on the side of the beneficiary in order to achieve these purposes.[1]

Before the Court is a petition for review on *certiorari*[2] filed under Rule 45 of the Rules of Court, seeking to reverse and set aside the Decision[3] dated January 21, 2015 and the Resolution[4] dated April 17, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 129755.

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[1] *GSIS v. De Leon*, 649 Phil. 610, 622 (2010); *Fetalino, et al. v. Commission on Elections*, 700 Phil. 129, 149-150 (2012); and *Philippine National Bank v. Dalmacio*, G.R. No. 202308, July 5, 2017, 830 SCRA 136, 148.

[2] *Rollo*, pp. 22-49.

[3] Penned by Associate Justice Sesinando E. Villon, with Associate Justices Rodil V. Zalameda and Maria Elisa Sempio Diy concurring; *id*. at 56-66.

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

Factual Antecedents

The facts of the case are essentially undisputed. Respondent Reynaldo P. Palmiery (Reynaldo) began his government service on May 2, 1961 as a Laborer in the Philippine Veterans Administration.[5] On January 1, 1987, or after more than 25 years of service, he retired as a Manager of the Development Bank of the Philippines (DBP) when the bank underwent reorganization.[6] The DBP paid his gratuity benefit under Republic Act (R.A.) No. 1616[7] in the amount of Php 189,618.46. Reynaldo received the refund of his contributions amounting to Php 60,395.85.[8] In total, he received Php 250,014.31.

On January 2, 1987, Reynaldo re-entered government service when he was appointed as Manager III in the Social Security System (SSS). He continued to work in the SSS until his retirement as a Deputy Administrator effective June 1, 1994.[9] Reynaldo then claimed retirement benefits under R.A. No. 660;[10] pursuant to which, he was granted a five (5)-year lump sum pension in the amount of Php 532,491.28. This amount was subject to the following deductions: (a) the amount of benefits he received prior (*i.e.* Php 250,014.31); and (b) his outstanding

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[5] *Id*. at 117.

[6] *Id.*; see Executive Order No. 81, PROVIDING FOR THE 1986 REVISED CHARTER OF THE DEVELOPMENT BANK OF THE PHILIPPINES (approved on December 3, 1986).

[7] AN ACT FURTHER AMENDING SECTION TWELVE OF COMMONWEALTH ACT NUMBERED ONE HUNDRED EIGHTY-SIX, AS AMENDED, BY PRESCRIBING TWO OTHER MODES OF RETIREMENT AND FOR OTHER PURPOSES (approved on May 31, 1957).

[8] *Rollo*, p. 136.

[9] *Id*. at 118.

[10] AN ACT TO AMEND COMMONWEALTH ACT NUMBERED ONE HUNDRED AND EIGHTY-SIX ENTITLED "AN ACT TO CREATE AND ESTABLISH A GOVERNMENT SERVICE INSURANCE SYSTEM, TO PROVIDE FOR ITS ADMINISTRATION, AND TO APPROPRIATE THE NECESSARY FUNDS THEREFOR," AND TO PROVIDE RETIREMENT INSURANCE AND FOR OTHER PURPOSES (approved on June 16, 1951).

accountabilities (*i.e.* Php 57,774.64).[11] Thus, Reynaldo received the aggregate amount of Php 224,836.73 on July 4, 1994.[12]

After four (4) years, or on July 7, 1998, Reynaldo was appointed as a member of the Government Service Insurance System (GSIS) Board of Trustees. During his tenure as a member of the board, he began to concurrently serve as the GSIS Executive Vice-President after his appointment to this position on July 16, 1998.[13]

On July 11, 2001, Reynaldo refunded to GSIS the amount of Php 895,320.78, or the benefits he previously received from his retirement.[14] He also requested for the suspension of his monthly pension, which became effective on July 1, 1999, or five (5) years after the payment of his lump sum pension.[15] Reynaldo likewise refunded the pension he received on various dates, pending the GSIS' action on his request. All in all, the total amount Reynaldo refunded to GSIS was Php 920,566.72.[16]

Reynaldo retired upon reaching the compulsory retirement age on May 28, 2005. On May 14, 2010, he applied for retirement benefits under R.A. No. 8291.[17] Included in his application was his request for full credit of his government service starting on July 1, 1961 until his mandatory retirement on May 28, 2005, or approximately 38 years.[18]

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[11] *N.B.* The accountabilities of Reynaldo to the GSIS included interests on the previously received benefits amounting to Php 33,167.84; *rollo*, p. 136.

[12] *Id*. at 137.

[13] *Id*. at 119.

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

[15] *Id*. at 137.

[16] *Id*. at 138.

[17] AN ACT AMENDING PRESIDENTIAL DECREE NO. 1146, AS AMENDED, EXPANDING AND INCREASING THE COVERAGE AND BENEFITS OF THE GOVERNMENT SERVICE INSURANCE SYSTEM, INSTITUTING REFORMS THEREIN AND FOR OTHER PURPOSES. Approved on May 30, 1997.

[18] *Rollo*, pp. 107-120.

Ruling of the GSIS

In a letter[19] dated June 3, 2010, the GSIS Claims Department rejected Reynaldo's application for retirement benefits under R.A. No. 8291, for failure to meet the service requirement. The Claims Department stated that the GSIS would only credit Reynaldo's service after his re-entry to the government in 1998. Reynaldo was likewise informed that the amount previously refunded to the GSIS would be returned to him without interest. Reynaldo replied through a letter[20] dated June 21, 2010, in order to protest the denial of his retirement application.

There being no response from the GSIS, Reynaldo filed a petition on January 18, 2011,[21] which was later forwarded to the GSIS Committee on Claims.[22] The GSIS Committee on Claims, thereafter, denied Reynaldo's claim.[23] Unsatisfied with their decision, Reynaldo filed a petition[24] dated November 11, 2011 with the GSIS Office of the Corporate Secretary. The petition was then forwarded to the GSIS Chief Legal Counsel for appropriate action.[25]

Acting on Reynaldo's petition, the GSIS Board of Trustees promulgated its Decision[26] dated February 28, 2013, which ruled to dismiss the petition for lack of merit, *viz*.:

> WHEREFORE, the petition is hereby DISMISSED for lack of merit. The GSIS Claims Department is hereby ordered to refund to [Reynaldo] the amount of Php920,566.72, which he returned to the GSIS. The acceptance of the refund shall be deemed as a constructive filing of the claim for separation benefits.

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[19] *Id*. at 124.

[20] *Id*. at 125-126.

[21] CA *rollo*, pp. 105-132.

[22] *Rollo*, pp. 127-128.

[23] *Id*. at 106.

[24] *Id*. at 73-104.

[25] *Id*. at 72.

[26] *Id*. at 135-154.

SO ORDERED.[27]

According to the GSIS Board of Trustees, it has approved Policy and Procedural Guidelines (PPG) No. 183-06 on January 4, 2006, which established a clear procedure in the processing of retirement claims of re-employed government officials. Under these guidelines, government employees who re-entered on or after the effectivity of R.A. No. 8291, or on June 24, 1997, cannot claim their previous years of service upon retirement.[28] Since Reynaldo re-entered government service after June 24, 1997, the GSIS Board of Trustees excluded the years of service prior to his re-entry in the computation of his service under R.A. No. 8291.[29]

Ruling of the CA

Reynaldo appealed to the CA *via* a petition for review[30] under Rule 43 of the Rules of Court. In a Decision[31] dated January 21, 2015, the CA granted his appeal and ruled as follows:

WHEREFORE, in light of all the foregoing, the petition is GRANTED. Accordingly, the decision dated February 28, 2013 of [GSIS] in GSIS Case No. 005-11 is hereby REVERSED and SET ASIDE.

Respondent GSIS is DIRECTED to process the total retirement benefits accruing in favor of [Reynaldo], based on his total length of government service.

SO ORDERED.[32]

The CA held that under Section 12(g) of Commonwealth Act (C.A.) No. 186,[33] a reinstated government employee may

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[27] *Id*. at 152.

[28] *Id*. at 148-149.

[29] *Id*. at 151-152.

[30] CA *rollo*, pp. 30-59.

[31] *Rollo*, pp. 56-66.

[32] *Id*. at 65.

[33] AN ACT TO CREATE AND ESTABLISH A "GOVERNMENT SERVICE INSURANCE SYSTEM," TO PROVIDE FOR ITS ADMINISTRATION,

receive full credit for the years of service, provided that the retirement and pension benefits previously received are refunded to the GSIS. This is the applicable policy, despite the amendments enacted under R.A. No. 660 and R.A. No. 728.[34] The CA further found that later laws, such as Presidential Decree (P.D.) No. 1146,[35] P.D. No. 1981,[36] and R.A. No. 8291, all failed to expressly repeal this provision of C.A. No. 186. Finally, as a piece of social legislation, the CA held that retirement laws should be liberally construed in favor of their beneficiaries.[37]

In a motion dated February 12, 2015, the GSIS sought the reconsideration of the CA's decision.[38] The CA denied this motion in its Resolution[39] dated April 17, 2015:

> WHEREFORE, the instant Motion for Reconsideration is hereby DENIED for lack of merit.
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> SO ORDERED.[40]

Disagreeing with the adverse rulings of the CA, the GSIS filed the present petition before the Court. According to the

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AND TO APPROPRIATE THE NECESSARY FUNDS THEREFOR (approved on November 14, 1936).

[34] AN ACT TO FURTHER AMEND THE GOVERNMENT SERVICE INSURANCE ACT, AS AMENDED BY REPUBLIC ACT NUMBERED SIX HUNDRED SIXTY, AND TO AMEND SECTION TWENTY-SIX OF THE LATTER ACT (approved on June 18, 1952).

[35] AMENDING, EXPANDING, INCREASING AND INTEGRATING THE SOCIAL SECURITY AND INSURANCE BENEFITS OF GOVERNMENT EMPLOYEES AND FACILITATING THE PAYMENT THEREOF UNDER COMMONWEALTH ACT NO. 186, AS AMENDED, AND FOR OTHER PURPOSES (approved on May 31, 1977).

[36] FURTHER AMENDING PRESIDENTIAL DECREE NO. 1146, AS AMENDED, OTHERWISE KNOWN AS THE REVISED GOVERNMENT SERVICE INSURANCE ACT OF 1977 (approved on July 19, 1985).

[37] *Rollo*, pp. 60-65.

[38] CA *rollo*, pp. 464-480.

[39] *Rollo*, pp. 68-69.

[40] *Id*. at 68.

GSIS, Section 10(b) of R.A. No. 8291 is clear with respect to employees who re-enter government service after retirement. The law supposedly considers these employees as new entrants, as a consequence of which, the GSIS excludes the services credited to the previous retirement in the computation of benefits.[41] Furthermore, the GSIS argues that there is a distinction between those who re-entered government service before the effectivity of R.A. No. 8291, and those who re-entered and retired after its effectivity.[42] Since Reynaldo falls under the latter category, his previous years of service cannot be included in the computation of his retirement benefits.[43]

In his comment, Reynaldo submits that the GSIS erroneously interpreted Section 10(b) of R.A. No 8291. He argues that only the service credited for retirement for which corresponding benefits have been awarded is excluded in the computation.[44] He likewise subscribes to the CA's finding that the Primer on the GSIS Act of 1997 allows the refund of previously received benefits for the purpose of giving full credit in the computation of retirement benefits.[45] Lastly, he submits that the GSIS Board of Trustees cannot rely on PPG No. 183-06 to deny his claim because at the time he refunded the previously received benefits to GSIS, this policy was not yet in place.[46]

The Court must, therefore, resolve whether Reynaldo's previous years in government should be included in the computation for his retirement benefits.

Ruling of the Court

The Court finds the petition without merit. The GSIS should give full credit to Reynaldo's years of service in the government.

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

[42] *Id*. at 44.

[43] *Id.* at 39.

[44] *Id*. at 167-175.

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

[46] *Id.* at 181.

In computing the years of service, the present GSIS Law excludes only services credited for retirement for which the corresponding benefits have been awarded.

The current governing law for retirees in the government service is R.A. No. 8291, otherwise known as "*The Government Service Insurance System Act of 1997*." It amended P.D. No. 1146, or the "*Revised Government Service Insurance Act of 1977*." Under this law, all government employees who have not reached the mandatory retirement age are compulsorily required to become members of the GSIS. This membership entitles employees, except those in the judiciary and constitutional commissions, to life insurance, retirement, and other benefits (*e.g.* disability, survivorship, separation, and unemployment).[47]

For retirement benefits, in particular, R.A. No. 8291 provides the following conditions before a member may become qualified to receive this benefit, *viz*.: (a) the employee must have rendered at least 15 years of service; (b) the employee must be at least 60 years old at the time of retirement; and (c) the employee must not be receiving a monthly pension as a result of permanent total disability.[48] R.A. No. 8291 further provides for the manner by which service is computed, thus:

SECTION 10. *Computation of Service*. — (a) The computation of service for the purpose of determining the amount of benefits payable under this Act shall be **from the date of original appointment/ election, including periods of service at different times under one or more employers**, those performed overseas under the authority of the Republic of the Philippines, and those that may be prescribed by the GSIS in coordination with the Civil Service Commission.

(b) **All service credited for retirement, resignation or separation for which corresponding benefits have been awarded under this Act or other laws shall be excluded in the computation of service in case of reinstatement in the service of an employer and**

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[47] P.D. No. 1146, as amended by R.A. No. 8291, Section 3.

[48] *Id*. at Section 13-A.

subsequent retirement or separation which is compensable under this Act.

For the purpose of this section the term service shall include full time service with compensation: *Provided*, That part time and other services with compensation may be included under such rules and regulations as may be prescribed by the GSIS.[49] (Emphases Ours)

Pursuant to this provision, the GSIS argues that there is no longer "any exemption or condition such as refund of previously received benefits[,] as a restorative recourse of adding previous services in the computation of service [for reinstated employees]."[50] The provision in Section 12(g) of C.A. No. 186, which allows for the refund of previously received benefits, is no longer found in the present law. Thus, the GSIS argues that this recourse is not available to those who re-entered government service after the effectivity of R.A. No. 8291.[51]

The Court does not agree.

While it is true that Section 12(g) of C.A. No. 186 explicitly provides for giving full credit to the prior years of service upon the refund of benefits previously received, **the absence of a similar provision in R.A. No. 8291 does not necessarily mean that the law has abandoned this policy**. A review of Section 12 of C.A. No. 186 shows that it covered the conditions for retirement. This provision prescribed the requirements for an employee-member to avail of the retirement benefits under C.A. No. 186, as well as the specific benefits to which such member may be entitled, given the various enumerated conditions.

Section 12(g) of C.A. No. 186 specifically makes reference to Section 12(f), which disqualifies separated employees *receiving the annuity under Section 11* of C.A. No. 186,[52] from

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[49] *Id*. at Section 10.

[50] *Rollo*, p. 42.

[51] *Id*. at 45.

[52] This provision reads:

Section 11. (a) *Amount of annuity.* — Upon retirement after faithful and satisfactory service a member shall be automatically entitled to a life annuity

being appointed to another appointive position, unless he or she possesses special qualifications. During the period of new employment, the annuity payment is suspended. Payment of the annuity resumes only after the termination of the employment.

But under Section 12(g) of C.A. No. 186, the GSIS should give full credit to the services rendered prior to the reinstatement, if such separated employee is *not receiving the annuity* mentioned in Section 11. The full credit of services is conditioned upon the refund of contributions for retirement, and the benefits previously received under any pension or retirement plan.

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guaranteed for at least five years and thereafter as long as he lives. The amount of the monthly annuity at the age of fifty-seven years shall be thirty pesos, plus for each year of service after the sixteenth of June, nineteen hundred and fifty-one, two per centum of the average monthly salary received by him during the last three years of service, plus, for each year of service rendered prior to the sixteenth of June, nineteen hundred and fifty-one, one and two-tenths per centum of said average monthly salary: Provided, That this amount shall be adjusted actuarially if retirement be at an age other than fifty-seven years: Provided, further, That the maximum amount of monthly annuity at age fifty-seven shall not in any case exceed three-fourths of said average monthly salary: And provided, finally, That retirement benefit shall be paid not earlier than one year after the approval of this Act. In lieu of this annuity, he may prior to his retirement elect one of the following equivalent benefits.

(1) Monthly annuity during his lifetime;

(2) Monthly annuity during the joint-lives of the employee and his or her spouse guaranteed for at least five years, which annuity, however, shall, upon death of either and after the five-year guarantees period, be reduced to one-half and be paid to the survivor.

(3) For those who are at least sixty-three years of age, lump-sum payment of present value of annuity for first five years, and for those who are at least sixty but below sixty-three years of age, lump- sum payment of the present value of the annuity for the first three years, with the balance of the five-year guaranteed annuity payable in lump-sum upon reaching sixty-three years of age, and annuity after the guaranteed period to be paid monthly: Provided, further, That it shall be compulsory for an employer to pay on the date of retirement in preference to all other obligations, except salaries and wages of its employees, its share of at least the premiums required to permit an employee to enjoy [these] options.

(4) Such other benefits as may be approved by the System.

Thus, taken in its proper context, Section 12(g) of C.A. No. 186 applies to a specific category of employees and their corresponding benefits. The provision's subsequent absence in R.A. No. 8291 is attributable to the revised conditions for retirement under the new law, which was streamlined to only three (3) requirements for eligibility.[53] The Court cannot interpret its absence in R.A. No. 8291 as an express prohibition against refunding previously received benefits for purposes of claiming retirement benefits under the law. The GSIS, therefore, erroneously relied on the absence of this provision to deny the claim of Reynaldo.

More importantly, a plain reading of Section 10(b) of R.A. No. 8291 reveals that employees who already received the retirement benefits under R.A. No. 8291, or the other laws, cannot credit their years of service prior to their re-entry in the government. **Conversely, this means that employees who have *not* received their retirement benefits are entitled to full credit of their service.**

In this regard, those similarly situated, or those who refunded their retirement benefits to the GSIS after they re-entered government service should be allowed to include their prior years of service in the computation of their eligibility and retirement benefits. This is consistent with the legal precept against double compensation, which prohibits payment for the same services covering the same period.[54] Thus, if the employee has not received his/her retirement benefits, or has returned them to the GSIS, as the case may be, then the prohibition against double retirement benefits cannot apply.

For this reason, giving full credit to Reynaldo's years of service in the government does not contravene any existing statute or policy, especially since it is undisputed that Reynaldo refunded his previously received benefits to the GSIS. The GSIS even suspended his monthly pension effective October 1, 2001,

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[53] *Supra* note 48.

[54] See *Ocampo v. Commission on Audit*, 710 Phil. 706, 722-723 (2013), citing *Santos v. Court of Appeals*, 399 Phil. 298, 307-308 (2000).

pursuant to the request of Reynaldo.[55] His re-entry into government service after the effectivity of R.A. No. 8291 is, therefore, inconsequential to the present case. The distinction that the GSIS created between individuals who re-entered government service before the effectivity of R.A. No. 8291, and those who re-entered after its effectivity, cannot supersede the unambiguous policy in Section 10(b) of the new GSIS Law.

The claim for retirement benefits in this case cannot be jeopardized by GSIS' new interpretation of R.A. No. 8291.

Significantly, when Reynaldo refunded his benefits, the GSIS subscribed to the policy that the prior services of an employee reinstated in the government may be credited as long as a refund of the previously received retirement benefits is made. The GSIS Primer on R.A. No. 8291 states, thus:

☞ *Can services for which retirement contributions have been refunded be included in the computation of service in case of reinstatement?*

Yes, however, the corresponding contributions plus interests shall be deducted from benefits to be received. Services which are excluded in the computation of service in case of reinstatement are services for which the following retirement and separation benefits have been paid:

(1) cash payments, lump sums or pensions for retirement or old-age benefits under GSIS retirement laws such as R.A. 8291, P.D. 1146 and R.A. 660 and other special retirement laws which include R.A. 910, P.D. 1638, R.A. 6975, R.A. 7699, etc.; or

(2) retirement gratuities under R.A. 1616 and R.A. 6683; or

(3) cash payments and pensions as separation benefits under R.A. 8291.

☞ *Are the previous services of an employee credited if upon reinstatement to the service, he/she refunded all the retirement benefits he/she received?*

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[55] *Rollo*, p. 137.

Yes, because technically the employee in this case has not received any retirement or separation benefits. Formerly, refund of retirement benefits received was a requirement upon reinstatement. Under R.A. 8291, there is no such requirement.[56]

Notably, the GSIS did not dispute Reynaldo's refund. The GSIS accepted the amount and even issued a receipt in his favor.[57] Reynaldo's request to suspend the payment of his monthly pension was also granted, as a result of which, the monthly pension under R.A. No. 660 was suspended effective October 1, 2001. Pending the suspension of his monthly pension, Reynaldo made succeeding refunds of the amounts he received from the GSIS. His total refund thus amounted to Php 920,566.72.[58]

In accepting the refund of Reynaldo, the GSIS cannot subsequently apply PPG No. 183-06, which adopts a new policy prejudicial to the retiree. The GSIS is the primary agency tasked with administering the government's retirement system. Reynaldo, thus, correctly assumed that when the GSIS accepted the refund of his retirement benefits, the agency would grant full credit to his years of service in the government. As the Court aptly held in *GSIS v. De Leon*:[59]

It must also be underscored that GSIS itself allowed respondent to retire under R.A. No. 910, following jurisprudence laid down by this Court.

One could hardly fault respondent, though a seasoned lawyer, for relying on petitioner's interpretation of the pertinent retirement laws, considering that the latter is tasked to administer the government's retirement system. He had the right to assume that GSIS personnel knew what they were doing.

Since the change in circumstances was through no fault of respondent, he cannot be prejudiced by the same. His right to receive

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[56] *Id*. at 123.

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

[58] *Id*. at 137-138.

[59] 649 Phil. 610 (2010).

monthly pension from the government cannot be jeopardized by a new interpretation of the law.[60]

Granting full credit to Reynaldo's years of service is neither unjust enrichment nor violative of the principle against double compensation. There is no express prohibition under R.A. No. 8291 against crediting the years of service upon the refund of previously received retirement benefits. In this case, Reynaldo refunded his retirement pay and monthly pension; and, from the time his monthly pension was suspended, Reynaldo no longer received the benefits due him. Denying his claim is, therefore, tantamount to depriving Reynaldo of his compensation for the years of service he rendered to the government, despite being eligible under the law.

Ultimately, in our jurisdiction, the inflexible rule is that social legislation must be liberally construed in favor of the beneficiaries.[61] This includes retirement laws, the main objective of which is to provide support to retirees, especially at a time when their employment has ended.[62] The benefits that retirees receive from retirement is also a form of reward for loyally serving their employer.[63] In light of the humanitarian purpose of retirement laws, all doubts should be resolved in favor of the retiree as the person primarily intended to be benefited by this legislation.

WHEREFORE, the petition is **DENIED**. Accordingly, the Decision dated January 21, 2015 and the Resolution dated April 17, 2015, which were both promulgated by the Court of Appeals in relation to CA-G.R. SP No. 129755, are **AFFIRMED**.

The Government Service Insurance System is directed to give full credit to the years of service of Reynaldo P. Palmiery and to grant the retirement benefits due him, less any lawful

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[60] *Id*. at 625.

[61] *Philippine National Bank v. Dalmacio*, G.R. No. 202308, July 5, 2017, 830 SCRA 136.

[62] *Id*. at 148.

[63] *GSIS v. De Leon*, *supra* note 59.

deductions and corresponding interest and legal interest, if there are any.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 220008. February 20, 2019]

SOCORRO T. CLEMENTE, as substituted by SALVADOR T. CLEMENTE, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES (Department of Public Works and Highways, Region IV-A),** *respondent.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; DONATION; NON-FULFILLMENT OF THE CONDITION GIVES THE DONOR THE RIGHT TO REVOKE THE DONATION.— [U]pon the execution of the Deed of Donation and the acceptance of such donation in the same instrument, ownership was transferred to the Republic, as evidenced by the new certificate of title issued in the name of the Province of Quezon. Because the condition in the Deed of Donation is a resolutory condition, until the donation is revoked, it remains valid. However, for the donation to remain valid, the donee must comply with its obligation to construct a government hospital and use the Subject Property as a hospital site. The failure to do so gives the donor the right to revoke the donation. x x x It is clear from the records that the donee failed to comply with its obligation to construct a government hospital and to use the premises as a hospital site.

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

2. ID.; ID.; ID.; NO NEED FOR A SETTLEMENT OF THE DONOR'S ESTATE BEFORE AN HEIR CAN FILE AN ACTION FOR REVOCATION OF DONATION AND RECONVEYANCE PROVIDED THAT SUCH HEIR RECOGNIZES AND ACKNOWLEDGES THE OTHER CO-HEIRS AND ACTING IN BEHALF OF ALL.— [T]here is no need for the settlement of the estate before one of the heirs can institute an action on behalf of the other co-heirs. Although an heir's right in the estate of the decedent which has not been fully settled and partitioned is merely inchoate, Article 493 of the Civil Code gives the heir the right to exercise acts of ownership. Thus, even before the settlement of the estate, an heir may file an action for reconveyance of possession as a co-owner thereof, provided that such heir recognizes and acknowledges the other co-heirs as co-owners of the property as it will be assumed that the heir is acting on behalf of all the co-heirs for the benefit of the co-ownership.

3. ID.; ID.; PRESCRIPTION; AN ACTION FOR RECONVEYANCE MUST BE INSTITUTED WITHIN TEN (10) YEARS AND AN ACTION TO REVOKE A DONATION PRESCRIBES IN FOUR (4) YEARS; IN BOTH CASES, THE TIME OF NON-COMPLIANCE WITH THE CONDITION IMPOSED IS THE STARTING POINT WHEN TO COUNT THE PRESCRIPTIVE PERIOD.— An action for reconveyance based on a violation of a condition in a Deed of Donation should be instituted within ten (10) years from the time of such violation. Moreover, an action to revoke a donation based on non-compliance of the condition prescribes after four (4) years from such non-compliance. Thus, in both cases, to be able to determine whether the action has prescribed, the time of non-compliance must first be determined. This is because the failure to comply with the condition imposed will give rise to the cause of action against the obligor-donee, which is also the starting point of when to count the prescriptive period.

4. ID.; ID.; ID.; WHERE THE DEED OF DONATION FAILED TO STATE THE PERIOD WITHIN WHICH THE DONEE SHOULD HAVE COMPLIED WITH THE CONDITION, IT MAY BE INFERRED THAT THE PARTIES INTENDED THAT THE CONDITION SHOULD BE PERFORMED WITHIN A REASONABLE PERIOD.— In this case, the Deed of Donation is bereft of any period within which the donee

should have complied with the condition of constructing a government hospital. Thus, the action has not yet prescribed. Based on the Deed of Donation, however, it is apparent that a period was indeed intended by the parties. By agreeing to the conditions in the Deed of Donation, the donee agreed, and it bound itself to construct a government hospital and to use the Subject Property solely for hospital purposes. The construction of the said hospital could not have been intended by the parties to be in a state of limbo as it can be deduced that the parties intended that the hospital should be built **within a reasonable period**, although the Deed of Donation failed to fix a period for such construction.

5. ID.; ID.; ID.; WHERE IT HAS BEEN MORE THAN FIFTY (50) YEARS SINCE THE DONATION HAS BEEN EXECUTED AND THE DONEE NO LONGER HAS THE INTENTION OF FULFILLING ITS OBLIGATION, THEN THE OBLIGATION OF THE DONOR TO HONOR THE DONATION IS EXTINGUISHED AND CAN NOW SEEK RESCISSION.— While ideally, a period to comply with the condition should have been fixed by the Court, we find that this will be an exercise in futility because of the fact that it has been more than fifty (50) years since the Deed of Donation has been executed; and thus, the reasonable time contemplated by the parties within which to comply with the condition has already lapsed. x x x Further, in 2003, Socorro already wrote to DPWH asking for updates on the construction of the government hospital. However, the DPWH informed her that there were no plans to build any hospital on the Subject Property. **Thus, it is clear that the donee no longer has the intention of fulfilling its obligation under the Deed of Donation.** It has now become evident that the donee will no longer comply with the condition to construct a hospital because a government hospital was already built in another barangay, Barangay Polo. If it becomes indubitable that the event, in this case the construction of the hospital, will not take place, then the obligation of the donor to honor the donation is extinguished. Moreover, the donor-obligee can seek rescission of the donation if the donee-obligor has manifested no intention to comply with the condition of the donation.

6. ID.; ID.; LACHES, DEFINED; AS LACHES HAS NOT SET IN SINCE THE DEED OF DONATION FAILED TO

SPECIFY THE PERIOD WITHIN WHICH TO COMPLY WITH THE CONDITION, THERE CAN BE NO DELAY IN ASSERTING THE RIGHT AGAINST RESPONDENT.— [W]e find that laches has not set in. Laches is defined as the failure or neglect for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. Because of the failure of the Deed of Donation to specify the period within which to comply with the condition, there can be no delay in asserting the right against respondent. In contrast, respondent is guilty of unreasonable delay and neglect in complying with its obligation to construct a government hospital and to use the Subject Property as a hospital site.

CAGUIOA, *J.*, *concurring opinion*:

1. **CIVIL LAW; CIVIL CODE; DONATION; THE SUBJECT DEED OF DONATION SHOULD BE CLASSIFIED AS AN ONEROUS DONATION THAT IS GOVERNED BY THE RULES ON OBLIGATIONS AND CONTRACTS AND THE PROVISIONS ON RECIPROCAL OBLIGATIONS.—** [W]hile the *ponencia* holds that the donation made by the Clemente Siblings was a donation subject to a resolutory condition and thus covered by Article 764 of the Civil Code, I find that no resolutory condition exists in this case. x x x While I agree that the rights over the donated property are demandable at once, I disagree that the fulfillment, performance, or extinguishment thereof depends upon "a future or uncertain event." Rather, the construction of a government hospital as stated in the above-quoted provision is a mode, burden, or charge, the value of which was, presumably, at least equal to the value of the land donated. In line with the Court's pronouncements in *De Luna v. Judge Abrigo*, *The Secretary of Education v. Heirs of Rufino Dulay, Sr.* and *City of Manila v. Rizal Park Co.*, the herein donation should be classified as an onerous donation that is governed by the rules on obligations and contracts and the provisions on resolution of reciprocal obligations under Article 1191 of the Civil Code. Such classification is necessary for a more consistent application of 1) the rules on when the

court is authorized to fix a period, and 2) the conflicting prescriptive periods under Articles 764 and 1144 of the Civil Code.

2. **ID.; ID.; ID.; ID.; AS THE DONATION HERE IS ONEROUS WHICH IMPOSES A BURDEN TO CONSTRUCT A GOVERNMENT HOSPITAL, THE COURT IS AUTHORIZED TO FIX THE PERIOD FOR COMPLIANCE.—** I submit that the applicable provision is Article 1197 as this specifically applies to "Obligations with a Period." Inasmuch as the donation here is not actually conditional, but rather, merely imposes a burden to construct a government hospital, then Article 1197 under the title of "Obligations with a Period" governs. In full agreement with the *ponencia*, this is a situation where the courts should be allowed to fix a period. In other words, as the onerous donation imposed an obligation to construct a government hospital but failed to provide a period for compliance, the court is authorized to fix a period for compliance under Article 1197 of the Civil Code, *viz.*: ART. 1197. If the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof. The same conclusion may be arrived at by applying Article 1191, which authorizes the court to fix a period for "just cause" in lieu of rescission/resolution.

3. **ID.; ID.; PRESCRIPTION; THE TEN-YEAR PERIOD SHOULD APPLY IN CASE AT BAR; THE ACTION HAS NOT PRESCRIBED SINCE THERE WAS NO PERIOD PROVIDED FOR THE GOVERNMENT TO COMPLY WHICH RENDERS IT IMPOSSIBLE TO DETERMINE WHEN PETITIONER'S ACTION HAD ACCRUED.—** I find that the 10-year period should apply. As already mentioned, the instant case involves an onerous donation which is expressly made subject to the rules on obligations and contracts. Thus, the 10-year period under Article 1144(1) should be applied. In this regard, I agree with the *ponencia* that the action has not prescribed because there was no period provided for the government to comply with its obligation to construct a government hospital, which renders it impossible to determine when petitioner's cause of action had accrued.

4. **ID.; ID.; LACHES; THE PRESENT ACTION IS NOT ALSO BARRED BY LACHES.—** [T]he Republic failed to positively

prove the elements of laches. In the Office of the Solicitor General's Comment, there was no statement as to when petitioner or his predecessors-in-interest learned about the government's breach. The Deed of Donation expressly provided that the government was obliged to construct a government hospital. Thus, it cannot reasonably claim that it could not have known or anticipated that its possession and occupancy would later be questioned. Further, unlike *Dept. of Education, Division of Albay v. Oñate*, where the government invested significant amounts for the construction of a public school, the construction in this case was never completed as only the foundation of what it constructed remained. Thus, any prejudice to the government would not have been caused by petitioner's delay in asserting his right, but by the government's unreasonable delay in constructing the hospital.

APPEARANCES OF COUNSEL

De Jesus Manimtim & Associates for petitioner.
Office of the Solicitor General for respondent.

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. Petitioner Salvador T. Clemente[1] challenges the 17 October 2014 Decision[2] and the 14 August 2015 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No.

[1] Substituted the original complainant in this case, Socorro T. Clemente.

[2] *Rollo*, pp. 25-36. Penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Magdangal M. De Leon and Stephen C. Cruz concurring.

[3] *Id*. at 14-15. Penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Magdangal M. De Leon and Zenaida T. Galapate-Laguilles concurring. Associate Justices Stephen C. Cruz and Leoncia R. Dimagiba dissented.

91522. The CA affirmed the 24 September 2007 Decision[4] and 4 April 2008 Resolution[5] of the Regional Trial Court (RTC), Branch 64 of Mauban, Quezon, dismissing the Complaint[6] and Amended Complaint[7] for Revocation of Donation, Reconveyance and Recovery of Possession filed by Socorro T. Clemente (Socorro) against the Republic of the Philippines through its agency, the Department of Public Works and Highways (DPWH) Region IV-A.

The Facts

Municipal Mayor Amado A. Clemente (Mayor Clemente), Dr. Vicente A. Clemente, Judge Ramon A. Clemente, and Milagros A. Clemente (Clemente Siblings) were the owners of a parcel of land covered by Transfer Certificate of Title (TCT) No. T-50896. During their lifetime, they executed a Deed of Donation[8] dated 16 March 1963 over a one-hectare portion of their property (Subject Property) in favor of the Republic of the Philippines. The Deed of Donation provided:

> [T]he herein DONORS hereby voluntarily and freely give, transfer and convey, by way of unconditional donation, unto said DONEE, his executors and administrators, all of the rights, title and interest which the aforesaid DONORS have or which pertain to them and which they owned exclusively in the above-described real property over a one-hectar[e] portion of the same, solely for hospital site only and for no other else, where a Government Hospital shall be constructed, free from all liens and encumbrances whatsoever, which portion of the land had been segregated in the attached subdivision plan x x x.[9]

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[4] *Id*. at 37-42. Penned by Judge Rodolfo D. Obnamia, Jr.

[5] *Id*. at 297-299.

[6] *Id*. at 140-144.

[7] *Id*. at 145-150.

[8] *Id*. at 151-153. The agreement was denominated as "Donation of Real Property Inter Vivos."

[9] *Id*. at 152.

In the same Deed of Donation, District Engineer II Ciceron A. Guerrero of DPWH Region IV-A accepted said donation. On 29 March 1963, TCT No. T-50896 was partially cancelled by TCT No. T-51745 covering the Subject Property and issued in the name of the Province of Quezon.

In accordance with the Deed of Donation, the construction of a building for a hospital was started in the following year. However, for reasons unknown, the construction was never completed and only its foundation remains today.

In a letter dated 23 August 2003,[10] Socorro and Rosario P. Clemente wrote to the District Engineer of Quezon asking for information on the development of the government hospital, as they were aware that the construction of the foundation of the hospital structure had already been started. In a subsequent letter dated 24 November 2003, Socorro wrote to the District Engineer restating their inquiry and consultation on 20 November 2003, when the District Engineer informed her that the DPWH no longer had a plan to construct a hospital at the site and that the DPWH had no budget for the hospital construction.[11]

In 2004, almost forty-one (41) years after the Deed of Donation was executed, Socorro, as heir and successor-in-interest of Mayor Clemente, filed a Complaint, and subsequently an Amended Complaint, for Revocation of Donation, Reconveyance and Recovery of Possession alleging that the Republic of the Philippines failed to comply with the condition imposed on the Deed of Donation, which was to use the property "solely for hospital site only and for no other else, where a [g]overnment [h]ospital shall be constructed."[12]

The Ruling of the RTC

On 24 September 2007, the RTC rendered its Decision[13] dismissing the case on the ground of prematurity. The RTC

[10] *Id*. at 225.

[11] *Id*. at 227.

[12] *Id*. at 152.

[13] *Id*. at 133-138.

held that the Republic agreed to comply with the condition of constructing a government hospital, and it initially commenced its construction. However, it was not completed for unknown reasons, and that only the foundation remains, after the construction was cannibalized by the people in the area. The RTC held that based on the records, it was only in the last semester of 2003 that Socorro demanded the construction of the hospital. Despite such demand, no hospital was built on the donated property. The RTC held that since the parties did not fix the period within which to comply with the condition, but a period was indeed intended, the Court may fix the period for the performance of the donee's obligation, under Article 1197 of the Civil Code. However, since Socorro failed to pray for the fixing of the period, the RTC dismissed the case. The RTC held:

> Answering the issue posed, therefore, for resolution by the Court, it can now safely be said that the deed of donation, at this point in time, cannot be revoked to revert the ownership of the land donated to the heirs of the donee on the ground of prematurity.
>
> WHEREFORE, the Court orders the dismissal of this case as it is hereby dismissed.
>
> No costs.
>
> SO ORDERED.[14]

In a Resolution dated 4 April 2008, the RTC denied the Motion for Reconsideration filed by Socorro, affirming its Decision that the donation was revocable before the fulfillment of the resolutory condition to construct the government hospital, and that such condition was subject to a period even if no period was actually stipulated in the Deed of Donation. Thus, Socorro appealed to the CA.

The Ruling of the CA

In a Decision dated 17 October 2014, the CA denied the appeal, finding that while there may be basis for the recovery

[14] *Id*. at 137-138.

of the property, Socorro, as an heir of a deceased co-donor, cannot assert the concept of heirship to participate in the revocation of the property donated by her successor-in-interest. The CA held:

> Prescinding simply from the hypothetical effect of succession for Socorro T. Clemente, neither was there any assertion on the initiatory pleading nor evidence from the plaintiff-appellant as to any judicial or extra-judicial settlement of the estate of her husband as co-donor. And without any representation from Socorro T. Clemente on the Amended Complaint as to previous determination of heirs, full liquidation of the estate and payment of estate debts, if any, it cannot be assumed, and the plaintiff's representatives cannot assert heirship, that a portion of the property donated was still part of the estate of Socorro T. Clemente's husband. Corollary thereto, Section 2, Rule 73 of the Revised Rules of Court illuminates that until liquidation of the property, neither the widow nor the heirs can sue for participation therein.
>
> Thus, based on the lacuna from the plaintiff-appellant, when assayed by vital tenets in law, the plaintiff's representative ventilated an inchoate right *via* the Amended Complaint.
>
> WHEREFORE, by reason of the foregoing premises towards prematurity of the suit below, the appeal is hereby DENIED.
>
> SO ORDERED.[15]

In a Resolution dated 14 August 2015, the CA denied the Motion for Partial Reconsideration. Hence, this petition.[16]

The Issues

The petition raises the following issues:

A.

WHETHER OR NOT THE "SETTLEMENT OF AN ESTATE" OR THE "DETERMINATION OF HEIRS, FULL LIQUIDATION OF THE ESTATE AND PAYMENT OF ESTATE DEBTS" OF THE CO-OWNERS IS A NECESSARY REQUIREMENT BEFORE THE

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[15] *Id*. at 34-35.

[16] *Id*. at 55-103.

PETITIONER (THE ONLY SURVIVING SPOUSE OF ONE OF THE CO-OWNERS) MAY FILE THIS ACTION FOR REVOCATION OF DONATION, RECONVEYANCE AND RECOVERY OF POSSESSION OF THE PROPERTY WHICH THEY DONATED ON MARCH 16, 1963 OR 52 YEARS AGO, SINCE ANYWAY THE ACTION SHALL INDISPUTABLY BENEFIT ALL CO-HEIRS?

B.

WHETHER OR NOT THE FAILURE OF THE OTHER CO-HEIRS TO JOIN PETITIONER IN THIS ACTION IS A GROUND FOR ITS DISMISSAL ALTHOUGH THE ACTION IS FOR THE BENEFIT OF ALL THE CO-HEIRS AS BENEFICIAL OWNERS AND ALTHOUGH THIS KIND OF LEGAL ACTION COVERS ALL KINDS OF ACTION FOR THE RECOVERY OF POSSESSION, I.E., FORCIBLE ENTRY AND UNLAWFUL DETAINER (ACCION INTERDICTAL), RECOVERY OF POSSESSION (ACCION PUBLICIANA) AND RECOVERY OF OWNERSHIP (ACCION [REIVINDICATORIA])?

C.

WHETHER OR NOT THE ACTION IS PREMATURE? IF NOT, WHETHER OR NOT IT IS BARRED BY THE CONTRARY DOCTRINE OF PRESCRIPTION OR LACHES? NOTWITHSTANDING THAT THE DONATION IS ONEROUS THEREBY REMOVING IT FROM THE AMBIT OF THE LAW OF DONATIONS AND INSTEAD PLACING IT WITHIN THE PURVIEW OF THE LAW ON OBLIGATIONS AND CONTRACTS UNDER ART. 733, CIVIL CODE?[17]

The Ruling of the Court

The petition is meritorious.

The nature of the donation made by the Clemente Siblings is a donation subject to a condition – the condition being the construction of a government hospital and the use of the Subject Property solely for hospital purposes. Upon the non-fulfillment of the condition, the donation may be revoked and all the rights already acquired by the donee shall be deemed lost and

[17] *Id*. at 79-80.

extinguished.[18] This is a resolutory condition because it is demandable at once by the donee[19] but the non-fulfillment of the condition gives the donor the right to revoke the donation.[20]

In this case, upon the execution of the Deed of Donation and the acceptance of such donation in the same instrument, ownership was transferred to the Republic, as evidenced by the new certificate of title issued in the name of the Province of Quezon. Because the condition in the Deed of Donation is a resolutory condition, until the donation is revoked, it remains valid.[21] However, for the donation to remain valid, the donee must comply with its obligation to construct a government hospital and use the Subject Property as a hospital site. The failure to do so gives the donor the right to revoke the donation. Article 764 of the Civil Code provides:

> Art. 764. The donation shall be revoked at the instance of the donor, when the donee fails to comply with any of the conditions which the former imposed upon the latter.
>
> In this case, the property donated shall be returned to the donor, the alienations made by the donee and the mortgages imposed thereon by him being void, with the limitations established, with regard to third persons, by the Mortgage Law and the Land Registration Laws.
>
> This action shall prescribe after four years from the non-compliance with the condition, may be transmitted to the heirs of the donor, and may be exercised against the donee's heirs.

Respondent argues that the obligation to construct a hospital was fulfilled when respondent started to construct a hospital.

We do not agree. It is clear from the records that the donee failed to comply with its obligation to construct a government hospital and to use the premises as a hospital site.

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[18] *Central Philippine University v. CA*, 316 Phil. 616 (1995).

[19] Article 1179 of the Civil Code.

[20] Article 764 of the Civil Code.

[21] *Parks v. Province of Tarlac*, 49 Phil. 142 (1926).

When the parties provided in the Deed of Donation that the donee should construct a government hospital, their intention was to have such hospital built and completed, and to have a functioning hospital on the Subject Property. This can be evidenced by the accompanying words in the Deed of Donation – "solely for hospital site only and for no other else, where a [g]overnment [h]ospital shall be constructed." The condition imposed upon the donee has two parts – *first*, to construct a government hospital, and *second*, to use the Subject Property solely as a hospital site. The argument of respondent that the mere construction of the foundation of a building complies with the condition that a government hospital be constructed on the Subject Property is specious. A foundation of a building is obviously not a government hospital. The other condition in the Deed of Donation, which is to use the Subject Property solely as a hospital site, is also not complied with when the Subject Property is left idle, which means the Subject Property is not being used as a hospital site. The foundation of a building cannot function as a hospital site. Thus, even if we are to consider, for the sake of argument, that the construction of the foundation of a hospital building is enough to comply with the obligation to construct a government hospital, the subsequent abandonment of the construction results in the non-compliance with the second part of the donee's obligation – which is to use the Subject Property solely as a hospital site.

Based on the foregoing, we find that the donee failed to comply with the resolutory condition imposed in the Deed of Donation.

Determination of Heirs

Petitioner also argues that there is no need for a settlement of the estate before an action for revocation of donation, reconveyance, and recovery of possession of property may be filed by an heir of a co-owner.

We agree.

It has been settled that a co-heir or co-owner may bring suit without impleading all the other co-owners if the suit is for the benefit of all. *In Spouses Mendoza v. Coronel*,[22] we held:

> [T]he law now allows a co-owner to bring an action for ejectment, which covers all kinds of actions for the recovery of possession, including forcible entry and unlawful detainer, without the necessity of joining all the other co-owners as co-plaintiffs, because the suit is deemed to be instituted for the benefit of all.[23]

In subsequent cases, this Court has consistently held that as long as the co-owner recognizes the co-ownership, there is no need to implead all the co-owners in all kinds of action for recovery of possession. In *Catedrilla v. Lauron*,[24] we held:

> Petitioner can file the action for ejectment without impleading his co-owners. In *Wee v. De Castro*, wherein petitioner therein argued that the respondent cannot maintain an action for ejectment against him, without joining all his co-owners, we ruled in this wise:
>
> Article 487 of the New Civil Code is explicit on this point:
>
> ART. 487. *Any one of the co-owners may bring an action in ejectment.*
>
> This article covers all kinds of action for the recovery of possession, i.e., forcible entry and unlawful detainer (*accion interdictal*), recovery of possession (*accion publiciana*), and recovery of ownership (*accion de reivindicacion*). As explained by the renowned civil[i]st, Professor Arturo M. Tolentino:
>
> > A co-owner may bring such an action, without the necessity of joining all the other co-owners as co-plaintiffs, because the suit is deemed to be instituted for the benefit of all. If the action is for the benefit of the plaintiff alone, such that he claims possession for himself and not for the co-ownership, the action will not prosper.

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[22] 517 Phil. 549 (2006).

[23] *Id*. at 553.

[24] 709 Phil. 335 (2013).

In the more recent case of *Carandang v. Heirs of De Guzman*, this Court declared that a co-owner is not even a necessary party to an action for ejectment, for complete relief can be afforded even in his absence, thus:

> In sum, in suits to recover properties, all co-owners are real parties in interest. However, pursuant to Article 487 of the Civil Code and the relevant jurisprudence, any one of them may bring an action, any kind of action for the recovery of co-owned properties. Therefore, only one of the co-owners, namely the co-owner who filed the suit for the recovery of the co-owned property, is an indispensable party thereto. The other co-owners are not indispensable parties. They are not even necessary parties, for a complete relief can be afforded in the suit even without their participation, since the suit is presumed to have been filed for the benefit of all co-owners.

In this case, although petitioner alone filed the complaint for unlawful detainer, he stated in the complaint that he is one of the heirs of the late Lilia Castigador, his mother, who inherited the subject lot, from her parents. **Petitioner did not claim exclusive ownership of the subject lot, but he filed the complaint for the purpose of recovering its possession which would redound to the benefit of the co-owners. Since petitioner recognized the existence of a co-ownership, he, as a co-owner, can bring the action without the necessity of joining all the other co-owners as co-plaintiffs.**[25] (Emphasis supplied)

In this case, it is not disputed that Socorro is an heir of one of the donors. Moreover, her prayer in her action was to revoke the Deed of Donation and to cancel the TCT issued in the name of the Province of Quezon, and to issue a new certificate in the names of the **heirs of the Clemente Siblings**, *pro-indiviso*, and to direct the Republic to surrender or reconvey possession over the property to the **heirs of the Clemente Siblings**.[26] It is clear, therefore, that Socorro acknowledges and continues to recognize her co-heirs as co-owners of the Subject Property.

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[25] *Id*. at 344-345.

[26] *Rollo*, p. 148.

Further, based on the Complaint and Amended Complaint of Socorro, it is clear that the suit was intended for the benefit of all the co-heirs of the Clemente Siblings. Thus, there is no need to implead the other co-heirs for the action to proceed as it is for the benefit of the co-ownership.

Moreover, there is no need for the settlement of the estate before one of the heirs can institute an action on behalf of the other co-heirs. Although an heir's right in the estate of the decedent which has not been fully settled and partitioned is merely inchoate, Article 493 of the Civil Code[27] gives the heir the right to exercise acts of ownership.[28] Thus, even before the settlement of the estate, an heir may file an action for reconveyance of possession as a co-owner thereof, provided that such heir recognizes and acknowledges the other co-heirs as co-owners of the property as it will be assumed that the heir is acting on behalf of all the co-heirs for the benefit of the co-ownership.

No Prescription or Laches

The last issue raised by petitioner is whether the action is premature, or if it has been barred by prescription or laches. Respondent argues that the action has already prescribed because it has been more than ten (10) years since the violation of the condition in the Deed of Donation.

We find that this action is not premature, and has not been barred by prescription or laches.

An action for reconveyance based on a violation of a condition in a Deed of Donation should be instituted within ten (10) years

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[27] Article 493 of the Civil Code provides:

Art. 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be alloted to him in the division upon the termination of the co-ownership.

[28] *Quijano v. Amante*, 745 Phil. 40 (2014).

from the time of such violation.[29] Moreover, an action to revoke a donation based on non-compliance of the condition prescribes after four (4) years from such non-compliance.[30] Thus, in both cases, to be able to determine whether the action has prescribed, the time of non-compliance must first be determined. This is because the failure to comply with the condition imposed will give rise to the cause of action against the obligor-donee, which is also the starting point of when to count the prescriptive period.

It is imperative to determine the period within which the donee has to comply with the condition to construct a government hospital and use the site solely as a hospital site, because it is only after such time that it can be determined with certainty that there was a failure to comply with the condition. Without such determination, there is no way to determine whether the donee failed to comply with its obligation, and consequently, whether the prescriptive period to file an action has started to run. Prescription cannot set in if the period to comply with the obligation cannot be determined with certainty. In this case, the Deed of Donation is bereft of any period within which the donee should have complied with the condition of constructing a government hospital. Thus, the action has not yet prescribed.

Based on the Deed of Donation, however, it is apparent that a period was indeed intended by the parties. By agreeing to the conditions in the Deed of Donation, the donee agreed, and it bound itself to construct a government hospital and to use the

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[29] *Vda. de Delgado v. CA*, 416 Phil. 263 (2001).

[30] Art. 764 of the Civil Code of the Philippines provides:

Art. 764. The donation shall be revoked at the instance of the donor, when the donee fails to comply with any of the conditions which the former imposed upon the latter.

In this case, the property donated shall be returned to the donor, the alienations made by the donee and the mortgages imposed thereon by him being void, with the limitations established, with regard to third persons, by the Mortgage Law and the Land Registration Laws.

This action shall prescribe after four years from the non-compliance with the condition, may be transmitted to the heirs of the donor, and may be exercised against the donee's heirs.

Subject Property solely for hospital purposes. The construction of the said hospital could not have been intended by the parties to be in a state of limbo as it can be deduced that the parties intended that the hospital should be built **within a reasonable period**, although the Deed of Donation failed to fix a period for such construction.

In this situation, Article 1197 of the Civil Code squarely applies:

> Article 1197. If the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof.
>
> The courts shall also fix the duration of the period when it depends upon the will of the debtor.
>
> In every case, the courts shall determine such period as may under the circumstances have been probably contemplated by the parties. Once fixed by the courts, the period cannot be changed by them.

Based on the foregoing provision, the RTC reasoned that the action is premature because there can be no breach before the court fixes a period to comply with the obligation.

We disagree.

While ideally, a period to comply with the condition should have been fixed by the Court, we find that this will be an exercise in futility because of of the fact that it has been more than fifty (50) years since the Deed of Donation has been executed; and thus, the reasonable time contemplated by the parties within which to comply with the condition has already lapsed. In *Central Philippine University v. Court of Appeals*,[31] which had a similar factual background with this case, the Court held:

> Thus, when the obligation does not fix a period but from its nature and circumstances it can be inferred that a period was intended, the general rule provided in Art. 1197 of the Civil Code applies, which provides that the courts may fix the duration thereof because the fulfillment of the obligation itself cannot be demanded until after

[31] 316 Phil. 616 (1995).

the court has fixed the period for compliance therewith and such period has arrived.

This general rule however cannot be applied considering the different set of circumstances existing in the instant case. More than a reasonable period of fifty (50) years has already been allowed petitioner to avail of the opportunity to comply with the condition even if it be burdensome, to make the donation in its favor forever valid. But, unfortunately, it failed to do so. **Hence, there is no more need to fix the duration of a term of the obligation when such procedure would be a mere technicality and formality and would serve no purpose than to delay or lead to an unnecessary and expensive multiplication of suits. Moreover, under Art. 1191 of the Civil Code, when one of the obligors cannot comply with what is incumbent upon him, the obligee may seek rescission and the court shall decree the same unless there is just cause authorizing the fixing of a period.** In the absence of any just cause for the court to determine the period of the compliance, there is no more obstacle for the court to decree the rescission claimed.[32] (Emphasis supplied)

Further, in 2003, Socorro already wrote to DPWH asking for updates on the construction of the government hospital. However, the DPWH informed her that there were no plans to build any hospital on the Subject Property. **Thus, it is clear that the donee no longer has the intention of fulfilling its obligation under the Deed of Donation.** It has now become evident that the donee will no longer comply with the condition to construct a hospital because a government hospital was already built in another barangay, Barangay Polo.[33] If it becomes indubitable that the event, in this case the construction of the hospital, will not take place, then the obligation of the donor to honor the donation is extinguished.[34] Moreover, the donor-

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[32] *Id*. at 627.

[33] *Rollo*, p. 353.

[34] Article 1184 of the Civil Code provides:

Article 1184. The condition that some event happen at a determinate time shall extinguish the obligation as soon as the time expires or if it has become indubitable that the event will not take place.

obligee can seek rescission of the donation if the donee-obligor has manifested no intention to comply with the condition of the donation.[35]

For the same reason, we find that laches has not set in. Laches is defined as the failure or neglect for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.[36]

Because of the failure of the Deed of Donation to specify the period within which to comply with the condition, there can be no delay in asserting the right against respondent. In contrast, respondent is guilty of unreasonable delay and neglect in complying with its obligation to construct a government hospital and to use the Subject Property as a hospital site.

Article 1186 of the Civil Code provides:

Article 1186. The condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment.

[35] Article 1191 of the Civil Code provides:

Article 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

[36] *Pangasinan v. Disonglo-Almasora*, 762 Phil. 492 (2015), citing *Metropolitan Bank and Trust Company v. Centro Development Corporation*, G.R. No. 180974, 13 June 2012, 672 SCRA 325, 338, further citing *Municipality of Carcar v. CFI Cebu*, 204 Phil. 719, 723 (1982).

Based on the foregoing, the revocation of the donation and the reconveyance and recovery of possession of the Subject Property in favor of the donors – or the heirs of the donors – are necessary and proper.

WHEREFORE, the petition is **GRANTED**. The 17 October 2014 Decision and the 14 August 2015 Resolution of the Court of Appeals in CA-G.R. CV No. 91522 are hereby **REVERSED** and **SET ASIDE**. The Regional Trial Court of Mauban, Quezon, Branch 64, is **ORDERED** to cause the cancellation by the Register of Deeds of Quezon of TCT No. T-51745 and the issuance, in lieu thereof, of the corresponding certificate of title in the name of the heirs of Amado A. Clemente, Dr. Vicente A. Clemente, Judge Ramon A. Clemente, and Milagros A. Clemente.

SO ORDERED.

Perlas-Bernabe, Reyes, J. Jr., and *Hernando*,[*] *JJ.*, concur.

Caguioa, J., see separate concurring opinion.

CONCURRING OPINION

CAGUIOA, *J.*:

I concur with the *ponencia* that the Complaint[1] for Revocation of Donation, Reconveyance and Recovery of Possession should be granted. However, while the *ponencia* holds that the donation made by the Clemente Siblings was a donation subject to a resolutory condition and thus covered by Article 764 of the Civil Code, I find that no resolutory condition exists in this case.

The Deed of Donation expressly provided that it shall be "unconditional," *viz.*:

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[*] Designated additional member per Special Order No. 2630 dated 18 December 2018.

[1] *Rollo*, pp. 140-144. See also Amended Complaint, pp. 145-150.

That as an act of civic-mindedness, cooperation, liberality and generosity, the herein DONORS hereby voluntarily and freely give, transfer and convey, by way of unconditional donation, unto said DONEE, his executors and administrators, all of the rights, title and interest which the aforesaid DONORS have or which pertain to them and which they owned exclusively in the above-described real property over a one-hectar[e] portion of the same, solely for hospital site only and for no other else, where a Government Hospital shall be constructed, free from all liens and encumbrances whatsoever, which portion of the land had been segregated in the attached subdivision plan and more particularly described as follows[.][2] (Underscoring supplied)

While I agree that the rights over the donated property are demandable at once, I disagree that the fulfillment, performance, or extinguishment[3] thereof depends upon "a future or uncertain event."[4]

Rather, the construction of a government hospital as stated in the above-quoted provision is a mode, burden, or charge, the value of which was, presumably, at least equal to the value of the land donated.[5]

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[2] *Id*. at 152.

[3] Article 1181 of the Civil Code provides that "[i]n conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition."

[4] See CIVIL CODE, Art. 1179.

[5] *De Luna v. Judge Abrigo*, 260 Phil. 157, 163 (1990), citing EDGARDO L. PARAS, *CIVIL CODE OF THE PHILIPPINES ANNOTATED*, 11th ed., Vol. II, Art. 726 explains: "From the viewpoint of motive, purpose or cause, donations may be 1) simple, 2) remuneratory or 3) onerous. A simple donation is one the cause of which is pure liberality (no strings attached). A remuneratory donation is one where the donee gives something to reward past or future services or because of future charges or burdens, when the value of said services, burdens or charges is less than the value of the donation. An onerous donation is one which is subject to burdens, charges or future services equal (or more) in value than that of the thing donated."

In line with the Court's pronouncements in *De Luna v. Judge Abrigo*,[6] *The Secretary of Education v. Heirs of Rufino Dulay, Sr.*[7] and *City of Manila v. Rizal Park Co.*,[8] the herein donation should be classified as an onerous donation that is governed by the rules on obligations and contracts[9] and the provisions on resolution of reciprocal obligations under Article 1191 of the Civil Code.[10]

Such classification is necessary for a more consistent application of 1) the rules on when the court is authorized to fix a period, and 2) the conflicting prescriptive periods under Articles 764 and 1144 of the Civil Code.

a. *Authority to Fix a Period*

The *ponencia* treats the donation as one subject to a "resolutory condition" as defined under Article 1179 on "Pure and Conditional Obligations."[11] I submit that the applicable provision is Article specifically applies to "Obligations with a Period."[12]

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[6] *Id*.

[7] 516 Phil. 244 (2006).

[8] 53 Phil. 515 (1929).

[9] Article 733 of the Civil Code provides: "Donations with an onerous cause shall be governed by the rules on contracts, and remuneratory donations by the provisions of the present Title as regards that portion which exceeds the value of the burden imposed."

[10] ART. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

[11] CIVIL CODE, Book IV, Chapter 3, Sec. 1.

[12] CIVIL CODE, Book IV, Chapter 3, Sec. 2.

Inasmuch as the donation here is not actually conditional, but rather, merely imposes a burden to construct a government hospital, then Article 1197 under "Obligations with a Period" governs.

In full agreement with the *ponencia*, this is a situation where the courts should be allowed to fix a period. In other words, as the onerous donation imposed an obligation to construct a government hospital but failed to provide a period for compliance, the court is authorized to fix a period for compliance under Article 1197 of the Civil Code, *viz.*:

ART. 1197. If the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof.

The same conclusion may be arrived at by applying Article 1191, which authorizes the court to fix a period for "just cause" in lieu of rescission/resolution.[13]

b. Prescriptive Period

The *ponencia* likewise states that –

[a]n action for reconveyance based on a violation of a condition in a Deed of Donation should be instituted within ten (10) years from the time of such violation. Moreover, an action to revoke a donation based on non-compliance of the condition prescribes after four (4) years from such non-compliance.[14]

It is unclear, however, whether the 10-year or 4-year period applies in this case. I find that the 10-year period should apply. As already mentioned, the instant case involves an onerous donation which is expressly made subject to the rules on obligations and contracts.[15] Thus, the 10-year period under Article 1144(1) should be applied.[16]

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[13] See Article 1191, par. 3 which provides that "[t]he court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period."

[14] *Ponencia*, p. 9.

[15] CIVIL CODE, ART. 733.

[16] *De Luna v. Judge Abrigo*, *supra* note 5 at 166.

In this regard, I agree with the *ponencia* that the action has not prescribed because there was no period provided for the government to comply with its obligation to construct a government hospital, which renders it impossible to determine when petitioner's cause of action had accrued.

c. Laches

Finally, I agree that the action is also not barred by laches. In *Dept. of Education, Division of Albay v. Oñate*,[17] the Court held:

> Laches is defined as the failure or neglect, for an unreasonable and unexplained length of time, to do that which—by the exercise of due diligence—could or should have been done earlier. Verily, laches serves to deprive a party guilty of it to any judicial remedies. Its elements are: (1) conduct on the part of the defendant, or of one under whom the defendant claims, giving rise to the situation which the complaint seeks a remedy; (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice of the defendant's conduct as having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right in which the defendant bases the suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held barred.
>
> In *Felix Gochan and Sons Realty Corporation*, we held that "[t]hough laches applies even to imprescriptible actions, its elements must be proved positively. **Laches is evidentiary in nature which could not be established by mere allegations in the pleadings** and can not be resolved in a motion to dismiss (emphases supplied)." In the same vein, we explained in *Santiago v. Court of Appeals* that there is "no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances."[18] (Citations and underscoring omitted, emphasis supplied)

In said case, the Court held that laches had set in considering that: (1) the subject parcel had been continuously used as a

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[17] 551 Phil. 633 (2007).

[18] *Id*. at 648-649.

public school since 1940 or for 52 years;[19] (2) no evidence was presented to show that the respondent therein or his predecessors-in-interest ever took any action to contest the occupation by the concerned municipality and later the Department of Education (DepEd) despite the fact that there was a showing that the petitioner therein learned about the property as early as 1973;[20] (3) the DepEd could not have known or anticipated that its possession of the lot would later be questioned as the property was donated by the Municipality of Daraga, which had a tax declaration in its name;[21] and (4) the DepEd already expended funds for the construction of the public school and improvements thereon and both the government and the school children/teachers/personnel would be prejudiced if the property would be returned to the heirs of Oñate.[22]

In the instant case, however, the Republic failed to positively prove the elements of laches. In the Office of the Solicitor General's Comment,[23] there was no statement as to when petitioner or his predecessors-in-interest learned about the government's breach. The Deed of Donation expressly provided that the government was obliged to construct a government hospital. Thus, it cannot reasonably claim that it could not have known or anticipated that its possession and occupancy would later be questioned. Further, unlike *Dept. of Education, Division of Albay v. Oñate*, where the government invested significant amounts for the construction of a public school, the construction in this case was never completed as only the foundation of what it constructed remained. Thus, any prejudice to the government would not have been caused by petitioner's delay in asserting his right, but by the government's unreasonable delay in constructing the hospital.

Given the foregoing reasons, I concur in the result reached by the *ponencia* and vote to **GRANT** the instant Petition.

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[19] *Id*. at 651-652.

[20] *Id.* at 652.

[21] *Id*. at 653.

[22] *Id*.

[23] *Rollo*, pp. 312-326.

SECOND DIVISION

[G.R. No. 221117. February 20, 2019]

JEBSENS MARITIME, INC., ABOITIZ JEBSENS BULK TRANSPORT CORPORATION, and/or ENRIQUE M. ABOITIZ, *petitioners, vs.* **JESSIE D. ALCIBAR, substituted by MILDRED U. ALCIBAR,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; POEA STANDARD EMPLOYMENT CONTRACT; SECTION 20(B) REQUIRES A POST-EMPLOYMENT MEDICAL EXAMINATION TO PROVE A SEAFARER'S CLAIM TO DISABILITY BENEFITS; NON-COMPLIANCE THROUGH EMPLOYER-PETITIONER'S FAULT CANNOT BE TAKEN AGAINST THE EMPLOYEE. — Section 20(B) of the POEA Standard Employment Contract requires a post-employment medical examination to prove a seafarer's claim to disability benefits, x x x In addition, the CBA executed between Alcibar and petitioners provides for the evidence required to prove entitlement to sickness pay and disability compensation, thus: x x x 28.2 **The disability suffered by the seafarer shall be determined by a doctor appointed by the Company.** x x x In the present case, Alcibar immediately reported to petitioners' main office in Manila within three days upon his repatriation. In fact, Alcibar, who was already diagnosed as having internal hemorrhoids while on-duty at petitioners' vessel, voluntarily submitted himself for a post-employment medical examination in petitioners' office. However, petitioners told Alcibar that they would just contact him once his request for a post-employment medical examination had been approved by management. After Alcibar went back to the province, petitioners no longer called Alcibar to schedule his medical examination. x x x We agree with the CA that it was petitioners' fault that there was no declaration on the part of petitioners' company-designated physician regarding Alcibar's illness. Notably, by failing to schedule Alcibar for a post-employment medical examination, petitioners *waived* their right to use the

declaration of their designated physician as basis for rejecting Alcibar's disability claim. Therefore, the defense of the absence of a post-employment medical examination on the part of Alcibar is not a defense available to petitioners because it was through petitioners' fault that the provisions of the POEA Standard Employment Contract and the CBA were not observed.

2. ID.; ID.; SECTION 32-A PROVIDES FOR THE CONDITIONS THAT MUST BE ESTABLISHED FOR THE ILLNESS TO BE A COMPENSABLE OCCUPATIONAL DISEASE; COLON CANCER AGGRAVATED BY WORK IS A COMPENSABLE WORK-RELATED ILLNESS. — Section 32-A of the POEA Standard Employment Contract provides for the conditions that must be established for the illness to be a compensable occupational disease, to wit: For an occupational disease and the resulting disability or death to be compensable, all the following conditions must be established: 1. The seafarer's work must involve the risk described herein; 2. The disease was contracted as a result of the seafarer's exposure to the described risks; 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; 4. There was no notorious negligence on the part of the seafarer. In *Leonis Navigation Co., Inc. v. Villamater*, **this Court held that under Section 32-A of the POEA Standard Employment Contract, colon cancer is considered a work-related disease.** This Court explained that the seaman is entitled to disability benefits if the seaman proves that the conditions inside the vessel increased or aggravated the risk of the seaman of colon cancer. x x x In *Villamater*, this Court ruled that the dietary provisions which were high in fat and cholesterol given to the seaman while on duty increased or aggravated the seaman's risk of colon cancer. Accordingly, this Court considered colon cancer as a compensable work-related disease and granted full disability benefits to the seaman.

APPEARANCES OF COUNSEL

Del Rosario and Del Rosario Law Offices for petitioners.
Rhys Hywel N. Salise for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review on *certiorari*[1] assailing the 26 May 2015 Decision[2] and the 13 October 2015 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 130224.

The Facts

On 5 March 2010, Jebsens Maritime, Inc., on behalf of principal Aboitiz Jebsens Bulk Transport Corporation (petitioners), hired Jessie D. Alcibar (Alcibar) as an ordinary seaman for a period of nine (9) months. Prior to his deployment, Alcibar underwent a comprehensive pre-employment medical examination and was declared physically fit to assume his duties as an ordinary seaman. On 26 March 2010, Alcibar was deployed aboard ocean-going vessel M/V Maritime Victory.[4] While on board the vessel, Alcibar alleged that most of the meals that were served to him were high in fat and cholesterol. Alcibar alleged that the assigned cook would directly cook chilled meat without waiting for the meat to unfreeze.[5]

In February 2011, Alcibar felt severe pain in his anal region and noticed blood in his stool. He told the senior officers of the vessel about his condition but according to him he was ignored by the said officers.[6] Alcibar alleged that his condition

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[1] *Rollo*, pp. 33-58. Under Rule 45 of the 1997 Rules of Court.

[2] *Id*. at 14-27. Penned by Associate Justice Edwin D. Sorongon, with Presiding Justice Andres B. Reyes, Jr. and Associate Justice Ricardo R. Rosario concurring.

[3] *Id*. at 29-30. Penned by Associate Justice Edwin D. Sorongon, with Presiding Justice Andres B. Reyes, Jr. and Associate Justice Ricardo R. Rosario concurring.

[4] *Id*. at 15.

[5] *Id.*

[6] *Id*.

worsened because no medicine was given to him by the clinic inside the vessel. Finally, on 16 March 2011, while the vessel was docked in New Westminster, Canada, Alcibar was referred to a medical clinic where he was diagnosed by the doctor on duty with an internal hemorrhoid at the two o'clock position.[7] After his medical examination, Alcibar still resumed his duties as an ordinary seaman. Alcibar claimed that his condition worsened and he requested to be sent back to the Philippines. However, the officers of the vessel told Alcibar that he could only return to the Philippines once his replacement was available.[8]

On 5 April 2011, Alcibar was repatriated to the Philippines. In Manila, Alcibar immediately reported his deteriorating health to petitioners. Petitioners, however, told Alcibar that his request for medical assistance must first be approved by management. Petitioners then told Alcibar that they would call him as soon as the request for a post-employment medical examination was approved.[9] Alcibar then informed petitioners that he needed to go back to his province to attend the interment of his mother.[10]Alcibar then flew to Camiguin where his health deteriorated. While in the province, Alcibar claimed he did not receive any phone call from petitioners for his medical examination.

On 7 May 2011, Alcibar went to Associated Marine Officers and Seamen's Union of the Philippines (AMOSUP) Seamen's Hospital in Cebu to have himself physically examined. The private doctor at AMOSUP Seamen's Hospital diagnosed him to have suffered rectal cancer (colon cancer).[11] On 26 May 2011, Alcibar underwent a Laparoscopic Abdomino-percenal Resection. Alcibar was confined in AMOSUP Seamen's Hospital from 24 May to 10 June 2011.[12]

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[7] *Id*. at 79.

[8] *Id*. at 15.

[9] *Id*.

[10] *Id*. at 15-16.

[11] *Id*. at 16.

[12] *Id*. at 82.

Alcibar filed a Complaint[13] dated 8 September 2011 for permanent disability compensation, sickness allowance, damages, and attorney's fees. Alcibar sought disability compensation and sickness allowance since he claimed that the cause of his illness was the dietary provisions given to him by petitioners while at sea. Alcibar claimed that the dietary provisions on board the vessel increased his risk of contracting colon cancer.

For their defense, petitioners claimed that Alcibar was repatriated because his contract had already expired and not because Alcibar had an illness. According to petitioners, colon cancer is not work-related and is not compensable under the collective bargaining agreement (CBA) because the illness did not result from an accident on board the vessel.[14]

The Ruling of the Labor Arbiter

In a Decision[15] dated 15 May 2012, the Labor Arbiter ruled in favor of Alcibar. The Labor Arbiter found that Alcibar's illness was compensable. The Labor Arbiter held that the dietary provisions given to Alcibar while on board the vessel increased the risk of Alcibar of contracting colon cancer. The Labor Arbiter held that there was a strong presumption that Alcibar's colon cancer was work-related and was not existing at the time he boarded the vessel. The Labor Arbiter held that in the determination of the compensability of an illness, reasonable, and not direct, work-connection is sufficient. What matters is that the employee's work had contributed, even in a small degree, to the aggravation of the illness.

The dispositive portion of the Labor Arbiter's Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered declaring the illness of Complainant to be compensable. Accordingly, Respondents in solidum are hereby ordered to pay the following or in its peso equivalent at the time of payment, to wit:

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

[14] *Id*. at 17.

[15] CA *rollo*, pp. 37-47.

1. US$ 89,000.00 - representing permanent total disability benefits pursuant to the CBA;
2. US$ 1,800.00 - representing 130-day sickness allowance pursuant to the CBA; [and]
3. Attorney's fees of 10% of the total monetary award.

All other claims are dismissed.

SO ORDERED.[16]

The Ruling of the National Labor Relations Commission

In a Decision[17] dated 28 December 2012, the National Labor Relations Commission (NLRC) reversed the Decision of the Labor Arbiter. The NLRC held that Alcibar was not entitled to disability compensation because colon cancer could not be considered work-related. The NLRC ruled that there is no showing that colon cancer could have developed within a year Alcibar boarded the vessel of petitioners. Alcibar also did not comply with the requirements of the law because Alcibar was not medically examined within three days after signing off from the vessel. Hence, Alcibar could not file a claim since the company-designated physician's findings form the basis of any disability claim of the seafarer.

The dispositive portion of the NLRC's Decision states:

WHEREFORE, the appeal is hereby granted, the assailed decision of the Labor Arbiter is vacated and set aside, and this case is dismissed for lack of merit.

SO ORDERED.[18]

Alcibar filed a motion for reconsideration which was denied on 14 March 2013.[19]

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[16] *Id*. at 46-47.

[17] *Id*. at 22-31.

[18] *Id*. at 31.

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

The Ruling of the CA

In a Decision dated 26 May 2015, the CA granted Alcibar's petition for certiorari which reversed the Decision of the NLRC and reinstated the Decision of the Labor Arbiter. The CA held that under prevailing jurisprudence colon cancer is disputably presumed to be work-related. The extended employment of Alcibar coupled with the poor provisions given to Alcibar while at sea by the petitioners aggravated the risk of colon cancer. The CA ruled that Alcibar substantially complied with the requirement of a post-employment medical examination because he immediately reported to the office of petitioners his poor state of health. The CA held that it was petitioners who were grossly negligent because they ignored Alcibar's request for a medical examination when they fully knew that Alcibar had a pre-existing condition while on board the vessel.

The dispositive portion of the CA's Decision states:

WHEREFORE, the petition is GRANTED and the assailed December 28, 2012 Decision of the NLRC is hereby ANNULLED AND SET ASIDE. Accordingly, the May 15, 2012 Decision of the Labor Arbiter is hereby REINSTATED.

SO ORDERED.[20]

Petitioners filed a Motion for Reconsideration on 23 June 2015 which was denied on 13 October 2015.

Hence, this petition before this Court.

The Issue

Whether Alcibar's illness is compensable.

The Ruling of this Court

We deny the petition. Alcibar is entitled to disability benefits and sickness pay.

First, Alcibar complied with the requirements of the 2000 Philippine Overseas Employment Administration Amended

[20] *Rollo*, p. 26.

Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels (POEA Standard Employment Contract) and the CBA. Alcibar willingly submitted himself to a post-employment medical examination by petitioners' company-designated physician when he arrived in the Philippines. However, it was petitioners which *waived* their right to examine Alcibar since petitioners did not schedule Alcibar for a post-employment medical examination after Alcibar's request upon his repatriation. *Second*, under recent decisions of this Court, colon cancer is a compensable work-related disease. *Third*, that Alcibar's colon cancer is work-related has been established by *substantial evidence*.

Petitioners failed to exercise their right to have Alcibar undergo a post-employment medical examination by their company-designated physician.

Section 20(B) of the POEA Standard Employment Contract requires a post-employment medical examination to prove a seafarer's claim to disability benefits, to wit:

> Section 20. Compensation and Benefits
>
> x x x x x x x x x
>
> B. Compensation and Benefits for Injury or Illness
>
> The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:
>
> x x x x x x x x x
>
> **However, if after repatriation, the seafarer still requires medical attention from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.**
>
> 3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician

but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

x x x x (Boldfacing and underscoring supplied)

In addition, the CBA executed between Alcibar and petitioners provides for the evidence required to prove entitlement to sickness pay and disability compensation, thus:

Article 26: Sick Pay

26.1 When a seafarer is landed at any port because of sickness or injury, a pro rata payment of their basic wages plus guaranteed or, in the case of officers, fixed overtime, shall continue until they have been repatriated at the Company's expense as specified in Article 23.

x x x x x x x x x

26.4 Proof of continued entitlement to sick pay shall be by submission of satisfactory medical reports, endorsed, where necessary, by a Company appointed doctor. If a doctor appointed by or on behalf of the seafarer disagrees with the assessment, a third doctor may be nominated jointly between the Company and the Union and the decision of this doctor shall be binding on both parties.[21]

x x x x x x x x x

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

28.1 A seafarer who suffers permanent disability as a result of an accident whilst in the employment of the Company regardless of fault, including accidents occurring while traveling to or from the ship, and whose ability to work as a seafarer is reduced as a result thereof, but excluding permanent disability due to willful acts, shall in addition to sick pay, be entitled to compensation according to the provisions of this Agreement.

28.2 **The disability suffered by the seafarer shall be determined by a doctor appointed by the Company.** If a doctor appointed by or on behalf of the seafarer disagrees with the assessment, a third doctor may be nominated jointly between the Company and the Union and the decision of this doctor shall be final and binding on both parties.[22]

x x x x (Emphasis supplied)

In the present case, Alcibar immediately reported to petitioners' main office in Manila within three days upon his repatriation. In fact, Alcibar, who was already diagnosed as having internal hemorrhoids while on-duty at petitioners' vessel, voluntary submitted himself for a post-employment medical examination in petitioners' office. However, petitioners told Alcibar that they would just contact him once his request for a post-employment medical examination had been approved by management. After Alcibar went back to the province, petitioners no longer called Alcibar to schedule his medical examination. In *Jebsens Maritime, Inc. v. Undag*,[23] this Court explained that the rationale for the post-employment medical examination is for the company-designated physician to accurately determine whether the illness sustained by the disability claimant was work-related. The employer, through its company-designated physician, is given the first opportunity to examine the seaman seeking disability claims and make a determination whether the illness was caused by the seaman's duties at sea, thus:

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[22] *Id*. at 111.

[23] 678 Phil. 938 (2011).

x x x. An award of disability benefit to a seaman in this case, despite non-compliance with strict mandatory requirements of the law, cannot be sustained. **The rationale behind the rule can easily be divined. Within three days from repatriation, it would be fairly easier for a physician to determine if the illness was work-related or not. After that period, there would be difficulty in ascertaining the real cause of the illness.**

To ignore the rule would set a precedent with negative repercussions because it would open the floodgates to a limitless number of seafarers claiming disability benefits. It would certainly be unfair to the employer who would have difficulty determining the cause of a claimant's illness considering the passage of time. In such a case, the employers would have no protection against unrelated disability claims.[24] (Emphasis supplied)

We agree with the CA that it was petitioners' fault that there was no declaration on the part of petitioners' company-designated physician regarding Alcibar's illness. Notably, by failing to schedule Alcibar for a post-employment medical examination, petitioners *waived* their right to use the declaration of their designated physician as basis for rejecting Alcibar's disability claim. Therefore, the defense of the absence of a post-employment medical examination on the part of Alcibar is not a defense available to petitioners because it was through petitioners' fault that the provisions of the POEA Standard Employment Contract and the CB A were not observed. Accordingly, the CA is correct when it held that Alcibar substantially complied with the requirements of both the POEA Standard Employment Contract and the CBA.

Colon cancer is a compensable work-related illness.

Petitioners argue that colon cancer is not compensable because the illness did not arise from an accident aboard the vessel. Petitioners contend that colon cancer is not a work-related disease under the POEA Standard Employment Contract.

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[24] *Id.* at 948-949.

We disagree.

Section 32-A of the POEA Standard Employment Contract provides for the conditions that must be established for the illness to be a compensable occupational disease, to wit:

> For an occupational disease and the resulting disability or death to be compensable, all the following conditions must be established:
>
> 1. The seafarer's work must involve the risk described herein;
> 2. The disease was contracted as a result of the seafarer's exposure to the described risks;
> 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it;
> 4. There was no notorious negligence on the part of the seafarer.

In *Leonis Navigation Co., Inc. v. Villamater*,[25] **this Court held that under Section 32-A of the POEA Standard Employment Contract, colon cancer is considered a work-related disease.** This Court explained that the seaman is entitled to disability benefits if the seaman proves that the conditions inside the vessel increased or aggravated the risk of the seaman of colon cancer, thus:

> Colon cancer, also known as colorectal cancer or large bowel cancer, includes cancerous growths in the colon, rectum and appendix. With 655,000 deaths worldwide per year, it is the fifth most common form of cancer in the United States of America and the third leading cause of cancer-related deaths in the Western World. Colorectal cancers arise from adenomatous polyps in the colon. These mushroom-shaped growths are usually benign, but some develop into cancer over time. Localized colon cancer is usually diagnosed through colonoscopy.
>
> Tumors of the colon and rectum are growths arising from the inner wall of the large intestine. Benign tumors of the large intestine are called polyps. Malignant tumors of the large intestine are called cancers. Benign polyps can be easily removed during colonoscopy and are not life-threatening. If benign polyps are not removed from the large intestine, they can become malignant (cancerous) over time. Most of the cancers of the large intestine are believed to have developed

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[25] 628 Phil. 81 (2010).

as polyps. Colorectal cancer can invade and damage adjacent tissues and organs. Cancer cells can also break away and spread to other parts of the body (such as liver and lungs) where new tumors form. The spread of colon cancer to distant organs is called metastasis of the colon cancer. Once metastasis has occurred in colorectal cancer, a complete cure of the cancer is unlikely.

Globally, colorectal cancer is the third leading cause of cancer in males and the fourth leading cause of cancer in females. The frequency of colorectal cancer varies around the world. It is common in the Western world and is rare in Asia and in Africa. In countries where the people have adopted western diets, the incidence of colorectal cancer is increasing.

Factors that increase a person's risk of colorectal cancer include high fat intake, a family history of colorectal cancer and polyps, the presence of polyps in the large intestine, and chronic ulcerative colitis.

Diets high in fat are believed to predispose humans to colorectal cancer. In countries with high colorectal cancer rates, the fat intake by the population is much higher than in countries with low cancer rates. It is believed that the breakdown products of fat metabolism lead to the formation of cancer-causing chemicals (carcinogens). Diets high in vegetables and high-fiber foods may rid the bowel of these carcinogens and help reduce the risk of cancer.

A person's genetic background is an important factor in colon cancer risk. Among first-degree relatives of colon-cancer patients, the lifetime risk of developing colon cancer is 18%. Even though family history of colon cancer is an important risk factor, majority (80%) of colon cancers occur sporadically in patients with no family history of it. Approximately 20% of cancers are associated with a family history of colon cancer. And 5% of colon cancers are due to hereditary colon cancer syndromes. Hereditary colon cancer syndromes are disorders where affected family members have inherited cancer-causing genetic defects from one or both of the parents.

In the case of Villamater, it is manifest that the interplay of age, hereditary, and dietary factors contributed to the development of colon cancer. By the time he signed his employment contract on June 4, 2002, he was already 58 years old, having been born on October 5, 1943, an age at which the incidence of colon cancer is more likely. He had a familial history of colon cancer, with a brother who succumbed to death and an uncle who underwent surgery for

the same illness. Both the Labor Arbiter and the NLRC found his illness to be compensable for permanent and total disability, because they found that his dietary provisions while at sea **increased his risk of contracting colon cancer** because he had no choice of what to eat on board except those provided on the vessels and these consisted mainly of high-fat, high-cholesterol, and low-fiber foods.

x x x x x x x x x

On these points, we sustain the Labor Arbiter and the NLRC in granting total and permanent disability benefits in favor of Villamater, as it was sufficiently shown that his having contracted **colon cancer was, at the very least, aggravated by his working conditions.**[26] (Emphasis supplied)

In *Villamater*, this Court ruled that the dietary provisions which were high in fat and cholesterol given to the seaman while on duty increased or aggravated the seaman's risk of colon cancer. Accordingly, this Court considered colon cancer as a compensable work-related disease and granted full disability benefits to the seaman.

Likewise, in *Dohle-Pilman Manning Agency, Inc. v. Heirs of Andres G. Gazzingan*,[27] this Court granted full disability benefits to a seaman who proved that the conditions on board the vessel aggravated his illness, thus:

Indeed, the causal connection between the illness contracted and the nature of work of a seaman is a factual question, which is not a proper subject of this Court's review. Nonetheless, considering the conflicting findings of the tribunals below, this Court is constrained to dwell on factual matters involved in this case and reassess the evidence on record.

Gazzingan's work as a messman is not confined mainly to serving food and beverages to all officers and crew; he was likewise tasked to assist the chief cook/chef steward, and thus performed most if not all the duties in the ship's steward department. **In the performance of his duties, he is bound to suffer chest and back pains, which could have caused or aggravated his illness.** As aptly observed by

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[26] *Id.* at 96-100.

[27] 760 Phil. 861 (2015).

the CA, Gazzingan's strenuous duties caused him to suffer physical stress which exposed him to injuries. It is therefore reasonable to conclude that Gazzingan's employment has contributed to some degree to the development of his disease.

It must also be pointed out that Gazzingan was in good health and fit to work when he was engaged by petitioners to work on board the vessel M/V Gloria. His PEME showed essentially normal findings with no hypertension and without any heart problems. It was only while rendering duty that he experienced symptoms. This is supported by a medical report issued by Cartagena de Indias Hospital in Colombia stating that Gazzingan suffered intense chest and back pains, shortness of breath and a slightly elevated blood pressure while performing his duties. **Therefore, even assuming that Gazzingan had a pre-existing condition, as alleged by petitioners, this does not totally negate the probability and the possibility that his aortic dissection was aggravated by his work conditions.** The stress caused by his job actively contributed to the progression and aggravation of his illness. In compensation cases, "[i]t 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."[28] (Emphasis supplied)

Notably, in *Dohle-Pilman Manning Agency, Inc.*,[29] this Court ruled that illnesses which are either: (1) acquired by the seaman on board the vessel; or (2) resulting from a pre-existing condition of the seaman which is aggravated by the conditions on board the vessel are compensable work-related diseases.

In a recent case, in *Talosig v. United Philippine Lines, Inc.*,[30] this Court reiterated the ruling in Villamater, and held that, following Section 32-A of the POEA Standard Employment Contract, the seaman must prove through substantial evidence the presence of the conditions that aggravated the seaman's risk of colon cancer. Accordingly, we disagree with petitioners

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[28] *Id*. at 877-878.

[29] *Id*. at 878.

[30] 739 Phil. 774 (2014).

that colon cancer is not a compensable work-related disease. Clearly, the POEA Standard Employment Contract only requires that the conditions mentioned in Section 32-A thereof be established to prove that the occupational disease is work-related. **Illnesses like colon cancer, acquired or aggravated while on duty on board the vessel, which were caused by the conditions on board the vessel, are also considered work-related if the acquisition or aggravation of the illnesses is proven by the seaman through substantial evidence.** Therefore, applying the decisions of this Court, the Court finds that colon cancer is a compensable work-related disease if the seaman is able to establish the conditions under Section 32-A of the POEA Standard Employment Contract through the required quantum of proof of substantial evidence. The seaman, thus, must prove that the conditions aboard the vessel increased, aggravated, or elevated the seaman's risk of colon cancer for the occupational disease to be compensable.

That Alcibar's colon cancer is work-related has been established by substantial evidence.

In *Magsaysay Maritime Corporation v. National Labor Relations Commission*,[31] this Court explained that the seafarer must prove with substantial evidence that there is a causal connection between his illness and the work for which he had been contracted, thus:

> For disability to be compensable under Section 20(B) of the 2000 POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. In other words, to be entitled to compensation and benefits under this provision, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; **it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.**

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[31] 630 Phil. 352 (2010).

The 2000 POEA-SEC defines "work-related injury" as "injury resulting in disability or death arising out of and in the course of employment" and "work-related illness" as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied."[32] (Emphasis supplied)

In his position paper, Alcibar alleged that the cause of his colon cancer was the poor provisions given to him while at sea, to wit:

As to its cause, Complainant could only trace this from the fact that his dietary provisions while at sea increased his risk of contracting rectal cancer because he had no choice of what to eat on board except those provided on the vessel and these consisted mainly of high-fat, high cholesterol, and low-fiber foods.[33] (Emphasis supplied)

Notably, in the records of the present case, petitioners did not specifically deny in any of their pleadings, including their position paper submitted to the Labor Arbiter, pleadings before the NLRC and CA, and the petition filed before this Court, Alcibar's allegation that petitioners were continuously serving him poor dietary provisions which were high in fat and cholesterol, and low in fiber. Following Section 11 of Rule 8[34] of the Rules of Court, which supplements the NLRC Rules, this particular allegation of Alcibar against petitioners which was not specifically denied by petitioners is deemed admitted. In the present case, it was also established by Alcibar that, during the performance of his duties as a seaman, he was suffering from internal hemorrhoids, a disease aggravated by the poor dietary provisions given to him while on board petitioners' vessel.

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[32] *Id*. at 362-363.

[33] CA *rollo*, p. 153.

[34] Section 11 of Rule 8 states: *Allegations not specifically denied deemed admitted*. — Material averment in the complaint, other than those as to the amount of unliquidated damages, shall be deemed admitted when not specifically denied. x x x.

In fact, a resident doctor in Westminster, Canada, who examined Alcibar, diagnosed Alcibar as having internal hemorrhoids and recommended that Alcibar eat proper food with low fat, low cholesterol, and high in fiber. The medical report states:

Observations:	
Demographics:	28 Years Old OS from the Philippines
Subjective Notes:	For the past month he has been experiencing pain in his bottom. He states he has been having issues going to the washroom and lots of pain. He was given some medications by the second officer. He said that the medications did not help. His bowel motions are soft and have some bright fresh blood on the outside.

x x x x x x x x x

Assessment Notes:	**Internal Hemorrhoid**
Treatment:	**Patient reassured.** **Eat more fresh [vegetables] and fibre.** **Drink lots of water. 8 glasses a day.**

x x x[35] (Emphasis Supplied)

The fact of Alcibar's internal hemorrhoids during his work as a seaman was also admitted in the memorandum petitioners filed with the CA, to wit:

x x x x x x x x x

Although, right before his scheduled sign off, petitioner complained of painful bowel movement. He was brought down by the master for medical consult in Westminster, Canada and was found to have INTERNAL HEMORRHOIDS.[36]

Upon alcibar's repatriation, in a medical certificate issued by AMOSUP Seamen's Hospital in Cebu, the resident doctor confirmed the existence of Alcibar's colon cancer and the laparoscopic operation to remove the tumor in Alcibar's colon.

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[35] CA *rollo*, p. 212.

[36] *Id*. at 192.

The medical certificate states:

MEDICAL CERTIFICATE

x x x x x x x x x

This is to certify that JESSIE D. ALCIBAR, 28 years old from Mahinog, Camiguin, was admitted in this hospital from May 24, 2011 to June 10, 2011 due to:

Diagnosis: Rectal Carcinoma Stage 2A x x x
Operation Performed: Laparoscopic Abdomino-percenal resection
Date of Operation: May 26, 2011.

x x x x [37] (Emphasis Supplied)

In sum, the conditions while at sea contributed to alcibar's colon cancer. Following the ruling of this Court in *Villamater*, the poor dietary provisions given to alcibar while at sea aggravated, at the very least, Alcibar's risk of colon cancer. This court agrees with the CA that Alcibar was able to prove through substantial evidence his disability and sickness pay claim. To reiterate, the absence of the post-employment medical examination requirement, having been waived by petitioners by failing to schedule Alcibar for a medical examination, will not bar the disability claim of Alcibar who has established that his colon cancer, or the aggravation thereof, was work-related. Accordingly, we sustain the ruling of the CA granting disability benefits and sickness pay to Alcibar.

WHEREFORE, the petition is **DENIED**. We **AFFIRM** the decision dated 26 May 2015 and the Resolution dated 13 October 2015 of the Court of Appeals in CA-G.R. Sp No. 130224.

SO ORDERED.

Perlas-Bernabe, Caguioa, Reyes, J. Jr., and *Hernando,*[*] *JJ.,* concur.

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[37] *Rollo*, p. 82.

[*] Designated additional member per Special Order No. 2630 dated 18 December 2018.

SECOND DIVISION

[G.R. No. 222423. February 20, 2019]

METROPOLITAN MANILA DEVELOPMENT AUTHORITY, *petitioner, vs.* **D.M. CONSUNJI, INC. and R-II BUILDERS, INC.,** *respondents.*

SYLLABUS

POLITICAL LAW; COMMISSION ON AUDIT; PRIMARY JURISDICTION OVER MONEY CLAIMS AGAINST GOVERNMENT AGENCIES AND INSTRUMENTALITIES. — Under Commonwealth Act No. 327, as amended by Section 26 of Presidential Decree No. 1445, it is the COA which has primary jurisdiction over money claims against government agencies and instrumentalities. x x x Pursuant to its rule-making authority conferred by the 1987 Constitution and existing laws, the COA promulgated the 2009 Revised Rules of Procedure of the Commission on Audit. Section 1 of Rule II specifically enumerated those matters falling under COA's exclusive jurisdiction, which include "money claims due from or owing to any government agency."

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Castillo Laman Tan Pantaleon & San Jose for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition[1] assails the 10 July 2015 Decision[2] and the 12 January 2016 Resolution[3] of the Court of Appeals in CA-G.R.

[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 14-31. Penned by Associate Justice Ramon A. Cruz, with Associate Justices Marlene Gonzales-Sison and Ma. Luisa Quijano Padilla concurring.

[3] *Id*. at 10-12.

CV No. 95506. The Court of Appeals dismissed the appeals filed by petitioner Metropolitan Manila Development Authority (MMDA) and respondents D.M. Consunji, Inc. (DMCI) and R-II Builders, Inc. (R-II Builders), and affirmed the 9 June 2010 Decision[4] and 30 August 2012 Order of the Regional Trial Court of Makati City, Branch 133 in Civil Case No. 07-942. The Court of Appeals denied the MMDA's motion for reconsideration.

The Facts

As narrated by the Court of Appeals, the facts of the case are as follows:

MMDA, in coordination with the Greater Metro Manila Solid Waste Management Committee, conducted a selection process for the development and operation by a private entity of a new sanitary landfill for the next 25 years under the Build-Operate-Own (BOO) scheme. The facility was intended to replace the San Mateo landfill after it was closed on 31 December 2000.

The process, however, was stymied by legal actions filed by some concerned sectors of the society, particularly, those groups in the affected area. MMDA was thus restrained from proceeding with the new sanitary landfill project.

In the meantime, MMDA and the Metro Manila mayors agreed to choose the interim waste disposal site (controlled dump site) and the possible contractor/proponent therefor for a period of two (2) years. To implement this interim project, then MMDA Chairman Jejomar C. Binay (Binay) endorsed the matter to the Presidential Committee on Flagship Programs and Projects for favorable recommendation. The matter was then endorsed for approval by the Committee, through its then Chairman Roberto N. Aventajado, to the Office of the President.

MMDA's request was approved by then President Joseph E. Estrada in an undated memorandum subject to the condition that "the negotiated contract to be entered by MMDA shall be subject to the approval of the Office of the President," among others.

[4] *Id*. at 219-225. Penned by Judge Elpidio R. Calis.

The project was then opened for public bidding and was awarded to respondents as winning joint bidders.

In their bid, respondents proposed the construction of an integrated solid waste management facility/sanitary landfill in Barangay Semirara, Semirara Island, Caluya, Antique. This would entail the ferrying out of garbage from a temporary transfer station in Pier 18 Vitas, Tondo, Manila to a pre-arranged site in the northernmost part of Semirara Island.

Consequently, the parties executed a contract denominated as "Contract for the Development, Operation and Maintenance of Interim Integrated Waste Management Facility for Metropolitan Manila" on 4 January 2001. The contract was signed by then MMDA Chairman Binay, Isidro A. Consunji for respondent DMCI and Leopoldo T. Sanchez for respondent R-II Builders. The contract was also signed by Roberto N. Aventajado.

Thereafter, then MMDA Chairman Binay allegedly instructed respondents to proceed with the preparation of the transfer station in Vitas and the landfill site in Semirara although the contract had not yet been approved and signed by then President Estrada.

Allegedly, from 2 to 5 January 2001, respondents worked under the contract with the supervision of the MMDA's Office of the Assistant General Manager for Operations.

Meanwhile, two temporary restraining orders (TROs) were issued by the Regional Trial Court, Antique placing the operation on hold. Pending hearing on the prayer for the issuance of a writ of injunction, then President Estrada resigned from office.

To recover their alleged incurred expenses under the contract, respondents formally demanded from the MMDA the amount of ₱20,123,190.00 as reasonable reimbursement, claiming that they spent said amount until they were forced to stop their operations due to the TROs.

When respondents' claim for reimbursement was addressed to the MMDA's legal service, then MMDA consultant, Atty. Vincent S. Tagoc (Atty. Tagoc), opined that respondents may be compensated based on the principle of *quantum meruit*.

Notably, in his Opinion dated 28 March 2001, Atty. Tagoc opined that the benefit which allegedly inured to the government, particularly the MMDA, must be considered in applying said principle. Pertinently, he observed that the records failed to show any benefit derived by the MMDA from respondents' performance.

Further, in his Opinion dated June 13, 2001, Atty. Tagoc noted that while respondents were able to unload Metro Manila of 5,449.80 tons of garbage, they nevertheless brought back the same to Metro Manila. Thus, respondents tossed back the same problem to Metro Manila, and to that extent, Metro Manila suffered damages. He concluded that full payment for the amount claimed was improper.

However, Director Leopoldo V. Parumog, Head of the Solid Waste Management Office of the MMDA, recommended that respondents be reimbursed of their expenses.

When the recommendation of the Solid Waste Management Office was sent to the Office of then MMDA Chairman Bayani F. Fernando for his approval, the latter rejected the same citing the following reasons: (1) MMDA is not obliged to pay for mobilization expenses; (2) Stipulation No. 13 of the negotiated contract states that failure to perform the terms of the agreement due to mass/court actions shall not give rise to any claim by any party against each other; and (3) Stipulation No. 16 of the negotiated contract requires the approval of the President of the Philippines. Without the President's signature, the contract is invalid and ineffective.

Respondents filed with the trial court a Complaint dated 12 September 2007 for sum of money based on *quantum meruit* with damages against MMDA. The case was docketed as Civil Case No. 07-942. Respondents prayed for (1) ₱19,920,936.17 representing expenses incurred for the partial execution of the project with 6% legal interest; (2) attorney's fees; and (3) expenses of litigation.

On 15 January 2008, the MMDA, thru the Office of the Solicitor General, filed an Answer. The MMDA averred that

the contract involves a project under the BOO scheme for which the approval of the President of the Philippines is required pursuant to paragraph (d), Section 2 of Republic Act No. 7718. Corollarily, paragraph 16 of the negotiated contract provides that it shall be valid, binding and effective upon approval by the President pursuant to existing laws. Since the negotiated contract was not signed and approved by the President, the same never became effective and binding. Furthermore, the validity of the negotiated contract is dependent upon the fulfillment of the conditions stated in the Notice of Award dated 21 December 2000 which includes the submission of proof of social acceptability of the project from the Department of Environment and Natural Resources under paragraph 7.9 thereof. Respondents allegedly failed to comply with such condition.

Moreover, paragraph 13 of the negotiated contract provides that the failure to carry out, observe and/or perform any of the terms of the contract caused by or arising from mass actions and/or court actions shall not give rise to any claim by one party against the other. Assuming *arguendo* that the claim for reimbursement may be recognized under the principle of *quantum meruit*, the direct enforcement of liability against MMDA would violate the law because (1) disbursement of public funds must be covered by a corresponding appropriation as required by law; and (2) the present case is a suit against the State which has not given its consent to be sued. Accordingly, the remedy of the respondents is allegedly to file their money claim with the Commission on Audit (COA) as prescribed under Act No. 3083 and Commonwealth Act No. 327. The determination of State liability, and the prosecution, enforcement or satisfaction thereof must be pursued in accordance with the rules and procedures laid down in Presidential Decree No. 1445.

On 1 February 2008, respondents filed a Reply. Respondents alleged that MMDA was in bad faith when it denied paragraph 10 of the Complaint which was their basis in acting upon the explicit instruction of the MMDA Chairman. The matters are supposed to be within the knowledge of the MMDA because of the Memorandum dated 25 July 2001 by Leopoldo Parumog to Rogelio Uranza recommending the payment of ₱19,920,936.17

to respondents. Respondents claimed that MMDA was aware of the services they rendered prior to the approval of the contract in light of its admission in paragraph 16. The defenses raised by MMDA based on contract are irrelevant because respondents' cause of action is based on *quantum meruit*. Respondents countered that upon the final determination by the trial court of MMDA's liability to them, they would file their claims with the COA. Respondents stressed that MMDA is a public corporation created under Presidential Decree No. 824 which can sue and be sued.

On 28 February 2008, respondents filed a Motion for Judgment on the Pleadings which was granted by the trial court in its Consolidated Order dated 17 May 2010.

On 9 June 2010, the trial court rendered a decision, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant ordering the latter to pay the plaintiff the amount of PhP 19,920,936.17 representing the expenses the plaintiffs incurred for the partial execution of the Project, with 6% legal interest from the date of extrajudicial demand until fully paid.
>
> No costs.
>
> SO ORDERED.[5]

The MMDA filed a Notice of Appeal dated 29 June 2010. On the other hand, respondents filed a Motion for Partial Reconsideration of the decision on the ground of failure by the trial court to award litigation expenses in the amount of ₱450,977.06 in their favor despite the fact that they were compelled to file the case to protect their interests. This was denied in an Order dated 30 August 2012. Respondents then filed their Notice of Partial Appeal dated 14 September 2012.

The Ruling of the Court of Appeals

In affirming the trial court's decision, the Court of Appeals held that judgment on the pleadings is proper. It ruled that

[5] *Rollo*, p. 225.

"[b]ased on the admissions in the pleadings and documents attached, we find that the issues presented by the complaint and the answer can be resolved within the four corners of said pleadings without need to conduct further hearings."[6] The Court of Appeals cited *Pacific Rehouse Corporation v. EIB Securities, Inc.*,[7] which held that "when what is left are not genuine issues requiring trial but questions concerning the proper interpretation of the provisions of some written contract attached to the pleadings, judgment on the pleadings is proper."[8]

The Court of Appeals found that respondents are entitled to reimbursement. It ruled that they have the right to be compensated for the partial execution of the project applying the principle of *quantum meruit*. The Court of Appeals held that "even granting for the sake of argument, that the contract was invalid, payment should have been allowed based on the principle of '*quantum meruit*.' It should be noted that the services rendered by the [respondents] were neither denied nor rejected by the government. We agree that [MMDA] should not be allowed to avoid its obligation to [respondents] because it already derived benefit from the waste disposal operations conducted from January 2 to 5, 2001. It would be the height of injustice to order the [respondents] to shoulder the expenditure when the government had already received and accepted benefits from the project."[9]

The Court of Appeals rejected the defense of state immunity from suit, citing *EPG Construction Co. v. Vigilar*.[10] It held that "the doctrine of governmental immunity from suit cannot serve as an instrument for perpetrating an injustice to a citizen."[11]

The Court of Appeals also ruled that respondents are not entitled to litigation expenses. It held that "[n]o premium should be placed on the right to litigate and not every winning party

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[6] *Id*. at 24.

[7] 647 Phil. 534 (2010).

[8] *Rollo*, p. 24.

[9] *Id*. at 25.

[10] 407 Phil. 53 (2001).

[11] *Rollo*, p. 27.

is entitled to an automatic grant of costs of litigation."[12] It further held that "there is no sufficient showing of [MMDA's] bad faith in refusing to pay the expenses for the waste disposal operations as it relied on Section 2 of RA 7718, Act No. 3083, CA 327 and PD 1445."[13]

The dispositive portion of the Court of Appeals' decision reads:

> WHEREFORE, the appeals are DISMISSED. The assailed Decision dated June 9, 2010 and Order dated August 30, 2012 issued by the Regional Trial Court of Makati City, Branch 133 in Civil Case No. 07-942 are AFFIRMED.
>
> SO ORDERED.[14]

The Issues

MMDA raises the following issues: (1) whether judgment on the pleadings is proper; (2) whether DMCI and R-II Builders are entitled to recover the expenses they incurred based on *quantum meruit*; and (3) whether the COA has primary jurisdiction over the present case.

The Court's Ruling

The resolution of the issue of whether the COA has primary jurisdiction over the present case will determine whether there is a need to resolve the first two issues. Thus, the Court deems it necessary to settle first the issue of jurisdiction.

Respondents posit that "[o]nce the decision holding petitioner liable to respondents on the basis of *quantum meruit* and unjust enrichment becomes final, and on the further assumption that petitioner will not volunteer payment of the judgment award, then that will only be the time that respondents should file their money claim with the COA to enforce the final judgment."[15]

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[12] *Id*.

[13] *Id.*

[14] *Id.*

[15] *Id.* at 338.

They argue that "even if the trial court's decision in this case becomes final, the settlement of [their] money claim is still subject to the primary jurisdiction of the COA."[16] They further claim that assuming the doctrine of primary jurisdiction applies, this case falls under the exceptions to this doctrine, namely, alleged unreasonable delay and official inaction on the part of MMDA, and this case allegedly involves only a purely legal question.

Respondents' arguments are untenable. There is no dispute that MMDA is a government agency in charge of "those services which have metro-wide impact and transcend local political boundaries or entail huge expenditures such that it would not be viable for said services to be provided by the individual local government units (LGUs) comprising Metropolitan Manila."[17] There is also no dispute that respondents are claiming from MMDA the total amount of ₱19,920,936.17 representing expenses allegedly incurred for the partial execution of the interim waste management project for Metro Manila. Since what is involved is a specific money claim against a government agency, it is clearly within the jurisdiction of the COA.

Under Commonwealth Act No. 327, as amended by Section 26 of Presidential Decree No. 1445, it is the COA which has primary jurisdiction over money claims against government agencies and instrumentalities.

Section 26. General jurisdiction. The authority and powers of the Commission shall extend to and comprehend all matters relating to auditing procedures, systems and controls, the keeping of the general accounts of the Government, the preservation of vouchers pertaining thereto for a period of ten years, the examination and inspection of the books, records, and papers relating to those accounts; and the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, as

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[16] *Id*.

[17] Republic Act No. 7924, or AN ACT CREATING THE METROPOLITAN MANILA DEVELOPMENT AUTHORITY, DEFINING ITS POWERS AND FUNCTIONS, PROVIDING FUNDING THEREFOR AND FOR OTHER PURPOSES. Took effect on 1 March 1995.

well as the **examination, audit, and settlement of all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities**. The said jurisdiction extends to all government-owned or controlled corporations, including their subsidiaries, and other self-governing boards, commissions, or agencies of the Government, and as herein prescribed, including non-governmental entities subsidized by the government, those funded by donations through the government, those required to pay levies or government share, and those for which the government has put up a counterpart fund or those partly funded by the government. (Emphasis supplied)

Pursuant to its rule-making authority conferred by the 1987 Constitution and existing laws, the COA promulgated the 2009 Revised Rules of Procedure of the Commission on Audit. Section 1 of Rule II specifically enumerated those matters falling under COA's exclusive jurisdiction, which include "money claims due from or owing to any government agency." Section 1 of Rule VIII further provides:

Section 1. Original Jurisdiction - The Commission Proper shall have original jurisdiction over:

a) **money claim against the Government**; b) request for concurrence in the hiring of legal retainers by government agency; c) write off of unliquidated cash advances and dormant accounts receivable in amounts exceeding one million pesos (₱1,000,000.00); d) request for relief from accountability for loses due to acts of man, i.e. theft, robbery, arson, etc, in amounts in excess of Five Million pesos (₱5,000,000.00). (Emphasis supplied)

In *Euro-Med Laboratories Phil., Inc. v. Province of Batangas*,[18] the Court held that it is the COA, and not the Regional Trial Court, which has primary jurisdiction to pass upon petitioner's money claim against respondent local government unit. Such jurisdiction may not be waived by the parties' failure to argue the issue or by their active participation in the proceedings. The Court ruled, thus:

This case is one over which the doctrine of primary jurisdiction clearly held sway for although petitioner's collection suit for

[18] 527 Phil. 623 (2006).

₱487,662.80 was within the jurisdiction of the RTC, the circumstances surrounding petitioner's claim brought it clearly within the ambit of the COA's jurisdiction.

First, petitioner was seeking the enforcement of a claim for a certain amount of money against a local government unit. This brought the case within the COA's domain to pass upon money claims against the government or any subdivision thereof under Section 26 of the Government Auditing Code of the Philippines:

The authority and powers of the Commission [on Audit] shall extend to and comprehend all matters relating to x x x the examination, audit, and settlement of all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies, and instrumentalities. x x x.

The scope of the COA's authority to take cognizance of claims is circumscribed, however, by an unbroken line of cases holding statutes of similar import to mean only liquidated claims, or those determined or readily determinable from vouchers, invoices, and such other papers within reach of accounting officers. Petitioner's claim was for a fixed amount and although respondent took issue with the accuracy of petitioner's summation of its accountabilities, the amount thereof was readily determinable from the receipts, invoices and other documents. Thus, the claim was well within the COA's jurisdiction under the Government Auditing Code of the Philippines.

x x x x x x x x x [19]

In *Daraga Press, Inc. v. Commission on Audit*,[20] which involved petitioner's money claim for the payment of textbooks it allegedly delivered to respondent Department of Education-ARMM, the Court stressed the expertise of the COA, thus:

x x x. The respondent COA, as the duly authorized agency to adjudicate money claims against government agencies and instrumentalities, pursuant to Section 26 of Presidential Decree No. 1445, has acquired special knowledge and expertise in handling matters falling under its specialized jurisdiction. x x x.

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[19] *Id*. at 627-628.

[20] 760 Phil. 391, 408-409 (2015).

In *Province of Aklan v. Jody King Construction and Dev't. Corp.*,[21] the Court reversed the Court of Appeals and ruled that the COA has primary jurisdiction over respondent's collection suit directed against a local government unit. The Court further held that all the proceedings in the trial court are void, to wit:

> The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence. All the proceedings of the court in violation of the doctrine and all orders and decisions rendered thereby are null and void.

In *Star Special Watchman and Detective Agency, Inc. v. Puerto Princesa City*,[22] the Court held that the COA retains its jurisdiction even after the issuance by the trial court of a writ of execution, thus:

> x x x [I]t is clear that the COA has the authority and power to settle "all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities." This authority and power can still be exercised by the COA even if a court's decision in a case has already become final and executory. In other words, the COA still retains its primary jurisdiction to adjudicate a claim even after the issuance of a writ of execution.

Significantly, in *RG Cabrera Corporation, Inc. v. DPWH*,[23] where petitioner originally filed complaints for collection of sum of money before the trial court and which involved money claims based on *quantum meruit*, the Court in the narration of facts sustained the appellate court's ruling that the claims should have been filed with the COA, to wit:

> This prompted RG Cabrera to file five (5) separate complaints for collection of sum of money against the DPWH before the Regional Trial Court, Branch 52, Guagua, Pampanga (RTC). In all the cases, the Office of the Solicitor General (OSG) objected on the ground that the said contracts were defective because of their failure to follow the requirements of the law. xxx.

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[21] 722 Phil. 315, 328 (2013).

[22] 733 Phil. 62, 81 (2014).

[23] 797 Phil. 563 (2016).

When the cases were appealed by the OSG before the Court of Appeals (CA), the RTC decisions were reversed. The appellate court explained that the state was immune from suit and that the money claims should have been filed before the COA.

RG Cabrera elevated the cases to this Court, which denied the petitions for failure to show that the CA committed any reversible error. **Thus, the Court sustained the CA ruling that RG Cabrera should have filed its claims with the COA.**[24] (Emphasis supplied)

Notably, in several cases, involving money claims against government agencies based on *quantum meruit*, the claims were properly filed or referred to the COA.

In *Royal Trust Construction v. COA*,[25] the Court directed the COA, in the interest of substantial justice and equity, "to determine on a *quantum meruit* basis the total compensation due to the petitioner for the services rendered by it in the channel improvement of the Betis River in Pampanga and to allow the payment thereof immediately upon completion of the said determination."

In *Eslao v. COA*,[26] the Court directed COA "to determine on a *quantum meruit* basis the total compensation due to the contractor for the completed portion of the two public works projects involved and to allow the payment thereof immediately upon the completion of said determination."[27]

In *Melchor v. COA*,[28] the Court directed the COA to allow in post-audit the payment of ₱344,430.80 for the work done by the contractor. The COA was "likewise directed to determine on a *quantum meruit* basis the value of the extra works done, and after such determination, to disallow in post-audit the excess payment, if any, made by the petitioner to the contractor. The petitioner shall be personally liable for any such excess payment."[29]

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[24] *Id*. at 566.

[25] G.R. No. 84202, 23 November 1988 (Resolution of the Court *En Banc*), cited in *Melchor v. Commission on Audit*, 277 Phil. 801 (1991); *Department of Public Works and Highways v. Quiwa*, 675 Phil. 9 (2011).

[26] 273 Phil. 97 (1991).

[27] *Id*. at 107.

[28] 277 Phil. 801 (1991).

[29] *Id*. at 816.

In the narration of facts in *EPG Construction Co. v. Vigilar*,[30] the DPWH, which opined that payment of petitioner's money claims should be based on *quantum meruit*, referred petitioner's money claims to the COA, which acted on the same.

In *Movertrade Corporation v. COA*,[31] the Court affirmed the COA's ruling of inapplicability of the *quantum meruit* principle since there was a written contract entered into by the parties, and eventually denied petitioner's money claim on the ground of breach of contract.

Moreover, the COA itself issued Resolution No. 86-58,[32] dated 15 November 1986, which expresses its Policy on the Recovery by Government Contractors on the Basis of *Quantum Meruit*. The first Whereas clause explicitly recognizes the existence of money claims against the government on the ground of *quantum meruit* , to wit:

> WHEREAS, in the adjudication of claims arising from void government contracts, the issue that is sometimes presented to the Commission on Audit for resolution is whether or not recovery against the government under such contracts may be allowed on the basis of the *quantum meruit* principle[.]

WHEREFORE, the assailed Decision and Resolution of the Court of Appeals are **SET ASIDE**. Respondents' money claim against petitioner based on *quantum meruit* should be filed with the Commission on Audit.

SO ORDERED.

Perlas-Bernabe, Caguioa, Reyes, J. Jr., and *Hernando,*[*] *JJ.*, concur.

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[30] *Supra* note 10.

[31] 770 Phil. 79, 86, 93 (2015).

[32] https://www.gppb.gov.ph/laws/laws/COA_Resolution86-58.pdf (visited 14 February 2019).

[*] Designated additional member per Special Order No. 2630 dated 18 December 2018.

THIRD DIVISION

[G.R. No. 223405. February 20, 2019]

CARLOS L. REYNES, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN (VISAYAS), LUCRESIA M. AMORES, and MARIBEL HONTIVEROS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; PROBABLE CAUSE; DEFINED AND DISCUSSED.— Jurisprudence has settled that probable cause for the filing of an information is "a matter which rests on likelihood rather than on certainty. It relies on common sense rather than on 'clear and convincing evidence[.]'" In *Reyes v. Pearlbank Securities, Inc.*: Probable cause, for the purpose of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof. The term does not mean "actual and positive cause" nor does it import absolute certainty. *It is merely based on opinion and reasonable belief*. Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. *It is enough that it is believed that the act or omission complained of constitutes the offense charged.* A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed by the suspects. ***It need not be based on clear and convincing evidence*** *of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt.* In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. *He relies on common sense*. What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction.

2. ID.; ID.; ID.; ID.; A PUBLIC PROSECUTOR'S DETERMINATION OF PROBABLE CAUSE FOR THE

PURPOSE OF FILING AN INFORMATION IN COURT IS ESSENTIALLY AN EXECUTIVE FUNCTION AND, THEREFORE, GENERALLY LIES BEYOND THE PALE OF JUDICIAL SCRUTINY, EXCEPT WHEN SUCH DETERMINATION IS TAINTED WITH GRAVE ABUSE OF DISCRETION, AS WHEN HE OR SHE ARBITRARILY DISREGARDS THE JURISPRUDENTIAL PARAMETERS OF PROBABLE CAUSE, AND PERFORCE BECOMES CORRECTIBLE THROUGH THE EXTRAORDINARY WRIT OF *CERTIORARI*.— Determining whether probable cause exists for the filing of an information is an executive function. It is not a power that rests in courts. Generally, courts do not disturb conclusions made by public prosecutors. This is due to the basic principle of separation of powers. Nonetheless, "grave abuse of discretion taints a public prosecutor's resolution if he [or she] arbitrarily disregards the jurisprudential parameters of probable cause." As such, in keeping with the principle of checks and balances, a writ of *certiorari* may issue and undo the prosecutor's iniquitous determination.

3. ID.; ID.; ID.; ID.; NOT EVEN THE SUPREME COURT CAN ORDER THE PROSECUTION OF A PERSON AGAINST WHOM THE PROSECUTOR DOES NOT FIND SUFFICIENT EVIDENCE TO SUPPORT AT LEAST A *PRIMA FACIE* CASE, EXCEPT IN CASES OF UNMISTAKABLE SHOWING OF GRAVE ABUSE OF DISCRETION ON THE PART OF THE PROSECUTOR IN REFUSING TO PROSECUTE SPECIFIC PERSONS FOR SPECIFIC OFFENSES.— Acting on the basis of the evidence presented to them, public prosecutors are vested "with a wide range of discretion, the discretion of whether, what and whom to charge[.]" Thus, "[t]he prosecuting attorney cannot be compelled to file a particular criminal information." In accordance with judicial non-interference, "not even the Supreme Court can order the prosecution of a person against whom the prosecutor does not find sufficient evidence to support at least a *prima facie* case." x x x. However, in cases of "unmistakable showing of grave abuse of discretion on the part of the prosecutor" in refusing to prosecute specific persons for specific offenses, writs of *certiorari* have been issued to set aside the prosecutor's initial determination.

4. CRIMINAL LAW; REVISED PENAL CODE (RPC); ILLEGAL EXACTIONS PENALIZED UNDER ARTICLE 213(2) OF THE RPC; ELEMENTS.— A determination of probable cause must be made in reference to the elements of the crime charged. "This is based on the principle that every crime is defined by its elements, without which there should be, at the most, no criminal offense." Any inquiry into whether probable cause exists to prosecute for illegal exactions as penalized under Article 213(2) of the Revised Penal Code must begin with the text of Article 213(2). x x x. From this, liability under Article 213(2) ensues when the following elements are demonstrated: First, that the offender is a public officer who is "entrusted with the collection of taxes, licenses, fees and other imposts." Second, that he or she engages in any of the three (3) specified acts or omissions under Article 213(2): "[d]emanding, directly or indirectly, the payment of sums different from or larger than those authorized by law[; f]ailing voluntarily to issue a receipt, as provided by law, for any sum of money collected by him officially[; or c]ollecting or receiving, directly or indirectly, by way of payment or otherwise, things or objects of a nature different from that provided by law."

5. ID.; ID.; ID.; A PUBLIC OFFICER WHOSE FUNCTIONS DO NOT EXPLICITLY INCLUDE THE COLLECTION OF FEES AND CHARGES MAY BE HELD LIABLE FOR ILLEGAL EXACTIONS.— One might indulge private respondent Amores' seemingly inevitable exoneration by pointing to Section 395(3) of the Local Government Code and noting how the barangay treasurer is tasked with [c]ollect[ing] and issu[ing] official receipts for taxes, fees, contributions, monies, materials, and all other resources accruing to the barangay[.] However, it is improper to conveniently negate her possible culpability by the veneer of detachment just because she held a position different from, or superior to, that of a barangay treasurer. Private respondent Amores cannot evade liability by feigning incidental, ancillary, or tangential involvement, and pointing to subalterns as the person who actually effected the assailed collections. This is not the first case where this Court has considered the situation of a treasurer obliviously acting as the surrogate of a local chief executive who may have insisted on inordinate collections. In O*ngsuco v. Malones*, this Court noted that such a treasurer acts as a local chief executive's mere "alter ego." This is also not the first instance that this Court has considered the potential liability

for illegal exactions of a public officer, whose functions do not explicitly include the collection of fees and charges. x x x. Contrary to Atty. Mernado's conclusion, the evidence sustains a "reasonable belief" that private respondent Amores "[d]emand[ed] … the payment of sums different from or larger than those authorized by law.

6. ID.; ID.; ID.; WHEN THE LAW ENABLES NO FORM WHATSOEVER OF PAYMENT OR COLLECTION, A PUBLIC OFFICER'S DEMAND FOR PAYMENT OF *ANY* SUM, OR INSISTENCE ON COLLECTING *ANY* OBJECT CONSTITUTES ILLEGAL EXACTIONS.— Atty. Mernado failed to realize that Article 213(2)'s injunction against the "payment of sums *different from or larger* than those authorized by law" and against "receiving . . . objects of a nature *different from* that provided by law" admits of situations when no payment is ever permitted, or no collection of any object is ever allowed. These situations may arise through an explicitly stated legal prohibition, or through a law's mere silence. In the latter case, the law plainly declines to name any authorized manner of payment or collection. By its reticence, it signals that there is no permissible payment or collection. When the law enables no form whatsoever of payment or collection, a public officer's demand for payment of *any* sum, or insistence on collecting *any* object, is a legal breach. It is a punishable violation of Article 213(2).

7. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; A PUBLIC PROSECUTOR WHO EVADES HIS POSITIVE AND LEGALLY-ORDAINED DUTY TO APPRAISE CASES WITHIN THE JURISPRUDENTIAL PARAMETERS OF PROBABLE CAUSE COMMITS GRAVE ABUSE OF DISCRETION.— Atty. Mernado's fixation on petitioner's burden to "present the Ordinance on garbage fees" may have revealed that he did not quite grasp petitioner's position. Worse, it could betray a deliberate distortion or design to prevent petitioner from successfully pursuing his case. Regardless, by his insistence, Atty. Mernado engaged in a "whimsical exercise of judgment." His demand for petitioner to discharge a vacuous, even foolish, burden amounts to an evasion of his positive and legally-ordained duty to appraise cases within "the jurisprudential parameters of probable cause." It is grave abuse of discretion.

8. ID.; EVIDENCE; ADMISSIONS; ADMISSION BY SILENCE; REFERS TO ANY ACT OR DECLARATION MADE IN THE PRESENCE AND WITHIN THE HEARING OF ANOTHER, NOT TO A DECLARATION MADE IN WRITTEN CORRESPONDENCES.— The situation engendered by the August 8, 2011 letter calls to mind the Revised Rules of Evidence's provision on admission by silence. To be clear, the Revised Rules on Evidence did not govern the proceedings before public respondent, "except by analogy or in a suppletory character and whenever practicable and convenient." Moreover, the provision on admission by silence refers to any "act or declaration made in the presence and within the hearing [of another]," not to a declaration made in written correspondences. Nonetheless, the basic wisdom underlying the provision on admission by silence is obvious and commonsensical. The application of that underlying wisdom, if not of the actual rule, is readily appreciable here.

APPEARANCES OF COUNSEL

Siu Riñen & Associates for petitioner.

Office of the Legal Affairs, Office of the Ombudsman for public respondent.

D E C I S I O N

LEONEN, *J.*:

Determining probable cause for the filing of a criminal information is an executive function. Resolutions made by public prosecutors in exercise of this function shall generally not be disturbed by courts.[1] However, determinations that arbitrarily disregard the jurisprudential parameters for determining probable cause are tainted with grave abuse of discretion.[2] Such iniquitous

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[1] See *Lim v. Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices*, 795 Phil. 226 (2016) [Per *J.* Peralta, Third Division].

[2] *Aguilar v. Department of Justice*, 717 Phil. 789, 799 (2013) [*Per Curiam*, Second Division].

determinations are correctible by *certiorari*.[3] A public prosecutor who does not merely disregard, but even grossly misinterprets to the point of distorting evidence and the Revised Penal Code's standards for liability, turning a blind eye to palpable indicators of criminal liability, commits grave abuse of discretion.

This resolves a Petition for *Certiorari*[4] under Rule 65 of the 1997 Rules of Civil Procedure praying that the assailed February 20, 2015 Resolution[5] and September 29, 2015 Order[6] in OMB-V-C-14-0510 of public respondent Office of the Ombudsman (Visayas), through Graft Investigation and Prosecution Officer I Michael M. Mernado, Jr. (Atty. Mernado), be set aside for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

In its assailed Resolution, the Office of the Ombudsman (Visayas) dismissed the Complaint for Illegal Exactions, penalized under Article 213(2)[7] of the Revised Penal Code, and violation of Section 48 of Republic Act No. 9003 (otherwise

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[3] See *Lim v. Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices*, 795 Phil. 226 (2016) [Per *J*. Peralta, Third Division].

[4] *Rollo*, pp. 3-24.

[5] *Id*. at 25-30.

[6] *Id*. at 31-32.

[7] REV. PEN. CODE, Art. 213(2) provides:

ARTICLE 213. *Frauds against the public treasury and similar offenses*. — The penalty of *prision correccional* in its medium period to *prision mayor* in its minimum period, or a fine ranging from 200 to 10,000 pesos, or both, shall be imposed upon any public officer who:

. . . . . .

2. Being entrusted with the collection of taxes, licenses, fees and other imposts, shall be guilty of any of the following acts or omissions:

(a) Demanding, directly or indirectly, the payment of sums different from or larger than those authorized by law.

(b) Failing voluntarily to issue a receipt, as provided by law, for any sum of money collected by him officially

(c) Collecting or receiving, directly or indirectly, by way of payment or otherwise things or objects of a nature different from that provided by law.

known as the Ecological Solid Waste Management Act of 2000)[8] filed by petitioner Carlos L. Reynes (Reynes), manager of Blue

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[8] Rep. Act No. 9003 (2001), Sec. 48 provides:

SECTION 48. Prohibited Acts. — The following acts are prohibited:

(1) Littering, throwing, dumping of waste matters in public places, such as roads, sidewalks, canals, esteros or parks, and establishment, or causing or permitting the same

(2) Undertaking activities or operating, collecting or transporting equipment in violation of sanitation operation and other requirements or permits set forth in or established pursuant to this Act

(3) The open burning of solid waste;

(4) Causing or permitting the collection of non-segregated or unsorted waste;

(5) Squatting in open dumps and landfills;

(6) Open dumping, burying of biodegradable or non-biodegradable materials in flood-prone areas;

(7) Unauthorized removal of recyclable material intended for collection by authorized persons;

(8) The mixing of source-separated recyclable material with other solid waste in any vehicle, box, container or receptacle used in solid waste collection or disposal;

(9) Establishment or operation of open dumps as enjoined in this Act, or closure of said dumps in violation of Sec. 37;

(10) The manufacture, distribution or use of non-environmentally acceptable packaging materials;

(11) Importation of consumer products packaged in non-environmentally acceptable materials;

(12) Importation of toxic wastes misrepresented as "recyclable" or "with recyclable content";

(13) Transport and dumping in bulk of collected domestic, industrial, commercial and institutional wastes in areas other than centers or facilities prescribed under this Act;

(14) Site preparation, construction, expansion or operation of waste management facilities without an Environmental Compliance Certificate required pursuant to Presidential Decree No. 1586 and this Act and not conforming with the land use plan of the LGU.

(15) The construction of any establishment within two hundred (200) meters from open dumps or controlled dumps, or sanitary landfills; and

(16) The construction or operation of landfills or any waste disposal facility on any aquifer, groundwater reservoir or watershed area and or any portions thereof.

Reef Beach Resort Cottages and Hotel (the resort) located in Barangay Marigondon, Lapu-Lapu City, Cebu, against private respondents Lucresia M. Amores (Barangay Captain Amores), punong barangay of Barangay Marigondon (the Barangay), and Maribel Hontiveros (Kagawad Hontiveros), a member of the Sangguniang Barangay.[9] In its assailed Order,[10] the Office of the Ombudsman (Visayas) denied Reynes' Motion for Reconsideration.

In an Affidavit-Complaint,[11] Reynes alleged that Barangay Captain Amores collected increased monthly garbage collection fees amounting to ₱2,000.00, even without any ordinance or statute, or any other regulation authorizing its collection, and despite the City of Lapu-Lapu already collecting its own garbage fees.[12]

Reynes explained that, prior to the material incidents in this case, the Barangay had been collecting ₱1,000.00 monthly as garbage collection fee.[13] In his subsequent Reply to Barangay Captain Amores and Kagawad Hontiveros' Joint Counter-Affidavit, Reynes annexed a copy of Official Receipt No. 2827422, dated January 31, 2011, acknowledging a total of ₱3,000.00 collected as "garbage collection fee for the month (*sic*) of Jan to March 2011."[14] He noted in his Complaint that the resort's garbage was segregated and deposited on Tongo Road, outside the resort's premises and there collected twice a week.[15]

When Barangay Captain Amores ordered that the fee be increased to ₱2,000.00, while reducing the frequency of garbage

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[9] *Rollo*, p. 4.

[10] *Id*. at 31-32.

[11] *Id*. at 35-44.

[12] *Id*. at 5 and 36.

[13] *Id*.

[14] *Id*. at 79.

[15] *Id*. at 5 and 36.

collection to once a week,[16] Reynes questioned the increase. He pointed out that no ordinance, statute, or regulation authorized it. However, Barangay Captain Amores never gave an explanation in response; instead, on July 27, 2011, she ordered the cessation of the collection of the resort's garbage.[17]

On August 8, 2011, Reynes wrote to Barangay Captain Amores[18] questioning her authority to levy garbage collection fees, considering that the same fees were already being paid to the City of Lapu-Lapu alongside business taxes and fees for licenses, and considering that no public hearing was ever conducted. Copies of this letter were furnished to the offices of the City Mayor, Vice Mayor, City Attorney, and City Secretary.[19] It stated in part:

> On August 5, 2011 at 8:30 AM, my wife Dra. Reynes went to the Barangay Office to see you personally. It was also confirmed that you really demanded for an increase of garbage collection fee from ₱1,000.00 to ₱2,000.00 without giving her any document to show as basis for the exaction of garbage collection fee or any ordinance to show that you are authorized to demand such increase. I could not also remember of a public hearing being conducted relative to your imposition of garbage collection fee pursuant to the Local Government Code. There was also no ordinance passed upon by the barangay relative to imposition of garbage collection fee which is to be reviewed and approved by the Lapu-Lapu City Council pursuant to the said law.
>
> For the information of the Honorable Barangay Chairman, Blue Reef Resort has paid business taxes and licenses to the City of Lapu-Lapu government for the year 2011 in the amount of ₱67,752.34 for the cottage. Inclusive of this amount is garbage collection fee of Php1,764.38.[20]

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[16] *Id*. at 36.

[17] *Id*. at 5 and 36.

[18] *Id*. at 45-47.

[19] *Id*. at 47.

[20] *Id*. at 45.

Barangay Captain Amores still offered no explanation and, in a meeting, merely told Reynes' wife, Dr. Sonia Beth Reynes[21] (Dr. Reynes), that the collection of ₱2,000.00 was "final and unalterable[.]"[22] Left with no alternative, lest the resort's garbage be left uncollected, Reynes relented to paying ₱2,000.00 monthly.[23]

Evidencing his subsequent payments, Reynes adduced copies of:

1. Official Receipt No. 3058061, dated August 16, 2011, acknowledging a total of ₱4,000.00 collected as "donation - garbage";[24]
2. Official Receipt No. 3058539, dated September 28, 2011, acknowledging a total of ₱4,000.00 collected as "donation for garbage collection Oct [and] Nov";[25]
3. Official Receipt No. 3088196, dated December 14, 2011, acknowledging a total of ₱4,000.00 collected as "donation to [the Barangay,]"[26] which was backed by a petty cash voucher for the disbursement of ₱4,000.00 for "Garbage collection fee for the month[s] of Dec 2011, Jan 2012";[27]
4. Official Receipt No. 3261377, dated March 19, 2012, acknowledging a total of ₱6,000.00 collected as "donation for garbage collection Feb, March, April 2012";[28]
5. Official Receipt No. 3341848, dated May 22, 2012, acknowledging a total of ₱4,000.00 collected as "donation for garbage collection May [and] June 2012";[29]

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[21] *Id*. at 7.

[22] *Id*. at 38.

[23] *Id*.

[24] *Id*. at 81.

[25] *Id*. at 82.

[26] *Id*. at 83.

[27] *Id.*

[28] *Id*. at 50.

[29] *Id*. at 51.

6. Official Receipt No. 3591932, dated November 26, 2012, acknowledging a total of ₱4,000.00 collected as "donation for garbage collection[,]" which was backed by a petty cash voucher for the disbursement of ₱4,000.00 for "garbage collection month of November to December 2012";[30]

7. Official Receipt No. 3627148, dated January 14, 2013, acknowledging a total of ₱4,000.00 collected as "donation for garbage collection[,]" which was backed by a petty cash voucher for the disbursement of ₱4,000.00 for "Payment/ Donation for Garbage Collection. Jan.-Feb. 2013";[31] and

8. Official Receipt No. 3794645, dated April 12, 2013, acknowledging a total of ₱8,000.00 collected as "donation for garbage collection[,]" which was backed by a petty cash voucher for the disbursement of ₱8,000.00 for "garbage collection March to June 2013[.]"[32]

Such was the state of affairs when, on June 3, 2014, the Barangay stopped collecting the resort's garbage. Reynes recounted Fredo Amores, the Barangay's garbage truck driver, informing both the resort's supervisor and checker that Barangay Captain Amores ordered the cessation of garbage collection. This was allegedly upon Kagawad Hontiveros' instigation, as she was offended by an incident from two (2) days prior. Referring to an Incident Report prepared by the resort's staff, Reynes recalled that on June 1, 2014, Kagawad Hontiveros, along with some companions, tried to enter the resort but was not immediately allowed to enter. Instead, she was asked to present an identification card per the resort's standard procedure.[33]

On June 6, 2014, Dr. Reynes sought an audience with Barangay Captain Amores to settle the matter. In a meeting held on June 11, 2014, Barangay Captain Amores maintained that her decision to stop collecting the resort's garbage was final. She supposedly

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[30] *Id*. at 52.

[31] *Id*. at 84.

[32] *Id*. at 53.

[33] *Id*. at 7 and 38.

justified this by saying that the resort's garbage was "bulky." She added that her decision was merely in keeping with a July 18, 2007 Memorandum issued by the Lapu-Lapu City Administrator.[34]

In their Joint Counter-Affidavit,[35] Barangay Captain Amores and Kagawad Hontiveros maintained that the Barangay was not in a position to collect the resort's garbage in view of a July 18, 2007 Memorandum issued by the Office of the City Administrator.[36] The Memorandum stipulated that while "barangay authorities are responsible for garbage collection in their respective jurisdictions[,] barangay garbage trucks/ collectors shall not encroach or enter into private properties such as subdivisions, resorts[,] and residences,"[37] and that "garbage trucks/collectors shall only collect garbage from garbage stations and/or dumps along barangay roads."[38] It also stated that "unsegregated garbage shall not be collected."[39]

Barangay Captain Amores and Kagawad Hontiveros claimed that the resort neither segregated its garbage nor used a garbage depositary situated along a public road. Still, Reynes wished to still have the Barangay collect the resort's garbage. Beseeching the Barangay's accommodation, Reynes supposedly offered to pay ₱2,000.00 monthly to defray the costs of garbage collection.[40]

Barangay Captain Amores and Kagawad Hontiveros faulted the resort for failing, allegedly unlike other resorts, to obtain the services of private concessionaires.[41] Bewailing the resort's continuing reliance on the Barangay, they justified the cessation

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[34] *Id*. at 7.

[35] *Id*. at 58-67.

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

[37] *Id*. at 48.

[38] *Id*.

[39] *Id*.

[40] *Id*. at 63-65.

[41] *Id*. at 66.

of the resort's garbage collection on its continuing inability to segregate and process its own garbage.[42]

In his Reply,[43] Reynes refuted Barangay Captain Amores and Kagawad Hontiveros' claims. He explained the resort's waste processing system and facilities, noting its use of a waste storage area with two (2) compartments— one (1) for biodegradable waste and another for non- biodegradable waste— both of which were secured by locks. There were also two (2) composting units for used oil and other biodegradable wastes. He maintained that the resort complied with the prescribed plastic bag color coding scheme for segregating waste.[44]

In its assailed February 20, 2015 Resolution,[45] the Office of the Ombudsman (Visayas), through Atty. Mernado, dismissed Reynes' Complaint.

In dismissing the charge of violating Section 48 of the Ecological Solid Waste Management Act, Atty. Mernado noted that the allegations against Barangay Captain Amores and Kagawad Hontiveros do not fall under the 16 prohibited acts in Section 48.[46]

In dismissing the charge of illegal exactions as penalized under Article 213(2) of the Revised Penal Code, Atty. Mernado gave a one (1)-paragraph explanation:

> Complainant failed to present the Ordinance on garbage fees. Thus, there is lack of evidence that respondent Amores demanded payment of sums different from or larger than that authorized by law. The payment complainant made to Barangay Marigondon appeared to be a donation as reflected in the Official Receipt issued. Complainant did not bother to question why the payments he made were reflected in the Official Receipt as donations. Also, complainant failed to show

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[42] *Id*. at 67.

[43] *Id*. at 70-78.

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

[45] *Id*. at 25-30.

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

any proof that the donation he gave to the barangay is prohibited by law.[47]

In its assailed September 29, 2015 Order,[48] the Office of the Ombudsman (Visayas), still through Atty. Mernado, denied Reynes' Motion for Reconsideration.

Thereafter, Reynes filed this Petition for *Certiorari*.[49] While he no longer makes averments concerning private respondents Barangay Captain Amores' and Kagawad Hontiveros' liability for violating Section 48 of the Ecological Solid Waste Management Act, he insists that both of them must still stand trial for the offense of illegal exactions.[50]

On September 26, 2016, public respondent Office of the Ombudsman (Visayas) filed its Comment.[51] Private respondents filed their Compliance (Explanation) with Comments[52] on April 18, 2017, only after being required to show cause[53] why they should not be cited in contempt for failing to timely file their Comment. On March 7, 2018, Reynes filed a Consolidated Reply[54] to both comments.

The issue for this Court's resolution is whether or not public respondent Office of the Ombudsman (Visayas), acting through Graft Investigation and Prosecution Officer I Michael M. Mernado, Jr., committed grave abuse of discretion amounting to lack or excess of jurisdiction in not finding probable cause to file criminal charges against private respondents Lucresia M. Amores and Maribel Hontiveros, and in dismissing petitioner Carlos L. Reynes' Complaint against them.

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[47] *Id.* at 29.

[48] *Id*. at 31-32.

[49] *Id*. at 3-24.

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

[51] *Id*. at 97-106.

[52] *Id*. at 111-116.

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

[54] *Id*. at 125-132.

This Court partly grants the Petition. It was grave abuse of discretion for Atty. Mernado to dismiss the Complaint with respect to private respondent Amores. She must stand trial for violating Article 213(2) of the Revised Penal Code.

I

Jurisprudence has settled that probable cause for the filing of an information is "a matter which rests on likelihood rather than on certainty. It relies on common sense rather than on 'clear and convincing evidence[.]'"[55] In *Reyes v. Pearlbank Securities, Inc.*:[56]

> Probable cause, for the purpose of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof. The term does not mean "actual and positive cause" nor does it import absolute certainty. *It is merely based on opinion and reasonable belief.* Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. *It is enough that it is believed that the act or omission complained of constitutes the offense charged.*
>
> A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed by the suspects. ***It need not be based on clear and convincing evidence*** *of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt.* In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. *He relies on common sense.* What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction.[57] (Emphasis supplied, citations omitted)

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[55] *Marasigan v. Fuentes*, 776 Phil. 574, 584 (2016) [Per J. Leonen, Second Division].

[56] 582 Phil. 505 (2008) [Per J. Chico-Nazario, Third Division].

[57] *Id*. at 518-519.

Determining whether probable cause exists for the filing of an information is an executive function. It is not a power that rests in courts. Generally, courts do not disturb conclusions made by public prosecutors. This is due to the basic principle of separation of powers. Nonetheless, "grave abuse of discretion taints a public prosecutor's resolution if he [or she] arbitrarily disregards the jurisprudential parameters of probable cause."[58] As such, in keeping with the principle of checks and balances, a writ of *certiorari* may issue and undo the prosecutor's iniquitous determination. In *Lim v. Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices*:[59]

> As a general rule, a public prosecutor's determination of probable cause — that is, one made for the purpose of filing an Information in court — is essentially an executive function and, therefore, generally lies beyond the pale of judicial scrutiny. The exception to this rule is when such determination is tainted with grave abuse of discretion and perforce becomes correctible through the extraordinary writ of *certiorari*. The rationale behind the general rule rests on the principle of separation of powers, dictating that the determination of probable cause for the purpose of indicting a suspect is properly an executive function, while the exception hinges on the limiting principle of checks and balances, whereby the judiciary, through a special civil action of certiorari, has been tasked by the present Constitution to determine whether or not grave abuse of discretion has been committed amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. It is fundamental that the concept of grave abuse of discretion transcends mere judgmental error as it properly pertains to a jurisdictional aberration. *While defying precise definition, grave abuse of discretion generally refers to a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. Corollarily, the abuse of discretion must be patent and gross so 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.* To note, the underlying principle behind the courts' power to review a public prosecutor's determination of probable cause is to ensure that the latter acts within the permissible bounds

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[58] *Aguilar v. Department of Justice*, 717 Phil. 789, 799 (2013) [*Per Curiam*, Second Division].

[59] 795 Phil. 226 (2016) [Per J. Peralta, Third Division].

of his authority or does not gravely abuse the same. This manner of judicial review is a constitutionally-enshrined form of check and balance which underpins the very core of our system of government.[60] (Emphasis supplied, citation omitted)

Acting on the basis of the evidence presented to them, public prosecutors are vested "with a wide range of discretion, the discretion of whether, what and whom to charge[.]"[61] Thus, "[t]he prosecuting attorney cannot be compelled to file a particular criminal information."[62]

In accordance with judicial non-interference, "not even the Supreme Court can order the prosecution of a person against whom the prosecutor does not find sufficient evidence to support at least a *prima facie* case."[63] In *People v. Pineda*,[64] this Court sustained the public prosecutor and issued a writ of *certiorari* against Court of First Instance Judge Hernando Pineda's orders for the prosecutor to abandon four (4) out of the five (5) cases that the prosecutor previously filed because, according to Judge Pineda, "the acts complained of 'stemmed out of a series of continuing acts on the part of the accused, not by different and separate sets of shots, moved by one impulse and should therefore be treated as one crime [to] the series of shots killed more than one victim[.]'[65]" This Court explained:

3. The impact of respondent Judge's orders is that his judgment is to be substituted for that of the prosecutor's on the matter of what

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[60] *Id*. at 241.

[61] *Gonzalez v. Hongkong and Shanghai Banking Corporation*, 562 Phil. 841, 855 (2007) [Per J. Chico-Nazario, Third Division].

[62] *Uy v. People*, 586 Phil. 473, 492 (2008) [Per J. Chico-Nazario, Third Division] citing *People v. Pineda*, 127 Phil. 950 (1967) [Per J. Sanchez, *En Banc*].

[63] *Chua v. Padillo*, 550 Phil. 241, 249 (2007) [Per J. Sandoval-Gutierrez, First Division] citing *Sanchez v. Demetriou*, 298 Phil. 421 (1993) [Per J. Cruz, *En Banc*].

[64] 127 Phil. 150 (1967) [Per J. Sanchez, *En Banc*].

[65] *Id*. at 152.

crime is to be filed in court. The question of instituting a criminal charge is one addressed to the sound discretion of the investigating Fiscal. The information he lodges in court must have to be supported by facts brought about by an inquiry made by him. It stands to reason then to say that in a clash of views between the judge who did not investigate and the fiscal who did, or between the fiscal and the offended party or the defendant, those of the Fiscal's should normally prevail. In this regard, he cannot ordinarily be subject to dictation. We are not to be understood as saying that criminal prosecution may not be blocked in exceptional cases. A relief in equity "may be availed of to stop a purported enforcement of a criminal law where it is necessary (a) for the orderly administration of justice; (b) to prevent the use of the strong arm of the law in an oppressive and vindictive manner; (c) to avoid multiplicity of actions; (d) to afford adequate protection to constitutional rights; and (e) in proper cases, because the statute relied upon is unconstitutional or was 'held invalid.'" Nothing in the record would as much as intimate that the present case fits into any of the situations just recited.

And at this distance and in the absence of any compelling fact or circumstance, we are loathe to tag the City Fiscal of Iligan City with abuse of discretion in filing separate cases for murder and frustrated murder, instead of a single case for the complex crime of robbery with homicide and frustrated homicide under the provisions of Article 294 (1) of the Revised Penal Code or, for that matter, for multiple murder and frustrated murder. We state that, here, the Fiscal's discretion should not be controlled.[66] (Citation omitted)

However, in cases of "unmistakable showing of grave abuse of discretion on the part of the prosecutor"[67] in refusing to prosecute specific persons for specific offenses, writs of *certiorari* have been issued to set aside the prosecutor's initial determination.[68]

Chua v. Padillo[69] illustrates one (1) such instance. There, this Court sustained the Court of Appeals in granting the

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

[67] *Chua v. Padilla*, 550 Phil. 241, 249 (2007) [Per *J.* Sandoval-Gutierrez, First Division] citing *Sanchez v. Demetriou*, 298 Phil. 421 (1993) [Per *J.* Cruz, *En Banc*].

[68] *Id*.

[69] 550 Phil. 241 (2007) [Per *J.* Sandoval-Gutierrez, First Division].

respondents' Petition for *Certiorari* and in ordering the inclusion of the petitioners-siblings Wilson and Renita Chua as accused, along with Wilson's wife, Marissa Padilla-Chua, in a case of estafa through falsification of commercial documents.

Marasigan v. Fuentes[70] saw this Court reverse the Court of Appeals' dismissal of the private complainant's Petition for *Certiorari*. It found that it was "grave abuse of discretion for [Department of Justice] Secretary [Agnes VST] Devanadera to conclude that respondent [Robert] Calilan may only be prosecuted for the crime of less serious physical injuries while his co- respondents, [Reginald] Fuentes and [Alain Delon] Lindo, may not be prosecuted at all."[71] Thus, the previous Resolution issued by Undersecretary Linda Malenab-Hornilla, which "ordered the provincial prosecutor of Laguna to file informations for attempted murder against Fuentes, Calilan, and Lindo[,]"[72] was reinstated.

II

A determination of probable cause must be made in reference to the elements of the crime charged. "This is based on the principle that every crime is defined by its elements, without which there should be, at the most, no criminal offense."[73]

Any inquiry into whether probable cause exists to prosecute for illegal exactions as penalized under Article 213(2) of the Revised Penal Code must begin with the text of Article 213(2). It provides:

Article 213. Frauds against the public treasury and similar offenses. — The penalty of prision correccional in its medium period to *prision mayor* in its minimum period, or a fine ranging from 200 to 10,000 pesos, or both, shall be imposed upon any public officer who:

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[70] 776 Phil. 574 (2016) [Per *J.* Leonen, Second Division].

[71] *Id.* at 583-584.

[72] *Id*. at 580.

[73] *Aguilar v. Department of Justice*, 717 Phil. 789, 800 (2013) [*Per Curiam*, Second Division] citing *Ang-Abaya v. Ang*, 593 Phil. 530 (2008) (Per *J.* Ynares-Santiago, Third Division].

. . . . . .

2. Being entrusted with the collection of taxes, licenses, fees and other imposts, shall be guilty of any of the following acts or omissions:

   (a) Demanding, directly or indirectly, the payment of sums different from or larger than those authorized by law.

   (b) Failing voluntarily to issue a receipt, as provided by law, for any sum of money collected by him officially.

   (c) Collecting or receiving, directly or indirectly, by way of payment or otherwise, things or objects of a nature different from that provided by law.

From this, liability under Article 213(2) ensues when the following elements are demonstrated:

First, that the offender is a public officer who is "entrusted with the collection of taxes, licenses, fees and other imposts."

Second, that he or she engages in any of the three (3) specified acts or omissions under Article 213(2): "[d]emanding, directly or indirectly, the payment of sums different from or larger than those authorized by law[; f]ailing voluntarily to issue a receipt, as provided by law, for any sum of money collected by him officially[; or c]ollecting or receiving, directly or indirectly, by way of payment or otherwise, things or objects of a nature different from that provided by law."

III

As punong barangay, private respondent Amores was chief executive of a local government unit.[74] She was head of Barangay

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[74] LOCAL GOV'T. CODE, Sec. 389 provides:

SECTION 389. Chief Executive: Powers, Duties, and Functions. — (a) The punong barangay, as the chief executive of the barangay government, shall exercise such powers and perform such duties and functions, as provided by this Code and other laws.

(b) For efficient, effective and economical governance, the purpose of which is the general welfare of the barangay and its inhabitants pursuant to Section 16 of this Code, the punong barangay shall:

Marigondon, administered it, and oversaw the discharge of all its functions. She was tasked with "[e]nforc[ing] all laws and ordinances which are applicable within the barangay[;] [m]aintain[ing] public order[;] [and] [p]romot[ing] the general

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(1) Enforce all laws and ordinances which are applicable within the barangay;

(2) Negotiate, enter into, and sign contracts for and in behalf of the barangay, upon authorization of the sangguniang barangay;

(3) Maintain public order in the barangay and, in pursuance thereof, assist the city or municipal mayor and the sanggunian members in the performance of their duties and functions;

(4) Call and preside over the sessions of the sangguniang barangay and the barangay assembly, and vote only to break a tie;

(5) Upon approval by a majority of all the members of the sangguniang barangay, appoint or replace the barangay treasurer, the barangay secretary, and other appointive barangay officials;

(6) Organize and lead an emergency group whenever the same may be necessary for the maintenance of peace and order or on occasions of emergency or calamity within the barangay;

(7) In coordination with the barangay development council, prepare the annual executive and supplemental budgets of the barangay;

(8) Approve vouchers relating to the disbursement of barangay funds;

(9) Enforce laws and regulations relating to pollution control and protection of the environment;

(10) Administer the operation of the katarungang pambarangay in accordance with the provisions of this Code;

(11) Exercise general supervision over the activities of the sangguniang kabataan;

(12) Ensure the delivery of basic services as mandated under Section 17 of this Code;

(13) Conduct an annual palarong barangay which shall feature traditional sports and disciplines included in national and international games, in coordination with the Department of Education, Culture and Sports;

(14) Promote the general welfare of the barangay; and

(15) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.

(c) In the performance of his peace and order functions, the punong barangay shall be entitled to possess and carry the necessary firearm within his territorial jurisdiction, subject to appropriate rules and regulations.

welfare of the barangay[.]"[75] More on point, it was her duty to "[e]nforce laws and regulations relating to pollution control and protection of the environment[,] [and] [e]nsure the delivery of basic services as mandated under Section 17 of [the Local Government] Code."[76] Among these basic services are "[s]ervices and facilities related to general hygiene and sanitation, beautification, and *solid waste collection*[.]"[77]

Private respondent Amores' engagement with solid waste management was official, direct, and unequivocal. This involvement spanned all dimensions of solid waste management, including the marshaling of resources, financial or otherwise. Her functions were sufficiently broad as to encompass facilitating the levying of charges for services rendered by the Barangay.[78] It is then not difficult to see, precisely as petitioner asserts, how private respondent Amores could have used her office as an artifice for "[d]emanding ... the payment of sums different from or larger than those authorized by law."[79]

One might indulge private respondent Amores' seemingly inevitable exoneration by pointing to Section 395(e) of the Local Government Code and noting how the barangay treasurer is tasked with "[c]ollect[ing] and issu[ing] official receipts for taxes, fees, contributions, monies, materials, and all other resources accruing to the barangay[.]"[80] However, it is improper to conveniently negate her possible culpability by the veneer

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[75] LOCAL GOV'T. CODE, Sec. 389(b)(1), (3), and (14).

[76] LOCAL GOV'T. CODE, Sec. 389(b)(9) and (12).

[77] LOCAL GOV'T. CODE, Sec. 17(b)(1)(iii).

[78] Book II, Title I, Chapter II, Article V, Section 153 of the Local Government Code, which provides for revenue-raising powers common to all local government units, states that barangays can "impose and collect such reasonable fees and charges for services rendered."

[79] REV. PEN. CODE, Art. 213(2)(a).

[80] LOCAL GOV'T. CODE, Sec. 395 provides:

SECTION 395. Barangay Treasurer: Appointment, Qualification, Powers and Duties. — . . . .

of detachment just because she held a position different from, or superior to, that of a barangay treasurer. Private respondent Amores cannot evade liability by feigning incidental, ancillary, or tangential involvement, and pointing to subalterns as the persons who actually effected the assailed collections.

This is not the first case where this Court has considered the situation of a treasurer obliviously acting as the surrogate of a local chief executive who may have insisted on inordinate collections. In *Ongsuco v. Malones*,[81] this Court noted that such a treasurer acts as a local chief executive's mere "alter ego."[82]

This is also not the first instance that this Court has considered the potential liability for illegal exactions of a public officer, whose functions do not explicitly include the collection of fees and charges. *Young v. Mapayo*[83] concerned a Regional Trial

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(e) The barangay treasurer shall:

(1) Keep custody of barangay funds and properties;

(2) *Collect and issue official receipts for taxes, fees, contributions, monies, materials, and all other resources accruing to the barangay treasury and deposit the same in the account of the barangay as provided under Title Five, Book II of this Code*;

(3) Disburse funds in accordance with the financial procedures provided in this Code;

(4) Submit to the punong barangay a statement covering the actual and estimates of income and expenditures for the preceding and ensuing calendar years, respectively, subject to the provisions of Title Five, Book II of this Code.

(5) Render a written accounting report of all barangay funds and property under his custody at the end of each calendar year, and ensure that such report shall be made available to the members of the barangay assembly and other government agencies concerned;

(6) Certify as to the availability of funds whenever necessary;

(7) Plan and attend to the rural postal circuit within his jurisdiction; and

(8) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance. (Emphasis supplied)

[81] 619 Phil. 492 (2009) [Per *J* . Chico-Nazario, Third Division].

[82] *Id*. at 509.

[83] 388 Phil. 78 (2000) [Per *J*. Pardo, First Division].

Court judge who was accused of "demanding and receiving [₱10,000.00] for the solemnization of [a] marriage."[84] Fully aware that the actual collection of fees was not a function performed by a judge, this Court, nevertheless, stated that "[t]he first charge, if proven, would constitute illegal exaction."[85]

IV

Contrary to Atty. Mernado's conclusion, the evidence sustains a "reasonable belief[86] that private respondent Amores "[d]emand[ed] . . . the payment of sums different from or larger than those authorized by law."[87]

Atty. Mernado began his assailed Resolution's one (1)-paragraph *ratio decidendi* by saying that petitioner "failed to present the Ordinance on garbage fees."[88] From this singular premise, he proceeded to state that "there is lack of evidence that [private] respondent Amores demanded payment of sums different from or larger than that authorized by law."[89]

Atty. Mernado's reasoning is an error that is as grievous as it is mind-boggling.

Petitioner's position is precisely that there was no ordinance or any other regulation that enabled the levying of garbage collection fees. To demand that he produce one (1) such ordinance was a farcically futile exercise. Atty. Mernado would have had him go on a fool's errand. Lest petitioner reveal himself to be untruthful and admit that there was indeed an enabling ordinance, there was no other reasonable outcome than for him to to be unable to present such an ordinance.

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[84] *Id.* at 84.

[85] *Id*.

[86] *Reyes v. Pearlbank Securities, Inc*., 582 Phil. 505, 518-519 (2008) [Per *J.* Chico-Nazario, Third Division].

[87] REV. PEN. CODE, Art. 213(2)(a).

[88] *Rollo*, p. 29.

[89] *Id*.

Atty. Mernado failed to realize that Article 213(2)'s injunction against the "payment of sums *different from or larger* than those authorized by law" and against "receiving . . . objects of a nature *different from* that provided by law" admits of situations when no payment is ever permitted, or no collection of any object is ever allowed. These situations may arise through an explicitly stated legal prohibition, or through a law's mere silence. In the latter case, the law plainly declines to name any authorized manner of payment or collection. By its reticence, it signals that there is no permissible payment or collection. When the law enables no form whatsoever of payment or collection, a public officer's demand for payment of *any* sum, or insistence on collecting *any* object, is a legal breach. It is a punishable violation of Article 213(2).

Such was petitioner's exact contention: that private respondent Amores violated Article 213(2) by her mere act of demanding payment—regardless of the amount—because she was, to begin with, not allowed to demand anything. Petitioner's entire cause was anchored on the assertion that because no ordinance, law, or regulation has ever permitted private respondent Amores to receive anything, yet she collected something, she violated Article 213(2).

Atty. Mernado's fixation on petitioner's burden to "present the Ordinance on garbage fees"[90] may have revealed that he did not quite grasp petitioner's position. Worse, it could betray a deliberate distortion or design to prevent petitioner from successfully pursuing his case. Regardless, by his insistence, Atty. Mernado engaged in a "whimsical exercise of judgment."[91] His demand for petitioner to discharge a vacuous, even foolish, burden amounts to an evasion of his positive and legally-ordained

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[90] *Id*. at 29.

[91] *Lim v. Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices*, 795 Phil. 226 (2016) [Per J. Peralta, Third Division] citing *Aguilar v. Department of Justice*, 717 Phil. 789 (2013) [*Per Curiam*, Second Division].

duty to appraise cases within "the jurisprudential parameters of probable cause."[92] It is grave abuse of discretion.

Atty. Mernado further justified dismissing the Complaint by suggesting that the amounts delivered to the Barangay must have been donations because the official receipts issued by the Barangay said so.[93] This is an error that is again as grievous as it is baffling.

Petitioner's entire case centered on the claim that the collections were unlawful. If they were indeed unlawful, one could not expect the person receiving and acknowledging receipt to voluntarily admit it in writing. It was, thus, likely that some artificial designation—a facade—for the payments had to be devised. Rather than weaken petitioner's cause, the official receipts' reference to supposed "donations" could actually be helpful, as they could point to an attempt to legitimize inordinate collections. Atty. Mernado failed to consider that the reference to "donations" could very well have been self-serving pretenses.

To be clear, this Court takes caution not to make a definitive finding of guilt. What is in issue, at this juncture, is the propriety of Atty. Mernado's disposition. It is here that we find grave error. While statements in documents are generally to be taken as regular, Atty. Mernado needed to appreciate the official receipts in view of the many nuances of this case. He cursorily concluded that donations were made, taking at face value the same receipts that may very well have been the offender's own artifice.

V

Private respondent Amores admitted Reynes' intermittent delivery of sums in multiples of ₱2,000.00.[94] She, however, claimed that the delivered sums do not correspond to compulsory

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[92] *Aguilar v. Department of Justice*, 717 Phil. 789, 799 (2013) [*Per Curiam*, Second Division].

[93] *Rollo*, p. 29.

[94] *Id*. at 64-66.

charges, but to voluntary contributions.[95] Her admission is notable not only since it concedes that petitioner delivered the money, but also since it concedes that petitioner's delivery and the Barangay's concomitant receipt were not on account of an enabling ordinance or regulation. These concessions leave the matters of her supposed demand and petitioner's supposed voluntary offer as the last, remaining points of contention.

This Court finds it more reasonable to opine that petitioner made deliveries to comply with the demands from private respondent Amores.

Private respondent Amores' position hinged on the truth of her premise: that the resort has not been able to comply with the Office of the City Administrator's July 18, 2007 Memorandum in that it cannot segregate and process its garbage, and has been using a depositary that was confined inside its premises.

Private respondent Amores offered nothing but bare allegations in asserting the resort's inability to segregate and process waste. Petitioner refuted these bare allegations in his Reply by laying the intricacies of the resort's waste processing system and facilities.[96] Even ahead of private respondent Amores' allegation in her Joint Counter-Affidavit with private respondent Hontiveros, petitioner had already attached to his original Complaint pictures of the resort's waste processing facilities.[97]

Private respondent Amores sought to substantiate her claim that the resort used a depositary that was confined inside its premises, rather than one that was along a public road, by attaching to her Joint Counter-Affidavit a copy of the Transfer Certificate of Title over the lot encompassing the resort. This, however, fails to impress. As petitioner emphasized, private respondents merely attached a copy of the Transfer Certificate of Title, but never discussed the lot's features, or how its metes and bounds revealed the depositary's confinement:

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[95] *Id*.

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

[97] *Id*. at 49.

[Private respondents] only presented a copy of TCT No. 72326 in the name of Beth Sonia Go Reynes married to Carlos Reynes as proof that petitioner's garbage was deposited on a private road. They did not however explain where on the face of the title does it say that the road where petitioner's garbage is deposited is part of the latter's property.[98]

Apart from the inadequacies of private respondent Amores' evidence, the circumstances surrounding petitioner's August 8, 2011 letter to private respondent Amores are revealing. This letter did not just state the basis of petitioner's objection to paying garbage collection fees: (1) that no law, ordinance, or regulation authorized the levy; (2) that no public hearing was ever conducted; and (3) that the city government was already collecting the garbage fees. Petitioner also went to the extent of furnishing copies of letter to the offices of the City Mayor, Vice Mayor, City Attorney, and City Secretary. Each of these four (4) offices stamped acknowledgments of their receipt of the letter.[99]

The letter did not mince words in imputing unlawful conduct against private respondent Amores. Petitioner pointedly said, "I believe that his refusal to collect our garbage was the unlawful demand by you to increase your exaction of garbage fee (*sic*)."[100] Worse for private respondent Amores, this imputation was brought to the attention of the City Mayor, Vice Mayor, City Attorney, and City Secretary.

The situation engendered by the August 8, 2011 letter calls to mind the Revised Rules of Evidence's provision on admission by silence.[101] To be clear, the Revised Rules on Evidence did

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[98] *Id.* at 8.

[99] *Id.* at 45 and 47.

[100] *Id.* at 45.

[101] RULES OF COURT, Rule 130, Sec. 32 provides:

SECTION 32. Admission by silence. — An act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for

not govern the proceedings before public respondent, "except by analogy or in a suppletory character and whenever practicable and convenient."[102] Moreover, the provision on admission by silence refers to any "act or declaration made in the presence and within the hearing [of another]," not to a declaration made in written correspondences. Nonetheless, the basic wisdom underlying the provision on admission by silence is obvious and commonsensical. The application of that underlying wisdom, if not of the actual rule, is readily appreciable here.

The grave imputations that were communicated not only to private respondent Amores, but even to the highest officials of the Lapu-Lapu City Government, demanded a denial, a refutation, or some manner of response from private respondent Amores. Yet, the record is bereft of proof of any such response. Private respondent Amores herself does not even allege any such response. By all counts, she never lifted a finger. Her next encounter with petitioner or persons representing him came only after petitioner's wife sought an audience with her.[103]

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action or comment if not true, and when proper and possible for him to do so, may be given in evidence against him.

[102] RULES OF COURT, Rule 1, Secs. 2-4 provides:

SECTION 2. In What Courts Applicable. — These Rules shall apply in all the courts, except as otherwise provided by the Supreme Court.

SECTION 3. Cases Governed. — These Rules shall govern the procedure to be observed in actions, civil or criminal, and special proceedings.

(a) A civil action is one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong.

A civil action may either be ordinary or special. Both are governed by the rules for ordinary civil actions, subject to the specific rules prescribed for a special civil action.

(b) A criminal action is one by which the State prosecutes a person for an act or omission punishable by law.

(c) A special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact.

SECTION 4. In What Cases Not Applicable. — These Rules shall not apply to election cases, land registration, cadastral, naturalization and insolvency proceedings, and other cases not herein provided for, except by analogy or in a suppletory character and whenever practicable and convenient.

[103] *Rollo*, p. 38.

That she appears to have never bothered to address a damning situation raises grave questions that can only militate against her cause. If her actions were legitimately motivated by the Office of the City Administrator's July 18, 2007 Memorandum, she could have just as easily said so. Instead, it appears she did not refer to this Memorandum until three (3) years after petitioner's damning letter, and only when another confrontation arose following the resort's averred conflict with private respondent Hontiveros.

This is not yet an adjudication on the merits made after the rigors of a full-blown trial. The parties remain free to expound on their claims and to adduce their evidence. Private respondent Amores may very well have an explanation that accounts for her silence, or she may even have actual proof that she responded. However, even as this Court makes no definitive findings on guilt or innocence in this Decision, it is tasked with weighing the evidence adduced thus far and appraise the propriety of Atty. Mernado's conclusions. The allegations and proof available for this Court's perusal weigh more heavily in petitioner's favor. With this state of affairs, this Court is constrained to maintain a well-founded belief that the crime of illegal exactions has been committed, and that private respondent Amores is probably guilty of it and should be held for trial.

VI

Unlike private respondent Amores, this Court finds no probable cause to indict private respondent Hontiveros for illegal exactions.

By petitioner's own allegations, private respondent Hontiveros' involvement arose only after the June 1, 2014 incident when the resort was supposed to have allowed her entry only after presenting an identification card. The charge that she induced private respondent Amores to order ceasing the collection of the resort's garbage, if true, is by no means righteous conduct that this Court condones. However, insofar as the charge of illegal exactions is concerned, it does not appear that private respondent Hontiveros herself acted in concert with private

respondent Amores in demanding and facilitating inordinate collections. It also does not appear that she, by herself or through someone acting on her instruction, collected or received the amounts delivered by petitioner.

That said, this Court underscores that the Affidavit-Complaint,[104] which petitioner filed before public respondent, was not exclusively a criminal complaint. It was at the same time an administrative complaint for gross misconduct.[105] The charge of gross misconduct embraces the imputations against private respondent Hontiveros that she abused her position and influence to induce the cessation of the garbage collection services to the resort.

This Petition specifically prayed for this Court to hold that private respondents must be indicted for the offense of illegal exactions under Article 213(2) of the Revised Penal Code.[106] However, the records available lack any averment on how public respondent disposed of the administrative aspect of petitioner's Complaint. This Court is not aware of any matter to affirm or reverse in this respect. The records also do not indicate a claim or an explanation of how public respondent may have erred in its handling of such administrative aspect. Thus, this Court is in no position to make conclusions on the administrative aspect of petitioner's claims.

To be clear, the affirmation of the dismissal of the Criminal Complaint against private respondent Hontiveros is without prejudice to the proper disposition of the administrative aspect of the Complaint against her.

WHEREFORE, the Petition is **PARTLY GRANTED**. The assailed February 20, 2015 Resolution and September 29, 2015 Order issued in OMB-V-C-14-0510 by public respondent Office of the Ombudsman (Visayas), through Graft Investigation and Prosecution Officer I Michael M. Mernado, Jr., are **SET ASIDE**

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[104] *Id*. at 35-43.

[105] *Id*. at 35.

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

insofar as they dismissed the charge against private respondent Lucresia M. Amores for violating Article 213(2) of the Revised Penal Code.

Public respondent Office of the Ombudsman (Visayas) is directed to file before the proper court the necessary information for violation of Article 213(2) of the Revised Penal Code against private respondent Lucresia M. Amores.

This is without prejudice to the proper disposition of the administrative aspect of the Complaint against both private respondents Lucresia M. Amores and Maribel Hontiveros.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 227795. February 20, 2019]
(Formerly UDK-15556)

MARVIN O. DAGUINOD, *petitioner, vs.* **SOUTHGATE FOODS, INC., represented by MAUREEN O. FERRER and GENERATION ONE RESOURCE SERVICE AND MULTI-PURPOSE COOPERATIVE,[*] represented by RESTY CRUZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FINDINGS OF THE COURT OF APPEALS IN LABOR

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

[*] Also referred to as "Generation One Service Cooperative" and "Generation One Resource Service Cooperative" in some parts of the records.

CASES AFFIRMING THE FINDINGS OF THE NATIONAL LABOR RELATIONS COMMISSION AND LABOR ARBITER, GENERALLY RESPECTED; EXCEPTIONS; MISAPPRECIATION OF RELEVANT AND UNDISPUTED FACTS. — Ordinarily, the Court will not disturb the findings of the CA in labor cases especially if they are consistent with the findings of the NLRC and LA, in recognition of the expertise of administrative agencies whose jurisdiction is limited to specific fields of law. Rule 45 petitions should raise only questions of law, as the Court is not duty-bound to analyze and re-examine the evidence already passed upon by the courts or tribunals below. x x x [I]n the instant case, [however,] the CA committed grave and serious error in affirming the findings of the NLRC, which had, in turn, affirmed the findings of the LA. The appellate court misappreciated relevant and undisputed facts which if it had correctly considered, would have resulted in the reversal of the erroneous decisions of the labor tribunals. After a judicious review of the facts of the case as borne out by evidence on record, the Court resolves to overturn the CA Decision.

2. **LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; LEGITIMATE LABOR CONTRACTING; CONSTRUED. —** The outsourcing of services is not prohibited in all instances. In fact, Article 106 of the Labor Code of the Philippines provides the legal basis for legitimate labor contracting. This provision is further implemented by DOLE Order No. 18, Series of 2002 (D0 18-02). Under Section 4(a) of DO 18-02, legitimate labor contracting or subcontracting refers to an arrangement whereby a principal agrees to put out or farm out with a contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal. The "principal" refers to any employer who puts out or farms out a job, service or work to a contractor or subcontractor.

3. **ID.; ID.; LABOR-ONLY CONTRACTING; PROHIBITED. —** [L]abor-only contracting is prohibited and defined under Section 5 of DO 18-02: ***Section 5. Prohibition against labor-only contracting.*** Labor-only contracting is hereby declared prohibited. For this purpose, **labor-only contracting shall refer to an arrangement where the contractor or subcontractor**

merely recruits, supplies, or places workers to perform a job, work or service for a principal, and any of the following elements [is] present: i) **The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or** ii) **The contractor does not exercise the right to control over the performance of the work of the contractual employee.**

4. ID.; ID.; ID.; WHERE THERE IS LABOR-ONLY CONTRACTING, THE PRINCIPAL SHALL BE DEEMED THE EMPLOYER OF THE CONTRACTUAL EMPLOYEE. — When there is labor-only contracting, Section 7 of DO 18-02 describes the consequences thereof: ***Section 7. Existence of an employer-employee relationship.*** The contractor or subcontractor shall be considered the employer of the contractual employee for purposes of enforcing the provisions of the Labor Code and other social legislation. The principal, however, shall be solidarily liable with the contractor in the event of any violation of any provision of the Labor Code, including the failure to pay wages. **The principal shall be deemed the employer of the contractual employee in any of the following case, as declared by a competent authority: (a) where there is labor-only contracting;** or x x x.

5. ID.; ID.; ID.; ONE FACTOR IN DETERMINING LABOR-ONLY CONTRACTING IS WHETHER THE WORK PERFORMED IS NECESSARY AND DESIRABLE TO THE BUSINESS OF THE PRINCIPAL; CASE AT BAR. — [O]ne of the factors in determining whether there is labor-only contracting is the nature of the employee's job, *i.e.*, whether the work he performs is necessary and desirable to the business of the principal. In this particular case, it was established that Daguinod was assigned as a counter crew/cashier in Jollibee Alphaland. x x x Daguinod was assigned to perform cash control activities which entails gathering of orders and assembling food on the tray for dine-in customers or for take-out. As cashier, Daguinod was also tasked to receive payments and give change. These tasks are undoubtedly necessary and desirable to the business of a fast food restaurant such as Jollibee. x x x These circumstances lead to no other conclusion than that Daguinod

was a regular employee of Southgate (franchise owner of Jollibee) and that Generation One (Service provider) was a mere agent of Southgate.

6. ID.; ID.; LEGITIMATE LABOR CONTRACTOR; POSSESSION OF SUBSTANTIAL CAPITAL ENTITLES ONE TO BE CONSIDERED A LEGITIMATE LABOR CONTRACTOR; NOT PRESENT IN CASE AT BAR. — The ownership of substantial capital in the form of tools, equipment, machineries, work premises, and other properties, by the contractor is another factor in establishing whether it is legitimate. x x x [T]he documents submitted are insufficient to prove that Generation One possesses substantial capital to be considered a legitimate labor contractor. x x x [T]he Certificate of Registration as an independent contractor issued by the DOLE to Generation One x x x does not automatically vest it with the status of a legitimate labor contractor. [I]t is merely presumptive proof. In the instant case, the totality of circumstances reveals that Generation One, despite its DOLE registration, is not a legitimate labor contractor. x x x [T]he Service Agreement between Generation One and Southgate which provided for the scope of the agreement as well as the proviso that there would be no employer-employee relationship between Southgate and Generation One's employees x x x are not the sole determining factor in ascertaining the true nature of the relationship between the principal contractor, and employees.

7. ID.; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; NON-COMPLIANCE OF THE PROCEDURAL DUE PROCESS. — The employer must comply with substantive and procedural due process in the dismissal of an employee. Substantive due process pertains to the just and authorized causes for dismissal as provided under Articles 297, 298, and 299 of the Labor Code. Procedural due process pertains to the twin requirements of notice and hearing, x x x In this case, there was non-compliance with procedural due process as the notice to explain (NTEs) did not contain the specific information required under the law. Moreover, Daguinod was not given a reasonable opportunity to submit his written explanation as he was ordered to immediately answer the NTEs.

8. ID.; ID.; ID.; FULL BACKWAGES, SEPARATION PAY, MORAL AND EXEMPLARY DAMAGES, ATTORNEY'S

FEES AND LEGAL INTEREST TO THE MONETARY AWARD, WARRANTED IN CASE AT BAR. — Article 294 of the Labor Code provides that an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges, full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. When reinstatement is no longer viable such as when the parties have strained relations, separation pay may be awarded as an alternative. x x x Undeniably, reinstatement is no longer feasible due to the strained relations of the parties and considering as well the length of time that has passed since the filing of this case. Thus, separation pay is awarded in lieu thereof. Daguinod is likewise entitled to moral and exemplary damages as his dismissal was attended with bad faith. Moral damages are awarded in illegal termination cases when the employer acted (a) in bad faith or fraud; (b) in a manner oppressive to labor; or (c) in a manner contrary to morals, good customs, or public policy. In addition to moral damages, exemplary damages may be imposed by way of example or correction for the public good. In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner. In the instant case, Southgate and Generation One clearly acted in bad faith. The respondents created a subterfuge of legitimate labor contracting to avoid the regularization of Daguinod. More significantly, respondents haphazardly accused Daguinod of theft without sufficient proof which resulted in his incarceration for three days. Thus, Daguinod is entitled to moral and exemplary damages of ₱200,000.00 and ₱100,000.00, respectively. The Court also awards Daguinod attorney's fees of 10% of the total monetary award. x x x Finally, the monetary award herein granted shall earn legal interest of 12% per annum from April 10, 2011, the date of constructive dismissal, until June 30, 2013 in line with the Court's ruling in *Nacar v. Gallery Frames*. From July 1, 2013 until full satisfaction of the award, the interest rate shall be at 6%. The total amount of the foregoing shall, in turn, earn interest at the rate of 6% per annum from finality of this Decision until full payment. The liability of Generation One and Southgate shall be joint and solidary.

APPEARANCES OF COUNSEL

Marissa Dadulla-Amos and *Robert Michael A. Natividad* for petitioner.

Jay Sangalang for Southgate Foods, Inc.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a petition for review[1] (Petition) under Rule 45 of the Rules of Court assailing the Court of Appeals (CA) Decision[2] dated January 28, 2016 and Resolution[3] dated March 18, 2016 in CA-G.R. SP No. 129296.

Facts

Petitioner Marvin O. Daguinod (Daguinod) was assigned as counter crew/cashier of a Jollibee franchise located in Alphaland Southgate Mall, Makati City (Jollibee Alphaland) pursuant to a Service Agreement[4] between Generation One Resource Service and Multi-Purpose Cooperative (Generation One) and the franchise operator Southgate Foods, Inc. (Southgate) (collectively respondents). Under the Service Agreement, Generation One was contracted by Southgate to provide "specified non-core functions and operational activities"[5] for its Jollibee Alphaland branch.

Daguinod also executed a Service Contract[6] dated September 9, 2010 with Generation One which stated that Generation One

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

[2] *Id*. at 20-29. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla, with the concurrence of Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan.

[3] *Id*. at 31-32.

[4] CA *rollo*, pp. 130-134.

[5] *Id*. at 130.

[6] *Id.* at 124.

was contracted by Southgate to perform "specified peripheral and support services." In the Service Contract, Daguinod was referred to as a "service provider" and "member" of Generation One cooperative. The specific work responsibilities to be performed by Daguinod were left blank. The period of Daguinod's services was stated as "beginning September 9, 2010 until the end of the project." To become a member of Generation One, Daguinod completed an application form[7] dated September 8, 2010, which required him to pay a membership fee of ₱250.00, and participate in "capital build-up and savings program" which obligated him to acquire 150 paid-up shares in Generation One, valued at ₱1,500.00. Prior to his employment/membership in Generation One cooperative, Daguinod was employed directly by Southgate from March 12, 2010 to August 26, 2010 as counter crew.[8]

Petitioner's version of events

Daguinod alleges that on April 10, 2011, he reported for work at 6:00 A.M. as a counter crew/cashier in Jollibee Alphaland. He was given a cash fund of ₱5,000.00. After serving one of the customers, Security Guard Jaime Rivero (Rivero) approached him and asked for the receipt of the last customer who had ordered a *longanisa* breakfast meal. Daguinod realized that he had put the customer's payment inside the cash register without the corresponding receipt so he had it "punched in." Thereafter, Rivero took the receipt and told Daguinod that he had committed a "pass out" of transaction. Rivero asked for assistance from the manager on duty, Jane[9] Geling (Geling). The latter conducted an audit and verification of the sales which revealed that the cash in the register was in excess of ₱106.00.[10]

Daguinod was then brought into a function room inside Jollibee Alphaland with Rivero keeping guard over him. Geling went

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[7] *Id.* at 123.

[8] See *id.* at 36, 123 and 135.

[9] Also referred to as "Mary Jean" in some parts of the records.

[10] CA *rollo*, pp. 44, 94 and 219-220.

into the room and accused Daguinod of theft. Daguinod reasoned that he did not commit any theft as in fact there was an overage of cash in the register. Geling did not believe him and told him that if he confessed, he would be forgiven and he could continue working. Daguinod was given two Notices to Explain (NTE). In the first NTE, he was made to explain the overage in the cash register. In the second NTE, he was charged with using the manager's swipe card without authority. Daguinod was directed to immediately answer the two NTEs.[11] In the first NTE, Daguinod alleges that he was instructed to write the sentence: "*Opo Mam, inaamin ko na po na nagpassout po ako*, 2nd week *po ng* March, [₱]5,500.00."[12] In the second NTE, Daguinod wrote: "*Di kopo alam, mam, nalito na po ako kaya di ko nabilang ang 50's. Nakita ko po yung [unintelligible] ni S' Aldrin tapos ginamit ko po. Isang buwan ko na pong ginagamit*."[13]

Daguinod was then brought to the Makati Police Station, Bangkal Precinct, where he was accused of Qualified Theft and put in jail. Daguinod was able to contact his sister, Maribeth D. Pacheco (Maribeth), to ask for help. At around 4:00 P.M., Daguinod was brought to the Ospital ng Makati for a medical check-up but he was brought back to the Makati Police Station where he was imprisoned until April 13, 2011. He was made to write a confession letter in exchange for his release from jail. He did not want to write the confession but he acceded as he had already spent two days in jail. On April 13, 2011, he was brought to the Makati City Prosecutor's Office for inquest before Assistant City Prosecutor Carolina J. Esguerra (Prosecutor Esguerra). Prosecutor Esguerra ordered Daguinod's release as the allegations against Daguinod were deficient and preliminary investigation was scheduled on April 19 and 26, 2011.[14] Daguinod

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

[12] *Id*. at 37.

[13] *Id*. at 38.

[14] *Id*. at 44-45. Resolution dated April 13, 2011 of the Office of the City Prosecutor, Makati.

alleges that during the second meeting for the preliminary investigation, he inquired with Geling as to the status of his employment. Geling told Daguinod to ask Resty Cruz (Cruz), Generation One's Resource Area Coordinator, who told Daguinod via phone call that his employment was terminated effective May 13, 2011.[15]

Daguinod's sister, Maribeth, corroborated his testimony. In her Affidavit[16] dated July 5, 2011, Maribeth alleged that on April 10, 2011 at around 1:30 P.M., she received a text message from her brother, asking for help as he was put in jail for alleged theft. She went to Jollibee Southgate and was able to talk to store managers Geling and Julius Paul Penafuerte, and Atty. Jay Sangalang (Atty. Sangalang), legal counsel of Southgate, who told her that Daguinod would be released if he confessed to the theft. She immediately went to the Makati Police Station to relay the same to her brother. She was shocked to see her brother in jail. She informed him of the instructions of Atty. Sangalang. At first, Daguinod refused to write a confession but after a while, he decided to comply as he was scared and wanted to be released from the jail. Thus, Daguinod wrote an apology/confession letter which Maribeth gave to Atty. Sangalang. However, Atty. Sangalang refused to accept the letter as it did not mention a date and amount. Upon Atty. Sangalang's instructions, Daguinod made a revised letter[17] containing the amount of ₱10,000.00, with a promise that Daguinod would pay back the amount in installments.[18]

Respondents' counter-allegations

Generation One admitted that Daguinod was its employee. The cooperative alleged that Southgate had discovered the attempted act of dishonesty of Daguinod on April 10, 2011. Generation One asserted that the filing of the complaint was

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[15] *Id*. at 223-225.

[16] *Id*. at 39-42.

[17] *Id*. at 43.

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

premature as the cooperative's investigation of the incident was still ongoing when Daguinod filed the complaint before the Labor Arbiter (LA).[19]

For its part, Southgate asserted that Daguinod was an employee of Generation One and not Southgate. Southgate further alleged that the complaint for illegal dismissal was merely retaliatory as it was Southgate employees who discovered that Daguinod was attempting to steal funds from Southgate.[20]

Southgate denied that Daguinod was coerced into signing the confession. On the issue of labor-only contracting, both Generation One and Southgate averred that Generation One is a legitimate labor contractor and that the Service Agreement between the two companies was valid.[21]

Ruling of the labor tribunals

In a Decision[22] dated June 28, 2012, Labor Arbiter Romelita N. Rioflorido (LA) held that Generation One is a legitimate labor contractor and Daguinod was a regular employee of Generation One. On the issue of illegal dismissal, the LA held that Daguinod was unable to prove that he was illegally dismissed, or even dismissed from service. The LA gave credence to Generation One's averment that its investigation of the allegations against Daguinod was still ongoing, and even Daguinod admitted that he did not receive a formal notice of termination.

Daguinod appealed the case to the National Labor Relations Commission (NLRC) which affirmed the LA's Decision. In its Decision[23] dated December 12, 2012, the NLRC agreed with the LA that Generation One was a legitimate labor contractor as it is a registered cooperative with substantial capital, investment, or equipment to perform its business. It also has

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[19] *Id*. at 208-210.

[20] *Id*. at 90.

[21] See *id*. at 102-104.

[22] *Id*. at 268-277.

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

its own office where its members meet and conduct activities. The NLRC also affirmed the LA's findings that Daguinod was not illegally dismissed; rather, it was Daguinod who prematurely concluded that he had been dismissed.[24] The NLRC denied Daguinod's motion for reconsideration (MR) in its Resolution[25] dated January 25, 2013.

Thus, Daguinod filed a petition for *certiorari*[26] under Rule 65 before the CA alleging that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in affirming the LA's Decision.

The CA Decision

The CA dismissed Daguinod's petition for *certiorari* and affirmed the NLRC Decision. The CA held that aside from Daguinod's mere assertions, there was no corroborative and competent evidence to substantiate his claim that he had been dismissed; if there is no dismissal, there can be no question as to its legality or illegality. The fact of dismissal must be established by positive and overt acts of the employer indicating the intention to dismiss the employee.[27]

The CA further ruled that Generation One is a legitimate labor contractor as it was issued a Certificate of Registration by the Department of Labor and Employment (DOLE). The Service Agreement between Generation One and Southgate clearly states that the former was to provide specific non-core functions and operational activities which included management and supervision of the food chain system, assistance in food preparation and quality control, cleaning of the dining area, comfort room, and other areas of the restaurant, assistance in cash control activities and warehouse and utilities management.[28]

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

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

[26] *Id*. at 2-22.

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

[28] *Id*. at 27.

Daguinod filed an MR which the CA denied in its Resolution[29] dated March 18, 2016.

Thus, Daguinod filed the instant Petition assailing the CA Decision and Resolution. Southgate filed its Comment[30] dated August 17, 2017. Generation One failed to file a Comment despite the grant of its motion for extension to file the same.[31]

Issues

1. Whether Generation One is a legitimate labor contractor.
2. Whether Daguinod's dismissal was valid.

The Court's Ruling

The Petition is meritorious.

Ordinarily, the Court will not disturb the findings of the CA in labor cases especially if they are consistent with the findings of the NLRC and LA, in recognition of the expertise of administrative agencies whose jurisdiction is limited to specific fields of law.[32] Rule 45 petitions should raise only questions of law, as the Court is not duty-bound to analyze and re-examine the evidence already passed upon by the courts or tribunals below.[33]

However, there are recognized exceptions to this rule, as enunciated in *New City Builders Inc. v. National Labor Relations Commission*:[34]

x x x (1) [W]hen the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly

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[29] *Id.* at 31-33.

[30] *Rollo*, pp. 81-113.

[31] See Resolution dated August 1, 2018 granting Generation One's motion for extension of time to file Comment within 10 days; *id*. at 231.

[32] See *Sarona v. National Labor Relations Commission*, 679 Phil. 394, 414 (2012).

[33] See *Sps. Garrido v. Court of Appeals*, 421 Phil. 872, 881 (2001).

[34] 499 Phil. 207 (2005).

mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) **when the judgment is based on a misapprehension of facts;** (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) **when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion**.[35] (Emphasis supplied)

In the instant case, the CA committed grave and serious error in affirming the findings of the NLRC, which had, in turn, affirmed the findings of the LA. The appellate court misappreciated relevant and undisputed facts which if it had correctly considered, would have resulted in the reversal of the erroneous decisions of the labor tribunals. After a judicious review of the facts of the case as borne out by evidence on record, the Court resolves to overturn the CA Decision.

Generation One is <u>not</u> a legitimate labor contractor; Daguinod is a regular employee of Southgate

The outsourcing of services is not prohibited in all instances. In fact, Article 106[36] of the Labor Code of the Philippines[37]

[35] *Id*. at 213, citing *The Insular Life Assurance Co., Ltd. v. Court of Appeals*, 472 Phil. 11, 22-23 (2004).

[36] ART. 106. *Contractor or Subcontractor*. — Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

provides the legal basis for legitimate labor contracting. This provision is further implemented by DOLE Order No. 18, Series of 2002[38] (DO 18-02).

Under Section 4(a) of DO 18-02, legitimate labor contracting or subcontracting refers to an arrangement whereby a principal agrees to put out or farm out with a contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal. The "principal" refers to any employer who puts out or farms out a job, service or work to a contractor or subcontractor.[39]

Meanwhile, labor-only contracting is prohibited and defined under Section 5 of DO 18-02:

Section 5. Prohibition against labor-only contracting. Labor-only contracting is hereby declared prohibited. For this purpose, **labor-only contracting shall refer to an arrangement where the**

The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting-out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him. (Emphasis supplied)

[37] Amended and renumbered by DOLE Department Advisory No. 01, series of 2015 issued on July 21, 2015.

[38] Rules Implementing Articles 106 to 109 of the Labor Code, as amended.

[39] DO 18-02, Sec. 4(d).

contractor or subcontractor merely recruits, supplies, or places workers to perform a job, work or service for a principal, and any of the following elements [is] present:

i) **The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or**

ii) **The contractor does not exercise the right to control over the performance of the work of the contractual employee.**

The foregoing provisions shall be without prejudice to the application of Article 248 (c) of the Labor Code, as amended.

"Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out.

The "right to control" shall refer to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end. (Emphasis supplied)

When there is labor-only contracting, Section 7 of DO 18-02 describes the consequences thereof:

Section 7. Existence of an employer-employee relationship. The contractor or subcontractor shall be considered the employer of the contractual employee for purposes of enforcing the provisions of the Labor Code and other social legislation. The principal, however, shall be solidarity liable with the contractor in the event of any violation of any provision of the Labor Code, including the failure to pay wages.

The principal shall be deemed the employer of the contractual employee in any of the following case, as declared by a competent authority:

(a) where there is labor-only contracting; or

(b) where the contracting arrangement falls within the prohibitions provided in Section 6 (Prohibitions) hereof. (Emphasis supplied)

In *Garden of Memories Park and Life Plan, Inc. v. National Labor Relations Commission,*[40] the Court summarized the above rules accordingly:

x x x [I]n determining the existence of an independent contractor relationship, several factors may be considered, such as, but not necessarily confined to, whether or not the contractor is carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of specified pieces of work; the control and supervision of the work to another; the employer's power with respect to the hiring, firing and payment of the contractor's workers; the control of the premises; the duty to supply premises, tools, appliances, materials and labor; and the mode, manner and terms of payment.

On the other hand, there is labor-only contracting where**: (a) the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others; and (b) the workers recruited and placed by such person are performing activities which are directly related to the principal business of the employer.**[41] (Emphasis supplied)

Based on the foregoing, one of the factors in determining whether there is labor-only contracting is the nature of the employee's job, *i.e.*, whether the work he performs is necessary and desirable to the business of the principal.

In this particular case, it was established that Daguinod was assigned as a counter crew/cashier in Jollibee Alphaland. The Service Contract of Daguinod with Generation One does not disclose the specific tasks and functions that he was assigned to do as counter crew/cashier. Thus, the Court must refer to Annex "A"[42] of the Service Agreement between Generation One

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[40] 681 Phil. 299 (2012).

[41] *Id.* at 310-311.

[42] CA *rollo*, p. 134.

and Southgate which lists the "non-core" functions contracted out by Southgate. The Service Agreement states:

Each of the non-core functions identified cover specific tasks that include, but are not limited to the following:

A. Peripheral activities related to the management and supervision of the food chain system.

B. Assistance in food preparation and quality control.

   1. Prepare food ingredients

   2. Wrap burgers, rice, cake and other food products

C. Peripheral activities related to orderliness, cleanliness and upkeep of dining area, comfort room, glass panels, and other areas.

x x x x x x x x x

D. Assistance in cash control activities

   1. Gathers orders

   2. Assemble food on tray/take-out

E. Assistance in warehouse and utilities management[43]

Daguinod was assigned to perform cash control activities which entails gathering of orders and assembling food on the tray for dine-in customers or for take-out. As cashier, Daguinod was also tasked to receive payments and give change. These tasks are undoubtedly necessary and desirable to the business of a fast food restaurant such as Jollibee. The service of food to customers is the main line of business of any restaurant. It is not merely a non-core or peripheral activity as Generation One and Southgate claim. It is in the interest of Southgate, franchise owner of Jollibee, that its customers be served food in a timely manner. Respondents' position that the gathering of orders and service of food to customers are "non-core" functions or peripheral activities is simply preposterous and is contrary to the basic business model of a fast food restaurant.

[43] *Id*.

These circumstances lead to no other conclusion than that Daguinod was a regular employee of Southgate and that Generation One was a mere agent of Southgate.

The ownership of substantial capital in the form of tools, equipment, machineries, work premises, and other properties, by the contractor is another factor in establishing whether it is legitimate. The NLRC held that Generation One was able to prove that it had substantial capital, proving that it was a legitimate labor contractor. The Court disagrees.

Generation One submitted only one Income Tax Return (ITR) for the year ended December 2010 showing a gross income of ₱9,564,065.00.[44] The submission of one ITR for one fiscal year can hardly be considered substantial evidence to prove that the cooperative has substantial capital. Furthermore, the Court cannot give credence to the ITR as it does not appear to have been submitted to the Bureau of Internal Revenue. Generation One likewise did not submit any Audited Financial Statements (AFS) to show its assets, liabilities, and equity. It only submitted the Notes to the AFS[45] for the year ended 2010 which does not show a complete picture of its financial standing. In fine, the documents submitted are insufficient to prove that Generation One possesses substantial capital to be considered a legitimate labor contractor.

In arriving at its Decision, the CA also relied on the Certificate of Registration[46] as an independent contractor issued by the DOLE to Generation One. However, the Court has previously ruled that said registration is not conclusive evidence of legitimate status. In *San Miguel Corporation v. Semillano*,[47] the Court ruled:

> Petitioner cannot rely either on AMPCO's Certificate of Registration as an Independent Contractor issued by the proper Regional Office

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[44] *Id*. at 257-258.

[45] *Id*. at 259-267.

[46] *Rollo*, p. 125.

[47] 637 Phil. 115 (2010).

of the DOLE to prove its claim. It is not conclusive evidence of such status. **The fact of registration simply prevents the legal presumption of being a mere labor-only contractor from arising. In distinguishing between permissible job contracting and prohibited labor-only contracting, the totality of the facts and the surrounding circumstances of the case are to be considered.**[48] (Emphasis supplied)

Thus, registration with DOLE as an independent contractor does not automatically vest it with the status of a legitimate labor contractor, it is merely presumptive proof. In the instant case, the totality of circumstances reveals that Generation One, despite its DOLE registration, is not a legitimate labor contractor.

As astutely noted by Associate Justice Estela M. Perlas-Bernabe during the deliberations of this case, Section 5 of DO 18-02 speaks of a second instance, where the "right to control" must be exercised by the contractor, otherwise, the arrangement shall be considered to be labor only contracting.

The Court notes that on April 10, 2011, the administrative investigation was conducted by Jollibee Alphaland's manager-on-duty Geling, in the presence of security guard Rivero. The handwritten NTEs, although bearing the header and name of Generation One were served upon Daguinod by Southgate manager Geling. Thus, Southgate took it upon itself to discipline Daguinod for an alleged violation of its company rules, regulations, and policies, validating the presence of its right to control Daguinod.

A perusal of Daguinod's Service Contract shows that the specific work responsibilities were unspecified, leaving the "[o]ther requirements to perform the services [to] be part of the orientation at the designated place of assignment,"[49] thus, suggesting that the right to determine not only the end to be achieved, but also the manner and means to achieve that end,

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[48] *Id*. at 129-130.

[49] CA *rollo*, p. 124.

was reposed in Southgate. Consequently, Southgate shall be deemed as the direct employer of Daguinod.

The CA also relied heavily on the Service Agreement between Generation One and Southgate which provided for the scope of the agreement as well as the proviso that there would be no employer-employee relationship between Southgate and Generation One's employees.

The Court holds that it was erroneous for the CA to place reliance on the contracts as the provisions therein are not the sole determining factor in ascertaining the true nature of the relationship between the principal, contractor, and employees. As held in *Petron v. Caberte*:[50]

> x x x [T]he character of the business, whether as labor-only contractor or as a job contractor, should be determined by the criteria set by statute and the parties cannot dictate by the mere expedience of a unilateral declaration in a contract the character of their business.[51]

In the instant case, the badges of labor-only contracting are too blatant to ignore and the Court cannot blindly rely on the contractual declarations of respondents.

With the finding that Generation One is a labor-only contractor, Daguinod is considered a regular employee of Southgate, as provided under Section 7[52] of DO 18-02.

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[50] 759 Phil. 353 (2015).

[51] *Id*. at 367.

[52] ***Section 7. Existence of an employer-employee relationship.*** The contractor or subcontractor shall be considered the employer of the contractual employee for purposes of enforcing the provisions of the Labor Code and other social legislation. The principal, however, shall be solidarity liable with the contractor in the event of any violation of any provision of the Labor Code, including the failure to pay wages.

The principal shall be deemed the employer of the contractual employee in any of the following cases, as declared by a competent authority:

(a) where there is labor-only contracting; or

(b) where the contracting arrangement falls within the prohibitions provided in Section 6 (Prohibitions) hereof. (Emphasis supplied)

Daguinod was illegally dismissed

The employer must comply with substantive and procedural due process in the dismissal of an employee. Substantive due process pertains to the just and authorized causes for dismissal as provided under Articles 297,[53] 298,[54] and 299[55] of the Labor Code.

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[53] ART. 297. [282] *Termination by Employer*. — An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

(e) Other causes analogous to the foregoing.

[54] ART. 298. [283] *Closure of Establishment and Reduction of Personnel.* — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

[55] ART. 299. [284] *Disease as Ground for Termination*. — An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: *Provided*, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever

Procedural due process pertains to the twin requirements of notice and hearing, as explained by the Court in *Noblado v. Alfonso*:[56]

x x x The employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first notice apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second notice informs the employee of the employer's decision to dismiss him. Before the issuance of the second notice, the requirement of a hearing must be complied with by giving the worker an opportunity to be heard. It is not necessary that an actual hearing be conducted.[57]

In *King of Kings Transport, Inc. v. Mamac*,[58] the Court expounded on the requirements of procedural due process:

(1) The **first written notice** to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, are violated and/or which among the grounds under Art. 282 is being charged against the employees.

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is greater, a fraction of at least six (6) months being considered as one (1) whole year.

[56] 773 Phil. 271 (2015).

[57] *Id*. at 282.

[58] 553 Phil. 108 (2007).

(2) After serving the first notice, the employers should schedule and conduct a **hearing or conference** wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a **written notice of termination** indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment.[59] (Emphasis supplied)

In this case, there was non-compliance with procedural due process as the NTEs did not contain the specific information required under the law. Moreover, Daguinod was not given a reasonable opportunity to submit his written explanation as he was ordered to immediately answer the NTEs.

The CA and labor tribunals no longer discussed the above requirements as it accepted Generation One's assertion that Daguinod was not dismissed from service as its investigation of the incident was ongoing and it was Daguinod who wrongly presumed that he was dismissed and prematurely filed the complaint.[60]

The Court cannot countenance such a simplistic explanation. It was reasonable for Daguinod to believe that he had been dismissed from service due to the events of April 10, 2011. On the said date, Daguinod was accused of theft after having an overage in the cash register of ₱106.00. He was served two NTEs which he had to answer on the same day. He was not

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

[60] See Generation One's Position Paper dated December 6, 2011, CA *rollo*, p. 210.

given time to prepare a proper defense or was not informed of his right to seek representation and counsel. He was, to the contrary, immediately arrested and imprisoned without warrant from April 10 to April 13, 2011. Thereafter, when he called Generation One to inquire about the status of his employment and his back pay, he was told by Cruz, Generation One's Resource Area Coordinator, that his employment was terminated effective May 13, 2011. Thus, Daguinod cannot be faulted for believing that his employment had been terminated.

Generation One claimed that it was conducting an investigation of the incident but did not submit any proof of the investigation or the results thereof. The Court notes that Generation One did not deny the phone call between Cruz and Daguinod but merely posited Cruz to be a mere employee of Generation One who has no part in the recruitment process. Again, the Court is unconvinced. Cruz does not appear to be an ordinary employee of Generation One as he was the signatory of Daguinod's Service Contract. As well, Generation One did not send a Return-to-Work Order to Daguinod if indeed it still considered him an employee.

In the similar case of *Robinsons Galleria/Robinsons Supermarket Corp. v. Ranchez*,[61] the Court held that the employee was illegally dismissed, thus:

> In the instant case, based on the facts on record, petitioners failed to accord respondent substantive and procedural due process. The haphazard manner in the investigation of the missing cash, which was left to the determination of the police authorities and the Prosecutor's Office, left respondent with no choice but to cry foul. Administrative investigation was not conducted by petitioner Supermarket. On the same day that the missing money was reported by respondent to her immediate superior, the company already pre-judged her guilt without proper investigation, and instantly reported her to the police as the suspected thief, which resulted in her languishing in jail for two weeks.
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> x x x x x x x x x

[61] 655 Phil. 133 (2011).

Respondent was constructively dismissed by petitioner Supermarket effective October 30, 1997. It was unreasonable for petitioners to charge her with abandonment for not reporting for work upon her release in jail. It would be the height of callousness to expect her to return to work after suffering in jail for two weeks. Work had been rendered unreasonable, unlikely, and definitely impossible, considering the treatment that was accorded respondent by petitioners.[62]

The haphazard way in which the accusations were thrown against Daguinod and how the investigation was conducted shows bad faith on the part of Southgate and Generation One. Daguinod spent three days in jail for an alleged attempted theft of ₱106.00. There was a pre-judgment of guilt without a proper investigation. Thus, Daguinod was constructively dismissed effective on April 10, 2011.

Daguinod is entitled to full backwages, separation pay, moral and exemplary damages, and attorney's fees

Article 294 of the Labor Code provides that an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges, full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.[63] When reinstatement is no longer viable such as when the parties have strained relations, separation pay may be awarded as an alternative.[64]

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[62] *Id*. at 140-141.

[63] ART. 294. [279] *Security of Tenure*. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[64] *Peak Ventures Corp. v. Heirs of Nestor B. Villareal*, 747 Phil. 320, 335 (2014).

In *Aliling v. Feliciano*[65] (*Aliling*), citing *Golden Ace Builders v. Talde*,[66] the Court awarded both backwages and separation pay:

> The basis for the payment of backwages is different from that for the award of separation pay. Separation pay is granted where reinstatement is no longer advisable because of strained relations between the employee and the employer. Backwages represent compensation that should have been earned but were not collected because of the unjust dismissal. The basis for computing backwages is usually the length of the employee's service while that for separation pay is the actual period when the employee was unlawfully prevented from working.[67]

Undeniably, reinstatement is no longer feasible due to the strained relations of the parties and considering as well the length of time that has passed since the filing of this case. Thus, separation pay is awarded in lieu thereof.

Daguinod is likewise entitled to moral and exemplary damages as his dismissal was attended with bad faith. Moral damages are awarded in illegal termination cases when the employer acted (a) in bad faith or fraud; (b) in a manner oppressive to labor; or (c) in a manner contrary to morals, good customs, or public policy.[68] In addition to moral damages, exemplary damages may be imposed by way of example or correction for the public good.[69] In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.[70]

In the instant case, Southgate and Generation One clearly acted in bad faith. The respondents created a subterfuge of legitimate labor contracting to avoid the regularization of

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[65] 686 Phil. 889 (2012).

[66] 634 Phil. 364, 369 (2010).

[67] *Aliling v. Feliciano*, *supra* note 65, at 916.

[68] *Montinola v. PAL*, 742 Phil. 487, 505 (2014).

[69] *Id*. at 510.

[70] CIVIL CODE, Art. 2232.

Daguinod. More significantly, respondents haphazardly accused Daguinod of theft without sufficient proof which resulted in his incarceration for three days. Thus, Daguinod is entitled to moral and exemplary damages of ₱200,000.00 and ₱100,000.00, respectively.[71]

The Court also awards Daguinod attorney's fees of 10% of the total monetary award. In *Aliling*, citing *Rutaquio v. NLRC*,[72] the Court held:

> It is settled that in actions for recovery of wages or where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable.[73]

Daguinod was compelled to litigate to enforce his rights which had been unjustly and blatantly violated by Generation One and Southgate, thus, he is entitled to attorney's fees.

Finally, the monetary award herein granted shall earn legal interest of 12% per annum from April 10, 2011, the date of constructive dismissal, until June 30, 2013 in line with the Court's ruling in *Nacar v. Gallery Frames*.[74] From July 1, 2013 until full satisfaction of the award, the interest rate shall be at 6%. The total amount of the foregoing shall, in turn, earn interest at the rate of 6% per annum from finality of this Decision until full payment.[75] The liability of Generation One and Southgate shall be joint and solidary.

WHEREFORE, premises considered, the Petition is **GRANTED**. The Court further **RESOLVES** to:

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[71] See *San Miguel Properties, Philippines, Inc. v. Gucaban*, 669 Phil. 288 (2011).

[72] 375 Phil. 405, 418 (1999).

[73] *Aliling v. Feliciano*, *supra* note 65, at 922.

[74] 716 Phil. 267 (2013). Consequently, the twelve percent (12%) *per annum* legal interest shall apply only until June 30, 2013. Come July 1, 2013 the new rate of six percent (6%) *per annum* shall be the prevailing rate of interest *when applicable. Id*. at 281.

[75] See *id*. at 281.

1. **REVERSE** and **SET ASIDE** the assailed Decision dated January 28, 2016 and Resolution dated March 18, 2016 of the Court of Appeals in CA-G.R. SP No. 129296;

2. **AWARD** petitioner Marvin O. Daguinod the following:

   (a) full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent from April 10, 2011 until finality of this judgment;

   (b) separation pay in lieu of reinstatement computed from April 10, 2011 until finality of this judgment,

   (c) moral damages of ₱200,000.00;

   (d) exemplary damages of ₱100,000.00; and

   (e) attorney's fees of 10% of the monetary award

   which shall be the **JOINT AND SOLIDARY LIABILITY** of Generation One Resource Service and Multi-Purpose Cooperative and Southgate Foods, Inc.;

3. The monetary award shall earn legal interest of 12% per annum from April 10, 2011 until June 30, 2013, and 6% from July 1, 2013 until full satisfaction of the award. The total amount of the foregoing shall, in turn, earn interest at the rate of 6% per annum from finality of this Decision until full payment; and

4. **REMAND** the case to the Labor Arbiter for the proper computation of backwages and separation pay and for execution of the award.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe, Reyes, J. Jr.*, and *Hernando*,[**] *JJ.*, concur.

[**] Designated additional Member per Special Order No. 2630 dated December 18, 2018.

SECOND DIVISION

[G.R. No. 229106. February 20, 2019]

TIONG BI, INC. [owner of Bacolod Our Lady Of Mercy Specialty Hospital], *petitioner, vs.* **PHILIPPINE HEALTH INSURANCE CORPORATION,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION IS NOT THE PROPER REMEDY IN CASE AT BAR; AN ORDER GRANTING OR DENYING AN APPLICATION FOR TEMPORARY RESTRAINING ORDER IS INTERLOCUTORY AND, THUS, UNAPPEALABLE.—** [I]t should be pointed out that the petitioner resorted to an improper remedy before this Court. Section 1(c), Rule 41 of the same Rules expressly provides that no appeal may be taken from an interlocutory order. An interlocutory order, as opposed to a final judgment or order, is one that does not dispose of the case completely but leaves something to be decided upon. Petitioner resorted to a petition for review on *certiorari* under Rule 45 of the Rules of Court to question the denial of its motion for issuance of an injunctive relief. An order granting or denying an application for a TRO or a preliminary injunction is interlocutory in nature and, thus, unappealable. The proper remedy is to file a petition for *certiorari* and/or prohibition under Rule 65 of the same Rules.

2. **ID.; ID.; ID.; ID.; RULE 45 PETITION IS LIMITED TO QUESTIONS OF LAW.—** [A] close reading of the arguments raised by the petitioner would readily show that they are factual in nature. While petitioner is ascribing grave abuse of discretion on the part of the CA in denying its motion for TRO, it basically seeks to enjoin the implementation of the PhilHealth Resolution questioned before the CA for allegedly being unfounded and erroneous. Undoubtedly, such endeavor would require an examination of evidence. Petitioner is questioning before this Court the exact same PhilHealth Resolution being questioned before the CA at present and on the same grounds raised therein. It is basic that a petition for review under Rule 45 of the Rules

of Court may raise only questions of law. This Court is not a trier of facts and we are not duty-bound to re-examine evidence especially when the court *a quo* had not yet even ruled on the merits of the main case. To rule otherwise would effectively preempt the proceedings before the CA.

3. ID.; SPECIAL CIVIL ACTIONS; INJUNCTION, NATURE OF; ELEMENTS THAT MUST BE PROVED TO BE ENTITLED TO AN INJUNCTIVE WRIT.— The grant or denial of a TRO or an injunctive writ rests on the sound discretion of the court taking cognizance of the case, since the assessment and evaluation of evidence towards that end involves findings of facts left to the said court for its conclusive determination. Verily, the exercise of judicial discretion by a court in injunctive matters must not be interfered with, unless there is grave abuse of discretion. x x x In the issuance or denial of an injunctive writ, grave abuse of discretion implies a capricious and whimsical exercise of judgment equivalent to lack of jurisdiction; or the exercise of power in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. x x x To be entitled to the injunctive writ, petitioner must show that (1) there exists a clear and unmistakable right to be protected; (2) this right is directly threatened by an act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage. As correctly ruled by the CA, essential for the grant of the injunctive relief is the existence of an urgent necessity to prevent serious damage. A TRO is issued only if the matter is of such extreme urgency that grave injustice and irreparable injury will arise unless it is issued immediately. Parenthetically, the burden is on the petitioner to show in the application that there is meritorious ground for the issuance of the TRO in its favor.

4. ID.; ID.; ID.; ID.; NO GRAVE AND IRREPARABLE INJURY EXISTS IN THIS CASE THAT WOULD JUSTIFY THE ISSUANCE OF AN INJUNCTIVE WRIT.— To support its claim of urgency and irreparable injury, petitioner sweepingly concluded that the penalty imposed by the subject PhilHealth Resolution would prejudice not only its current patients but also the public in general as they will be deprived of one of the

few health providers in the region if the penalty will be implemented. This argument deserves scant consideration. As stated, petitioner is not the only health service provider in the region. Hence, the suspension of its PhilHealth accreditation and the imposition of fine against it will not, in any way, hamper the delivery of health care services to the public, contrary to what the petitioner would want to impress to this Court. More importantly, it should be stressed that the subject PhilHealth Resolution merely imposes a fine and the suspension of the hospital's PhilHealth accreditation *not* the closure of the hospital. Hence, neither will petitioner's health care services be forestalled by the implementation of the penalty sought to be restrained. If at all, it is merely the members' benefits which may temporarily be hampered when the penalty is implemented. Such damage, if any, is easily quantifiable and, as such, cannot be considered as "grave and irreparable injury" as contemplated under the law.

APPEARANCES OF COUNSEL

Nelson A. Loyola for petitioner.
Office of the Government Corporate Counsel for respondent.

D E C I S I O N

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

Before us is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, assailing the Resolutions dated August 10, 2016[2] and January 12, 2017[3] of the Court of Appeals (CA) in CA-G.R. SP No. 144704, denying Tiong Bi, Inc.'s (petitioner) Extremely Urgent Motion for Immediate Issuance of Temporary Restraining Order.

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[1] *Rollo*, pp. 11-78.

[2] Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Franchito N. Diamante and Zenaida T. Galapate-Laguilles, concurring; *id*. at 102-104.

[3] *Id*. at 123-124.

The instant petition is rooted from charges of "Padding of Claims" and "Misrepresentation by Furnishing False and Incorrect Information" against petitioner before respondent Philippine Health Insurance Corporation (PhilHealth). These charges, in turn, stemmed from similar charges against two PhilHealth-accredited eye surgeons, who used petitioner's facilities and the services of its staff to attend to the needs of said physicians.[4]

Briefly, the charges of fraudulent benefit claims include padding of prescriptions and recommending of medicines and supplies such as oxygen and intravenous fluids not needed by the patients nor actually provided by the hospital or the doctors.[5]

In a Decision dated August 1, 2008, PhilHealth's Arbitration Department dismissed the charges against the two doctors for lack of merit. This Decision was affirmed by the PhilHealth Board.[6]

On the other hand, in PhilHealth Board Resolution No. 2040, S. 2016 dated February 24, 2016, PhilHealth affirmed with modification the July 30, 2010 Decision of Arbiter Darwin G. De Leon, finding petitioner guilty, for the second time, of a fraudulent offense. In accordance with the Revised Internal Rules of the PhilHealth Board on Appealed Administrative Cases, the reduced penalty of six months and one day suspension of accreditation and a fine of ₱10,000.00 for each count of Padding of Claims for a total of ₱170,000.00 were imposed upon petitioner. It was further ordered that the restitution for any payment made by PhilHealth for the claim/s subject of the case be made by petitioner or be charged and deducted from the proceeds of any pending or future claims of petitioner with PhilHealth. Lastly, petitioner was sternly warned that a repetition of the same or similar offense shall be dealt with more severely.[7]

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[4] *Id*. at 16.

[5] *Id*. at 23.

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

[7] *Id*. at 26-30.

Aggrieved, petitioner appealed the said PhilHealth Resolution before the CA through a petition for *certiorari* under Rule 43 of the Rules of Court. Petitioner likewise filed therein an Extremely Urgent Motion for Immediate Issuance of Temporary Restraining Order (TRO). Petitioner basically argues that the PhilHealth Resolution was erroneous for allegedly being based on a wrong case, which was said to be heard by a different arbiter. Also, petitioner insists that the charges against the two doctors were dismissed for lack of merit, the charges against it which were grounded upon the same set of facts should likewise be dismissed.[8]

As for the motion for issuance of TRO, petitioner cited the general concepts of public interest, public health, and safety to support its claim of irreparable injury and urgency. Specifically, petitioner averred that it is one of the biggest health providers in Negros and the threatened closure of its hospital by virtue of the subject PhilHealth Resolution would impede the health measures it can provide to contain certain epidemic in the country. According to petitioner, the flawed PhilHealth Resolution put in grave peril the safety, life and health of the patients confined in its hospital.[9]

In its August 10, 2016 Resolution,[10] the CA denied petitioner's motion for issuance of TRO, finding no actual existing right to be protected on the part of the petitioner nor the possibility of irreparable injury.

In its January 12, 2017 Resolution,[11] the CA likewise denied petitioner's motion for reconsideration of the August 10, 2016 Resolution.

Notably, the main case remains to be pending with the CA for resolution.

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

[9] *Id.*

[10] *Supra* note 2.

[11] *Supra* note 3.

Petitioner now comes before this Court through the instant petition for review on *certiorari* under Rule 45 of the Rules of Court on the pretext that it is grounded on pure questions of law. Specifically, petitioner contends that the CA erred in refusing to issue an injunctive writ, endangering, thus, public safety and exposing the public to the hazard and risk of a health crisis. Reiterating its argument in its pending appeals before the CA, petitioner argues that the threatened closure of its hospital would put the safety, life, and health of its confined patients to grave peril. Further, petitioner avers that closing a major health service provider such as petitioner's hospital, in a region with few hospitals, would create a crisis.

Petitioner also assails in the instant petition the subject PhilHealth Resolution, pointing out that it was based on a wrong case; that it has no factual and legal bases; and that it was based merely on surmises, guesswork, and assumptions, among others.

We resolve.

At the outset, it should be pointed out that the petitioner resorted to an improper remedy before this Court. Section 1(c), Rule 41 of the same Rules expressly provides that no appeal may be taken from an interlocutory order. An interlocutory order, as opposed to a final judgment or order, is one that does not dispose of the case completely but leaves something to be decided upon. Petitioner resorted to a petition for review on *certiorari* under Rule 45 of the Rules of Court to question the denial of its motion for issuance of an injunctive relief. An order granting or denying an application for a TRO or a preliminary injunction is interlocutory in nature and, thus, unappealable. The proper remedy is to file a petition for *certiorari* and/or prohibition under Rule 65 of the same Rules.[12]

Furthermore, a close reading of the arguments raised by the petitioner would readily show that they are factual in nature. While petitioner is ascribing grave abuse of discretion on the part of the CA in denying its motion for TRO, it basically seeks

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[12] *Australian Professional Realty, Inc. v. Municipality of Padre Garcia, Batangas*, 684 Phil. 283, 291 (2012).

to enjoin the implementation of the PhilHealth Resolution questioned before the CA for allegedly being unfounded and erroneous. Undoubtedly, such endeavor would require an examination of evidence. Petitioner is questioning before this Court the exact same PhilHealth Resolution being questioned before the CA at present and on the same grounds raised therein. It is basic that a petition for review under Rule 45 of the Rules of Court may raise only questions of law. This Court is not a trier of facts and we are not duty-bound to re-examine evidence especially when the court *a quo* had not yet even ruled on the merits of the main case.[13] To rule otherwise would effectively preempt the proceedings before the CA.

The present petition may, thus, be dismissed outright for being an improper remedy.[14]

At any rate, even if we treat this case as a petition under Rule 65, it shall still fail for lack of merit.

The grant or denial of a TRO or an injunctive writ rests on the sound discretion of the court taking cognizance of the case, since the assessment and evaluation of evidence towards that end involves findings of facts left to the said court for its conclusive determination. Verily, the exercise of judicial discretion by a court in injunctive matters must not be interfered with, unless there is grave abuse of discretion.[15]

The only issue, therefore, that confronts us is limited to the matter of whether the CA's denial of petitioner's motion for issuance of TRO was tainted with grave abuse of discretion.

In the issuance or denial of an injunctive writ, grave abuse of discretion implies a capricious and whimsical exercise of judgment equivalent to lack of jurisdiction; or the exercise of power in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive

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[13] See *Department of Public Works and Highways v. City Advertising Ventures Corp.*, 799 Phil. 47, 58-59 (2016).

[14] *Ortega v. Social Security Commission*, 578 Phil. 338, 346 (2008).

[15] *Barbieto v. Court of Appeals*, 619 Phil. 819, 835 (2009).

duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[16]

In this case, the Court finds no grave abuse of discretion on the part of the CA in denying the issuance of a TRO.

To be entitled to the injunctive writ, petitioner must show that (1) there exists a clear and unmistakable right to be protected; (2) this right is directly threatened by an act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.[17]

As correctly ruled by the CA, essential for the grant of the injunctive relief is the existence of an urgent necessity to prevent serious damage. A TRO is issued only if the matter is of such extreme urgency that grave injustice and irreparable injury will arise unless it is issued immediately. Parenthetically, the burden is on the petitioner to show in the application that there is meritorious ground for the issuance of the TRO in its favor.[18] In this case, we are one with the CA in finding that the petitioner failed to discharge such burden.

To support its claim of urgency and irreparable injury, petitioner sweepingly concluded that-the penalty imposed by the subject PhilHealth Resolution would prejudice not only its current patients but also the public in general as they will be deprived of one of the few health providers in the region if the penalty will be implemented.

This argument deserves scant consideration.

As stated, petitioner is not the only health service provider in the region. Hence, the suspension of its PhilHealth accreditation and the imposition of fine against it will not, in

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[16] *AMA Land, Inc. v. Wack Wack Residents' Association, Inc.*, G.R. No. 202342, July 19, 2017.

[17] *Australian Professional Realty, Inc. v. Municipality of Padre Garcia, Batangas*, *supra* note 12, at 292.

[18] *Brizuela v. Dingle*, 576 Phil. 611, 622 (2008).

any way, hamper the delivery of health care services to the public, contrary to what the petitioner would want to impress to this Court. More importantly, it should be stressed that the subject PhilHealth Resolution merely imposes a fine and the suspension of the hospital's PhilHealth accreditation *not* the closure of the hospital. Hence, neither will petitioner's health care services be forestalled by the implementation of the penalty sought to be restrained. If at all, it is merely the members' benefits which may temporarily be hampered when the penalty is implemented. Such damage, if any, is easily quantifiable and, as such, cannot be considered as "grave and irreparable injury" as contemplated under the law. The Court in *Heirs of Melencio Yu v. Court of Appeals*,[19] citing *Social Security Commission v. Bayona*[20] explained the concept of irreparable damage or injury as follows:

> Damages are irreparable within the meaning of the rule relative to the issuance of injunction where there is no standard by which their amount can be measured with reasonable accuracy. "An irreparable injury which a court of equity will enjoin includes that degree of wrong of a repeated and continuing kind which produce hurt, inconvenience, or damage that can be estimated only by conjecture, and not by any accurate standard of measurement." x x x

Here, the only possible injury which may be perceived is easily subject to mathematical computation.

In sum, this Court finds no reversible error, much less, grave abuse of discretion, on the part of the CA in denying the motion for the issuance of the TRO. What is more, the prevailing rule is that the courts should avoid resorting to interlocutory injunctive reliefs that would in effect preempt the resolution of the main case.

WHEREFORE, premises considered, the instant petition is **DENIED**. The Resolutions dated August 10, 2016 and January 12, 2017 of the Court of Appeals in CA-G.R. SP No. 144704

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[19] 717 Phil. 284, 301 (2013).

[20] 115 Phil. 106, 110-111 (1962).

are **AFFIRMED**. The Court of Appeals is **DIRECTED** to resolve CA-G.R. SP No. 144704 with dispatch.

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Perlas-Bernabe, Caguioa*, and *Hernando*,[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 233833. February 20, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROMULO ARAGO, JR.** ***y*** **COMO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); SECTION 5, ARTICLE II THEREOF ON ILLEGAL DELIVERY OF DANGEROUS DRUGS; ELEMENTS. — Section 5, Article II of R.A. No. 9165 does not only punish the sale of dangerous drugs but also its administration, dispensation, delivery, distribution and transportation. The Information against appellant reads, in part, "knowingly, willfully, and criminally **transport or deliver one (1) heat-sealed transparent plastic sachet containing Methamphetamine Hydrochloride,** more commonly known as *shabu.*" Hence, appellant was convicted not because of the sale of dangerous drugs which has consideration as its element, but because of the delivery of a dangerous drug. Section 3(k), of R.A. No. 9165 defines delivery as *"any act of knowingly passing a dangerous drug to another, personally or otherwise, and by any means,* ***with or without consideration****."* The elements of illegal delivery of dangerous drugs are: (1) the accused passed on possession of a dangerous drug to another, personally or

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[*] Additional Member per S.O. No. 2630 dated December 18, 2018.

otherwise, and by any means; (2) such delivery is not authorized by law; and (3) the accused knowingly made the delivery. Thus, delivery may be committed even without consideration.

2. ID.; ID.; ID.; MARKED MONEY IS NOT NECESSARY TO CONSUMMATE THE CRIME. — Appellant insists that the absence of money and the non-presentation of a marked money as evidence negates the finding that he committed the offense laid down in Section 5, Article II of R.A. No. 9165. In *People v. De la Cruz,* the Court held that the presentation of the marked money, as well as the fact that the money was paid in exchange for the delivery of dangerous drugs, were unnecessary to consummate the crime, x x x As found by the RTC and the CA, PO2 Olea was informed by his asset prior to their operation that no money or any form of consideration would be exchanged for the *shabu* that he would be obtaining from appellant, hence, there was no marked money prepared by the police officers.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED. — It cannot be overemphasized that in cases involving violations of the Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary. In this case, appellant failed to present evidence to refute the testimony and credibility of the witnesses for the prosecution. Additionally, in weighing the testimonies of the prosecution's witnesses *vis-a-vis* that of the defense, it is a well-settled rule that in the absence of palpable error or grave abuse of discretion on the part of the trial judge, the trial court's evaluation of the credibility of witnesses will not be disturbed on appeal. As to appellant's defense of denial and claim of frame-up, such cannot prevail over the positive testimonies of the prosecution witnesses. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence, which appellant failed to present in this case.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

This is an appeal of the Court of Appeals' (*CA*) Decision[1] dated March 28, 2017 in CA-G.R. CR HC No. 07585 dismissing Romulo C. Arago, Jr.'s appeal and affirming the Decision[2] dated April 17, 2015 of the Regional Trial Court *(RTC),*Branch 3, Batangas City, convicting the same appellant of Violation of Section 5, Article II, Republic Act No. *(R.A.)* 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002.*

The facts follow.

On November 24, 2012, around 10 o'clock in the evening, PO2 Alexander N. Olea (PO2 *Olea)* received an information from his asset that an *alias* Danica will be delivering *shabu* worth Seven Thousand Pesos (₱7,000.00) for sale on consignment at Phase 2, San Isidro Village, *Barangay* San Isidro, Batangas City. As such, PO2 Olea immediately relayed the information to PO1 Pepito Adelantar *(PO1 Adelantar*), PO3 Jonas Guarda *(PO3 Guarda)* and P/Supt. Carlos E. Barde. Afterwards, a team of police officers was formed to plan an operation against the alleged offender.

PO1 Adelantar prepared the Pre-Operation Report and Coordination Form indicating a "buy-bust operation" and sent the same through electronic mail to Philippine Drug Enforcement Agency *(PDEA),* which in turn gave a green light. A police blotter detailing their departure was, likewise, entered by the duty desk officer, PO2 Dennis Piad.

The team, before proceeding to the designated meeting area, stopped over the *barangay* outpost of San Isidro in order to coordinate with the *barangay* officials. When they arrived at San Isidro Village, PO2 Olea, PO3 Guarda, and the asset, waited

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[1] Penned by Associate Justice Renato C. Francisco with the concurrence of Associate Justices Ramon M. Bato, Jr. and Manuel M. Barrios; *rollo,* pp. 2-19.

[2] Penned by Judge Ruben A. Galvez; CA *rollo,* pp. 40-48.

at the gate of the village. Thereafter, a Honda motorcycle arrived with two (2) men on board, with one of them sporting a long hair. It was then that the asset informed PO2 Olea that the rider was *alias* Danica or the appellant herein, Romulo Arago, and that the motorcycle driver was later identified as Kerby De Chavez *(De Chavez).* Appellant alighted from the motorcycle which was more or less one (1) meter from the asset, while PO3 Guarda stood around five (5) to seven (7) meters away at the guardhouse of San Isidro Village. Then, appellant brought out a pink coin purse from his pocket that contained a sachet of suspected *shabu* and handed the latter to the asset while saying, *"Yan, pitong libo yan."* Immediately thereafter, PO2 Olea identified himself as a police officer and arrested appellant. PO3 Guarda approached them and arrested De Chavez, who has been sitting throughout the operation on the motorcycle. Appellant and De Chavez were then informed of their rights. PO2 Olea proceeded to mark the seized plastic sachet and pink coin purse with his initials "ANO" and the date "11-24-11," while PO3 Guarda took a photograph of the same item.

Eventually, appellant and De Chavez were brought to the *barangay* outpost of San Isidro where they were met by PO1 Adelantar. While on their way to the *barangay* outpost, PO2 Olea retained possession of the seized items and, thereafter, accomplished the Chain of Custody Report. The evidence was, subsequently, turned over to PO1 Adelantar. A Certificate of Inventory was then accomplished before *barangay kagawad* Eustaquio Ronquillo, DOJ Representative Prosecutor Evelyn Jovellanos, and media representative Maricia Lualhati.

The team, together with appellant and De Chavez, proceeded to the Batangas City Police Station where proper documentations were prepared. PO1 Adelantar then brought the Request for Laboratory Examination, along with the specimen, to the Provincial Crime Laboratory. After the conduct of a qualitative examination on the specimen, the latter was found positive for the presence of Methamphetamine Hydrochloride, a dangerous drug.

Consequently, an Information was filed against appellant and De Chavez for violation of Section 5, Article II of R.A. 9165, which reads as follows:

> That on or about November 24, 2011 at around 11:45 in the evening at Phase 2, Brgy. San Isidro, Batangas City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, not being authorized by law, did then and there, knowingly, willfully, and criminally transport or deliver one (1) heat-sealed transparent plastic sachet containing Methamphetamine Hydrochloride, more commonly known as shabu, weighing 0.41 gram, a dangerous drug, which is a clear violation of the above-cited law.
>
> That the aggravating circumstance of the use of motor vehicle is attendant in the commission of the offense.
>
> CONTRARY TO LAW.[3]

Appellant and De Chavez pleaded not guilty to the charge against them. Hence, the trial on the merits ensued.

The prosecution presented the testimonies of PO2 Olea, PO3 Guarda, PO1 Adelantar and PSI Herminia Llacuna, a forensic chemist.

After the court admitted the prosecution's evidence, appellant and De Chavez filed their respective Demurrer to Evidence[4] with prior leave of court. In an Order[5] dated July 22, 2014, the RTC denied the Demurrer to Evidence of appellant, but granted the Demurrer to Evidence of De Chavez and dismissed the case against him on the ground of insufficiency of evidence.

Appellant, thereafter, presented his own testimony and that of De Chavez. According to appellant, on November 24, 2011, he and De Chavez were at his house in Sta. Clara, Batangas, when a certain Greg called and invited him to a drinking session at *Barangay* San Isidro. Appellant requested De Chavez to

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[3] *Id.* at 40.

[4] Records, pp. 198-206.

[5] *Id.* at 223.

accompany him. De Chavez drove a motorcycle with appellant riding on the back of the vehicle. When they arrived at San Isidro Village, they did not proceed inside the village, as they were told that Greg would fetch them at the gate. While they were waiting at the gate, two (2) masked men approached them and held their hands. Thinking that the two men were robbers, De Chavez handed the keys of the motorcycle to one of the men when one them asked for the said key. The motorcycle's compartment was searched, but yielded nothing. It was then that appellant and De Chavez were handcuffed and arrested.

After their pictures were taken beside the motorcycle, appellant and De Chavez were made to board a mobile patrol car and were brought to the Batangas City Police Station. At the police station, they were interrogated about the identity of a certain "Doktora," but both of them denied knowing such person. They were then made to sign a document, the contents of which were not known by appellant and De Chavez, before they were directed to board another mobile patrol car and were brought to the *barangay* hall of San Isidro. At the *barangay* hall, they were asked to identify a pink coin purse which was being alleged to be owned by them. Pictures were taken of them together with the pink coin purse. Thereafter, they were brought back to the Batangas City Police Station where they were again interrogated about the identity of "Doktora."

Appellant and De Chavez were, subsequently, brought to the PNP Provincial Command where they were made to sign another document that was unknown to them. Afterwards, they were brought back to the Batangas City Police Station where they were detained. De Chavez asked the police officers as to the cause of their detention, and the latter replied that it was because he and appellant delivered a pink pouch containing *shabu* to a government asset, which De Chavez categorically denied. De Chavez maintained that he and appellant were only confronted with the pink coin purse for the first time at the *barangay* hall of San Isidro because a search of the compartment of the motorcycle did not yield anything.

The RTC, on April 17, 2015, rendered its Decision finding appellant guilty beyond reasonable doubt of the offense charged in the Information. The dispositive portion of the said Decision reads as follows:

> WHEREFORE, viewed from the foregoing, the Court finds the accused Romulo Arago y Como @ Danica GUILTY BEYOND REASONABLE DOUBT for violation of Section 5, Article II of RA 9165, otherwise known as [the] Comprehensive Dangerous Drugs Act of 2002 and is hereby sentenced to life imprisonment and to pay a fine in the amount of Five Hundred Thousand Pesos (₱500,000.00). Said accused shall be given credit for the period of his preventive detention.
>
> The 0.41 gram of Methamphetamine or *shabu* is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with the law.
>
> SO ORDERED.[6]

Appellant elevated the case to the CA, and on March 28, 2017, the appellate court affirmed with modification the decision of the RTC, thus:

> WHEREFORE, premises considered, the Decision dated 17 April 2015 in Criminal Case No. 17212 rendered by Branch 3 of the Regional Trial Court of Batangas City is AFFIRMED with the MODIFICATION that Accused-Appellant Romulo Arago, Jr. y Como is declared guilty beyond reasonable doubt of illegal delivery of *shabu* penalized under Section 5, Article II of Republic Act No. 9165, and is hereby sentenced to life imprisonment to pay a fine in the amount of Five Hundred Thousand Pesos (₱500,000.00). Said Accused-Appellant shall be given credit for the period of his preventive detention.
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> SO ORDERED.[7]

The motion for reconsideration having been denied by the CA, appellant now comes to this Court for the resolution of his appeal.

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[6] CA *rollo,* p. 48.

[7] *Id.* at 90.

In his Brief, appellant assigned the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF ILLEGAL SALE OF DANGEROUS DRUGS DESPITE THE PROSECUTION'S FAILURE TO PROVE PAYMENT OR CONSIDERATION THEREOF.

II.

THE TRIAL COURT GRAVELY ERRED IN RELYING ON PO2 OLEA'S INCONSISTENT AND INCREDULOUS TESTIMONY.

III.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[8]

According to appellant, the prosecution was not able to establish the monetary consideration in exchange of the dangerous drugs allegedly sold by him. He claims that in order for a charge of Section 5 of R.A. No. 9165 to prosper, the following elements must be present: (1) identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing being sold and the payment therefor. Thus, he avers that the second element has not been proven.

Appellant also argues that the offense charged against him is fabricated and that the testimony of the police officer is full of inconsistencies and simply incredulous. Hence, appellant maintains that the presumption of regularity of duties cannot prevail over the constitutional right of an accused to be presumed innocent and cannot by itself constitute proof of guilt beyond reasonable doubt.

The appeal must fail.

Section 5, Article II of R.A. No. 9165 provides the following:

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[8] *Id.* at 31-34.

Section 5. *Sale, Trading, Administration, Dispensation,* ***Delivery, Distribution and Transportation*** *of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* – The penalty of life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, **deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug**, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.[9]

It is very clear from the above provisions of the law that Section 5 does not only punish the sale of dangerous drugs but also its administration, dispensation, delivery, distribution and transportation. The Information against appellant reads, in part, "knowingly, willfully, and criminally **transport or deliver one (1) heat-sealed transparent plastic sachet containing Methamphetamine Hydrochloride,** more commonly known as *shabu*."[10] Hence, appellant was convicted not because of the sale of dangerous drugs which has consideration as its element, but because of the delivery of a dangerous drug. Section 3(k), of R.A. No. 9165 defines delivery as *"any act of knowingly passing a dangerous drug to another, personally or otherwise, and by any means,* ***with or without consideration****."*

The elements of illegal delivery of dangerous drugs are: (1) the accused passed on possession of a dangerous drug to another, personally or otherwise, and by any means; (2) such delivery is not authorized by law; and (3) the accused knowingly made the delivery. Thus, delivery may be committed even without consideration.[11] The prosecution was able to prove the said elements through the testimony of PO2 Olea:

FISCAL PATULAY:
After recording your coordination with the barangay of your [operation] what did you do next?

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[9] Emphasis ours.

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

[11] *People v. Bobotiok, Jr.*, G.R. No. 237804, July 4, 2018, citing *People v. Maongco, et al.,* 720 Phil. 488, 502 (2013).

WITNESS [PO2 OLEA]
A: After we proceeded to Phase 2 of San Isidro Village and parked at the side of the road near the gate.

Q: Who were with you in going to that place?
A: Our asset and PO2 Guarda, sir.

Q: How about [PO1] Adelantar?
A: He did not go with us.

Q: After parking your vehicle at the side of the road near the gate of San Isidro Village[,] what happened next?
A: We alighted from our vehicle and we walked towards the gate together with my asset.

Q: Were you able to reach the gate of that village?
A: Yes, sir.

Q: What happened after reaching the gate?
A: When we were waiting for them the black motorcycle arrived and I noticed two (2) persons were on board of said motorcycle; one is sporting a long hair.

Q: After this motorcycle arrived[,] what happened next?
A: We approached them and the one sporting with (sic) a long hair alighted from the motorcycle he was riding and he had a short talk with the one driving the motorcycle.

Q: After than[,] what happened next?
A: The one sporting [a] long hair got something from his pocket and I noticed it [was] a pink coin purse.

Q: How far were you from this person sporting a long hair when he got something from his pocket?
A: Witness, pointing to a distance of one (1) meter).

Q: Can you describe to us the area, its lighting condition during that day?
A: It was very well lighted because of the light coming from the subdivision.

Q: After noticing this person with long hair getting something from his pocket[,] what happened next?
A: He got a plastic sachet of suspected shabu from the pink coin purse and he said its worth ₱7,000 ("Yan, pitong libo yan.")

Q: When this person sporting with long hair uttered said [remarks], what was he doing?
A: He was giving it [to the] asset, sir.

Q: Which one was given to your asset?
A: The plastic sachet containing suspected shabu, sir.

Q: Where were you when this person sporting [a] long hair gave that plastic sachet of shabu to your asset?
A: We were near each other. It's just about a meter, sir.

Q: Did your asset receive that plastic sachet?
A: Yes[,] sir.

Q: After receiving that plastic sachet of shabu from the one sporting [a] long hair[,] what happened next?
A: He gave the plastic sachet to me and I saw that the contents [look] like shabu.

Q: After [that,] what happened next?
A: I introduced myself that I am a police officer and I apprehended him and then my companion PO2 Guarda arrived.

Q: After arresting this person sporting [a] long hair, what happened next?
A: I asked him for his name and he introduced [him]self as Romulo Arago, Jr. y Como of Brgy. Sta. Clara, Batangas City[,] and then I apprised him of his constitutional rights. x x x[12]

Appellant insists that the absence of money and the non-presentation of a marked money as evidence negates the finding that he committed the offense laid down in Section 5, Article II of R.A. No. 9165. In *People v. De la Cruz,*[13] the Court held that the presentation of the marked money, as well as the fact that the money was paid in exchange for the delivery of dangerous drugs, were unnecessary to consummate the crime, thus:

[E]ven if the money given to De la Cruz was not presented in court, the same would not militate against the People's case. In fact, there was even no need to prove that the marked money was handed

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[12] TSN, March 26, 2012, pp. 11-13.

[13] 263 Phil. 340 (1990), as cited in *People v. Maralit*, G.R. No. 232381, August 1, 2018.

to the appellants in payment of the goods. The crime could have been consummated by the mere delivery of the prohibited drugs. What the law proscribes is not only the act of selling but also, albeit not limited to, the act of delivering. In the latter case, the act of knowingly passing a dangerous drug to another personally or otherwise, and by any means, with or without consideration, consummates the offense.[14]

As found by the RTC and the CA, PO2 Olea was informed by his asset prior to their operation that no money or any form of consideration would be exchanged for the *shabu* that he would be obtaining from appellant, hence, there was no marked money prepared by the police officers. As testified by PO2 Olea:

THE COURT
Q: You were told by the asset that (sic) he was going to be a sale on credit?

WITNESS
A: Yes[,] your Honor. I was only informed that Romulo Arago will deliver the shabu and the payments will be made after the asset has successfully sold the shabu your honor.

Q: So this is not practically an outright sale?
A: Yes[,] your honor[.]

Q: You termed it to be a sale and consignment job?
A: Yes[,] your honor.

Q: And you knew for a fact before you talked with the accused Romulo Arago?
A: Yes[,] your honor.

Q: You were informed by Arago that that (sic) was going to be a sale and consignment job if (sic) you were informed by him?
A: Yes[,] your honor.

Q: And despite that, you and your asset agreed to that?
A: Yes[,] your honor.

Q: And actually it did happen?
A: Yes[,] your honor.

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[14] *Id.* at 350.

Q: So it was clear that there was no delivery of money?
A: Yes, your honor.

x x x x

Q: How many times did you incur an experience of this nature?
A: Three (3) or more times, your honor.

Q: You are saying that this is really happening in a buy bust operation?
A: Yes[,] your honor, if there is delivery.

Q: What do you mean if there is delivery?
A: It happens, your honor.

Q: You are being informed by your asset that the mode is like that, consignment?
A: Yes[,] your honor.

Q: And you consider it a buy-bust operation?
A: No[,] your honor.

Q: What do you call of (sic) that condition?
A: Transporting and delivery[,] your honor. x x x[15]

The above testimony of PO2 Olea was corroborated by PO3 Guarda, thus:

THE COURT
Q: When you were requested by [PO2] Olea to accompany him, did he tell you that he will be conducting a buy-bust operation, or do you know for a fact that you will be conducting a buy-bust operation?
A: No[,] your honor.

Q: So, you do not know exactly what was that operation all about when you accompanied Olea?
A: What I know is delivery, your Honor.

Q; When did you come to know that the operation is about delivery?
A: Before we left[,] your Honor, because we did not prepare a marked money.

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[15] TSN, March 26, 2012, pp. 36-38. (Emphasis ours)

Q: So you were informed by Olea before you left the station that your operation would be a delivery and not a buy[-]bust operation. That is correct?
A: Yes[,] your honor. That was my understanding.

Q: So, your understanding was confirmed because there was no buy[-]bust money prepared?
A: Yes, your honor. x x x[16]

It cannot be overemphasized that in cases involving violations of the Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.[17] In this case, appellant failed to present evidence to refute the testimony and credibility of the witnesses for the prosecution. Additionally, in weighing the testimonies of the prosecution's witnesses *vis-à-vis* that of the defense, it is a well-settled rule that in the absence of palpable error or grave abuse of discretion on the part of the trial judge, the trial court's evaluation of the credibility of witnesses will not be disturbed on appeal.[18]

As to appellant's defense of denial and claim of frame-up, such cannot prevail over the positive testimonies of the prosecution witnesses. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence,[19] which appellant failed to present in this case. As aptly ruled by the CA:

It is settled in our jurisdiction that uncorroborated defenses of denial and claims of frame-up cannot prevail over the positive testimonies of the prosecution witnesses, coupled with the presentation in court of the *corpus delicti*. The testimonies of police officers

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[16] TSN, September 18, 2012, pp. 39-40. (Emphasis ours)

[17] *People v. Steve,* 740 Phil. 727, 737 (2014).

[18] *People v. Alacdis, et al.,* G.R. No. 220022, June 19, 2017, 827 SCRA 419, 431-432, citing *People v. Asislo,* 778 Phil. 509 (2016).

[19] *People v. Lazaro, Jr.,* 619 Phil. 235, 254 (2009).

who caught Arago *in flagrante delicto* are usually credited with more weight and credence, in the absence of evidence that they have been inspired by an improper or ill motive, than the defenses of denial and frame-up of an accused which have been invariably viewed with disfavor for it can easily be concocted. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence, which Arago failed to do. Other than the denial made by Arago which this Court considers as self-serving, his vague assertion that he was framed by arresting officers for not being able to provide information about a certain "Doktora," there were no other evidence presented to substantiate his claims.[20]

Anent the penalty imposed by the CA, such must not also be disturbed, for being in accordance with law.

WHEREFORE, the appeal of Romulo Arago, Jr. *y* Como is **DISMISSED** for lack of merit. Consequently, the Decision dated March 28, 2017 of the Court Appeals in CA-G.R. CR HC No. 07585, affirming the Decision dated April 17, 2015 of the Regional Trial Court, Branch 3, Batangas City in Criminal Case No. 17212, convicting appellant of Violation of Section 5, Article II, Republic Act No. 9165, is **AFFIRMED.**

SO ORDERED.

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

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[20] *Rollo,* p. 17. (Citations omitted)

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

SECOND DIVISION

[G.R. No. 236023. February 20, 2019]

MACACUNA BADIO *y* DICAMPUNG, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS ACT (RA 9165); ILLEGAL SALE AND/OR POSSESSION OF DANGEROUS DRUGS; THE IDENTITY OF THE DANGEROUS DRUG MUST BE ESTABLISHED WITH MORAL CERTAINTY. — In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.

2. ID.; ID.; CHAIN OF CUSTODY, EXPLAINED; PROCEDURE. — To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that "[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team." Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody. The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses,

namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640, "a representative from the media ***and*** the [DOJ], and any elected public official"; or (*b*) if **after** the amendment of RA 9165 by RA 10640, "an elected public official and a representative of the National Prosecution Service ***or*** the media." The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

3. ID.; ID.; ID.; COMPLIANCE THEREWITH IS STRICTLY ENJOINED; RULE IN CASE OF NON-COMPLIANCE. — As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law." This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment." Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible. As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved. The foregoing is based on the saving clause found in Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640. It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

4. ID.; ID.; ID.; NON-COMPLIANCE WITH THE WITNESS REQUIREMENT MAY BE PERMITTED PROVIDED GENUINE AND SUFFICIENT EFFORTS WERE EXERTED TO SECURE THEIR PRESENCE. — Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness

of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances. Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] filed by petitioner Macacuna Badio *y* Dicampung (Badio), assailing the Decision[2] dated April 20, 2017 and Resolution[3] dated November 29, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 38542, which affirmed with modification the Decision[4] dated March 21, 2016 of the Regional Trial Court of Manila, Branch 2 (RTC) in Crim. Case No. 13-299331, finding him guilty beyond reasonable doubt of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11,

[1] *Rollo*, pp. 12-29.

[2] *Id*. at 35-48. Penned by Associate Justice Jose C. Reyes, Jr. (now a member of this Court) with Associate Justices Stephen C. Cruz and Nina G. Antonio-Valenzuela, concurring.

[3] *Id*. at 50.

[4] *Id.* at 75-81. Penned by Presiding Judge Sarah Alma M. Lim.

Article II of Republic Act No. 9165,[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information[6] filed before the RTC charging Badio of the crime of Illegal Possession of Dangerous Drugs. The prosecution alleged that on August 24, 2013, the Station Anti-Illegal Drugs Special Operation Task Unit of the Moriones, Tondo Police Station 2 received a tip that an illegal drug transaction would take place beside a specified vehicle along Antonio Rivera Street corner C.M. Recto Avenue, Manila. Upon receipt of such information, the station commander formed a team to, *inter alia*, conduct a surveillance around the area and effect arrests, if necessary. At around 8:30 in the evening of even date and after the team had established its position about four (4) to five (5) meters from the specified vehicle, the team noticed that a person – later on identified as Badio – approached the vehicle and started conversing with the passengers therein. Shortly after, Police Officer 3 Roman Jimenez (PO3 Jimenez) saw Badio showing two (2) transparent plastic sachets containing white crystalline substance to the passengers and when the team then approached him, Badio threw away the plastic sachets. However, PO3 Jimenez was able to recover the said sachets and arrest Badio, while the other members of the team apprehended the latter's companions. Subsequently, PO3 Jimenez marked the seized sachets and conducted a body search on Badio from whom he recovered another piece of plastic sachet. Immediately, all three (3) plastic sachets were photographed and inventoried[7] in the presence of Badio and a media representative. The team then went to the police station

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

[6] Dated August 27, 2013. Records, p. 1.

[7] See Receipt/Inventory of Seized Evidence dated August 24, 2013; *id*. at 10.

where Badio was held for further questioning, while the seized items were turned over to the investigating officer, Senior Police Officer 1 Elymar B. Garcia (SPO1 Garcia), who likewise prepared the necessary paper works therefor. Thereafter, the seized items were brought to the crime laboratory, where, upon examination,[8] the contents thereof tested positive for the presence of a total of 5.01 grams of methamphetamine hydrochloride or *shabu*, a dangerous drug.[9]

In his defense, Badio denied the charges against him, claiming instead that between one (1) to two (2) o' clock in the afternoon of August 24, 2013, he was inside a vehicle parked at a restaurant in Baclaran, when four (4) unidentified men suddenly arrived and grabbed him. The men then introduced themselves as police officers, handcuffed him, and brought him to the Moriones, Tondo Police Station. Later on, he learned that he was being charged of the crime of Illegal Possession of Dangerous Drugs.[10]

In a Decision[11] dated March 21, 2016, the RTC found Badio guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to seventeen (17) years and four (4) months, as maximum, and to pay a fine in the amount of ₱300,000.00.[12] It found the prosecution to have established with moral certainty that Badio was in possession of *shabu* without any lawful license or authority, and that there was an unbroken chain of custody over the dangerous drugs seized from his possession. Finally, it gave credence to the testimonies of the prosecution witnesses who are presumed to have regularly performed their duties in the absence of proof to the contrary.[13] Aggrieved, Badio filed an appeal before the CA.

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[8] See Chemistry Report No. D-269-13 dated August 25, 2013; *id*. at 8.

[9] See *rollo*, pp. 36-37 and 76-77.

[10] See *id*. at 37-38 and 77-79.

[11] *Id*. at 75-81.

[12] *Id*. at 81.

[13] See *id*. at 79-81.

In a Decision[14] dated April 20, 2017, the CA affirmed Badio's conviction with modification, sentencing him to suffer the penalty of imprisonment for a period of twenty (20) years and one (1) day, and to pay a fine in the amount of ₱400,000.00.[15] It found the sole testimony of PO3 Jimenez to be sufficient in convicting Badio of the crime charged. It likewise pointed out that despite the absence of a Department of Justice (DOJ) representative and an elected public official in the inventory and photography of the seized items, the prosecution nonetheless was able to establish that the integrity and evidentiary value of such items were properly preserved, as shown by the following links in the chain of custody, namely: (*a*) PO3 Jimenez recovered from Badio three (3) heat-sealed plastic sachets containing white crystalline substance, which were subsequently marked, photographed, and inventoried in the presence of a media representative; (*b*) PO3 Jimenez had been in possession of the seized items from the place of arrest up to the police station where they were turned over to SPO1 Garcia; (*c*) SPO1 Garcia then handed the seized items to the forensic chemist for laboratory examination; and (*d*) the same items were thereafter surrendered to the court for identification.[16] Undaunted, Badio filed a motion for reconsideration[17] which was denied in a Resolution[18] dated November 29, 2017.

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

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,[19] it is essential that the identity of the

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[14] *Id*. at 35-48.

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

[16] See *id*. at 42-46.

[17] Dated May 10, 2017. *Id*. at 51-58.

[18] *Id*. at 50.

[19] The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (*a*) the identity of the buyer and the seller, the

dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[20] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.[21]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[22] As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that "[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]).

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

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

[22] See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, *supra* note 19; *People v. Sanchez, supra* note 19; *People v. Magsano*, *supra* note 19; *People v. Manansala*, *supra* note 19; *People v. Miranda*, *supra* note 19; and *People v. Mamangon*, *supra* note 19. See also *People v. Viterbo*, *supra* note 20.

team."[23] Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.[24]

The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if ***prior*** to the amendment of RA 9165 by RA 10640,[25] "a representative from the media ***and*** the [DOJ], and any elected public official";[26] or (*b*) if **after** the amendment of RA 9165 by RA 10640, "an elected public official and a representative of the National Prosecution Service ***or*** the media."[27] The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."[28]

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded

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[23] *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

[24] See *People v. Tumulak,* 791 Phil. 148, 160-161 (2016); and *People v. Rollo,* 757 Phil. 346, 357 (2015).

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

[26] Section 21 (1), Article II of RA 9165 and its IRR; emphasis and underscoring supplied.

[27] Section 21 (1), Article II of RA 9165, as amended by RA 10640; emphasis and underscoring supplied.

[28] See *People v. Bangalan,* G.R. No. 232249, September 3, 2018, citing *People v. Miranda*, *supra* note 19. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

"not merely as a procedural technicality but as a matter of substantive law."[29] This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.[30]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[31] As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved.[32] The foregoing is based on the saving clause found in Section 21 (a),[33] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[34] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[35] and that

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[29] See *People v. Miranda*, *id*. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215, citing *People v. Umipang*, *supra* note 21, at 1038.

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

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

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

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

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

[35] *People v. Almorfe*, *supra* note 32.

the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[36]

Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.[37] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[38] These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.[39]

Notably, the Court, in *People v. Miranda*,[40] issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that "[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit

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

[37] See *People v. Manansala*, *supra* note 19.

[38] See *People v. Gamboa*, *supra* note 21, citing *People v. Umipang*, *supra* note 21, at 1053.

[39] See *People v. Crispo*, *supra* note 19.

[40] *Supra* note 19.

the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."[41]

In this case, there was a deviation from the witness requirement as the conduct of inventory and photography was not witnessed by an elected public official and a DOJ representative. This may be easily gleaned from the Receipt/Inventory of Seized Evidence[42] which only proves the presence of a media representative. Moreover, records are bereft of any showing that the police officers actually made attempts to secure the presence of the other required witnesses, and merely offered justifiable reasons as to why they failed to contact them. To reiterate, the law requires that the conduct of inventory and photography of the seized items must be witnessed by representatives from the media and the DOJ, and any elected public official, and that the prosecution is bound to account for their 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. As the Court sees it, the prosecution did not faithfully comply with these standards and unfortunately, failed to justify non-compliance. Thus, in view of these unjustified deviations from the chain of custody rule, the Court is therefore constrained to believe that the integrity and evidentiary value of the items purportedly seized from Badio were compromised, which consequently warrants his acquittal.

WHEREFORE, the appeal is **GRANTED**. The Decision dated April 20, 2017 and the Resolution dated November 29, 2017 of the Court of Appeals in CA-G.R. CR No. 38542 are hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Macacuna Badio *y* Dicampung 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.

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[41] See *id*.

[42] Dated August 24, 2013. Records, p. 10.

Carpio, S.A.J. (*Chairperson*), *Caguioa, Hernando*,[*] and *Carandang*,[**] *JJ.*, concur.

THIRD DIVISION

[G.R. No. 238566. February 20, 2019]

PHILIP JOHN B. MORENO, Accountant III/Division Chief II, Philippine Retirement Authority, *petitioner, vs.* **COURT OF APPEALS (Special Former Tenth Division) and OFFICE OF THE OMBUDSMAN,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICIALS AND EMPLOYEES; GRAVE MISCONDUCT, DEFINED.— Grave misconduct, with which Moreno stands charged, is defined as wrongful, improper, or unlawful conduct committed in connection with the performance of official functions, motivated by a premeditated, obstinate or intentional purpose, and coupled with the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule. It is an odious offense that has always been and will continue to be anathema in the civil service.

2. ID.; ID.; ID.; ID.; REPEATED FALSE CERTIFICATION THAT CERTAIN DISBURSEMENT VOUCHERS HAVE ALREADY BEEN LIQUIDATED AMOUNTED TO GRAVE MISCONDUCT.— [T]here is no doubt that the irregularities committed by Moreno amounted to grave misconduct. By

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[*] Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018.

[**] Designated Additional Member per Raffle dated January 16, 2019.

repeatedly and falsely certifying the subject DVs as liquidated, he effectively attempted to unlawfully conceal Leviste's unliquidated cash advances. This clearly meets the jurisprudential definition of misconduct—that is, "an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior, especially by a government official." Further, Moreno's act was properly qualified as grave, as it was done in flagrant disregard of Section 89 of P.D. No. 1445[.] x x x Certainly, Leviste would not have been able to secure subsequent cash advances, in violation of the foregoing provision, were it not for the false certification of the DVs pertinent to this case. As an accountant, Moreno was charged with ensuring that PRA officials, particularly Leviste, had liquidated their previous cash advances before securing subsequent ones. Moreover, the frequency with which Moreno falsely certified DVs only served to highlight his flagrant disregard for government auditing rules. Thus, the Ombudsman and the CA correctly ruled that Moreno's offense amounted to Grave Misconduct.

3. ID.; ID.; ID.; ID.; ID.; IN VIEW OF THE PRESENCE OF MITIGATING CIRCUMSTANCES, TWO MONTHS SUSPENSION WITHOUT PAY IMPOSED INSTEAD OF DISMISSAL FROM THE SERVICE.— [T]he Court finds dismissal too severe a penalty. For one, Moreno's participation in the act complained of was equivalent to that of a mere accessory. To be sure, it was never shown that Moreno derived any financial gain from the false certification of said DVs. Verily, this lends credence to his defense that the PRA upper management compelled him to conform to the practice of certifying DVs as liquidated, regardless of whether Leviste still had outstanding obligations with the government. Since Moreno knew that what he was doing was highly irregular, the Court is hard-pressed to believe that his acts were free from external influence. x x x Second, Moreno's track record reveals that he is an exemplar of public service. Notably, his meritorious tenure at the PRA earned him a scholarship funded by the Japan International Cooperation Agency. x x x In addition, his sterling performance is evinced by the fact that he was promoted twice; first, from Accountant III to Division Chief and, second, from Division Chief to Department Manager. Taken together, these show beyond doubt that he is an invaluable asset to the PRA and to the civil service as a whole. Third, Moreno admitted his

culpability and cooperated in the administrative investigation. x x x His admission, clearly not an afterthought in light of the circumstances under which it was made, saved the government precious resources and displayed the good faith that is typically deserving of the Court's sympathy. Finally, Moreno, to this date, has nearly two decades of admirable public service to his name. x x x His long and unblemished service record must necessarily be appreciated in his favor. Taking all of the above into account, the Court finds that Moreno should be meted out a penalty of suspension for two (2) months without pay. However, Moreno is warned that he will no longer merit any sympathy if he is again found guilty of a similar charge.

APPEARANCES OF COUNSEL

Degala Law Office for petitioner.

D E C I S I O N

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

Section 1, Article XI of the 1987 Constitution declares in no uncertain terms that public office is a public trust. The provision was designed for a sole rudimentary purpose-to exact accountability from public officers.[1] *And so that public accountability is more than just a phrase written on parchment, public servants who fail to observe the stringent requirement of the law must meet the appropriate consequences, with the most severe being dismissal from the service. To be sure, such consequences are meant no to punish the erring public officer, but rather to preserve the People's faith and confidence in the government.*[2]

Accordingly, administrative penalties must be meted out with utmost prudence, taking due consideration of the particular circumstances of each case. This is especially true when the

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[1] BERNAS, JOAQUIN G., *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES*: *A COMMENTARY*, 2009 Ed., p. 1148.

[2] *Fajardo v. Alvarez*, 785 Phil. 303, 322 (2016).

charge warrants the penalty of dismissal, which affects not only the public servant, but also those who depend on him or her for support. With these precepts in mind, the Court must tread lightly in treating of the instant petition, which may spell the difference between the possibility of continuation in public office and the loss of all that accompanies nearly two decades of exemplary service.

This petition for review on *certiorari*[3] challenges the February 22, 2017 Decision[4] and March 14, 2018 Resolution[5] rendered by the Court of Appeals (CA) in CA-G.R. SP No. 145445, through which the dismissal of the petitioner, Philip John B. Moreno (Moreno), as ordered by the Office of the Ombudsman in OMB-C-A-11-0477-H, was affirmed.

The Factual Antecedents

On February 1, 2001, the Philippine Retirement Authority (PRA) hired Moreno as Accountant III. He was subsequently promoted to Finance Division Chief and, later, to Department Manager.[6]

On March 5, 2010, the Ombudsman's Field Investigation Office charged Moreno with Gross Neglect of Duty and Conduct Prejudicial to the Best Interest of the Service. The charge was later amended to include Grave Misconduct and Dishonesty.[7]

The complaint stemmed from Moreno's act of signing Disbursement Vouchers (DVs) pertaining to the foreign travel cash advances of the PRA Chairman, Jose Antonio Leviste (Leviste), for the year 2003. In the relevant DVs, Moreno certified that Leviste's previous cash advances had been liquidated or accounted for, when in fact the contrary was true. This, in effect, allowed Leviste to secure subsequent advances without first

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[3] *Rollo*, pp. 3-11.

[4] *Id.* at 30-40.

[5] *Id.* at 41-43.

[6] *Id.* at 97.

[7] *Id.* at 32.

settling his prior outstanding obligations, in violation of Presidential Decree (P.D.) No. 1445, or the Government Auditing Code.[8]

The anomaly was discovered by State Auditor Marissa Fajardo-Pariñas, who, in a Narrative Report on Unliquidated Cash Advances dated October 15, 2009, found that Leviste had failed to account for ₱151,358.42 in government funds. Relevantly, the report revealed that Moreno was responsible for the certification of the following DVs:[9]

Foreign Travel	**DV No.**	**Amount of Advance**	**Amount Unliquidated**
USA (May 29-Jun 5)	0305848	₱182,022.00	₱13,190.00
China (Sept 4-17)	03091472	₱247,320.00	₱208,848.00
Japan (Sept 28-Oct 2)	03091647	₱27,575.00	₱27,575.00
Japan (Oct 24-29)	03101835 & 03101840	₱113,252.25	₱58,007.25
Taiwan (Nov 16-23)	03111942	₱149,485.50	₱110,730.00
Hong Kong & China (Dec 5-11)	03122129	₱149,526.00	₱27,690.00
TOTAL		₱869,180.75	₱446,040.25
LESS: Liquidations		Application of amount for Hong Kong trip (Dec 7-12) to outstanding cash advance balance	₱294,654.83
UNLIQUIDATED CASH ADVANCES AS OF DEC 31, 2007			**₱151,385.42**

Essentially, the charge against Moreno was that his recurrent false certification of DVs caused the loss of ₱151,358.42 in public funds, which to this day remains unaccounted for.

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[8] *Id.* at 31.

[9] *Id.*

Moreno, in his counter-affidavit, admitted that he, in fact, signed the above-cited DVs, but averred that he did so unwillingly due to pressure from PRA top management. According to him, his superiors, namely: Finance Division Chief Virgilia Guerrero and Department Manager for Administration and Finance Erlina Lozana, were reluctant to hold the cash advance transactions, as doing so would effectively hinder Leviste's official activities as PRA Chairman. Moreno insisted that he was merely influenced to conform to such practices, propagated as acceptable by PRA's higher officials.[10]

The Ombudsman's Ruling

On December 29, 2015, the Ombudsman rendered a decision finding Moreno administratively guilty of Grave Misconduct and ordering his dismissal from the service. In the Ombudsman's decision, it was noted that Moreno: (1) never disputed the fact that Leviste's cash advances had yet to be fully liquidated; (2) still signed the subject DVs despite knowing that such amounts were unliquidated; and (3) failed to make written report about such unliquidated advances, as required by Section 106 of P.D. No. 1445.[11] The *fallo* of the Ombudsman's decision reads:

> WHEREFORE, Accountant III and Division Chief II, Financial Planning and Control Division, Philip John B. Moreno is found administratively guilty of Grave Misconduct and is imposed the penalty of Dismissal from the Service, together with all its accessory penalties.
>
> In the event that the penalty of Dismissal can no longer be enforced to his separation from public service, the same shall be converted into a Fine in the amount equivalent to his last salary for one (1) year payable to the Office of the Ombudsman, which may be deductible from his retirement benefits, accrued leave credits or any receivable from his office, with all the penalties accessory to Dismissal.
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> x x x x x x x x x
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> SO ORDERED.[12]

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[10] *Id*. at 32.

[11] *Id*. at 33-34.

[12] *Id*. at 22.

Upset with the foregoing disquisition, Moreno elevated the case to the CA, arguing, first, that the Ombudsman's findings were not supported by substantial evidence and, second, that the penalty of dismissal was inappropriate considering the circumstances of the case.[13]

The CA's Ruling

On February 22, 2017, the CA affirmed the Ombudsman's ruling through the herein challenged decision. The appellate court refused to exonerate Moreno, holding that his act of repeatedly falsely certifying the pertinent DVs enabled Leviste to obtain illicit cash advances.[14] In addition, the CA ruled that the penalty of dismissal was appropriate considering the serious or grave nature of Moreno's offense.[15] The *fallo* of the appellate court's decision reads:

WHEREFORE, in light of the foregoing, the instant petition for review is *DENIED*.

SO ORDERED.[16]

Moreno, after his motion for reconsideration was denied through the assailed March 14, 2018 Resolution, sought the present recourse before the Court. In the instant petition, Moreno never denied signing the pertinent DVs. Instead, his arguments were premised on the excessiveness of the penalty meted out by the Ombudsman and affirmed by the CA. He stressed that dismissal is too harsh considering the surrounding circumstances. He pointed to his (1) good faith; (2) admission of guilt; (3) length of service; (4) cooperation in the administrative investigation; and (5) dismissal of the Criminal Case by the Sandiganbayan, contending that these factors should be taken into account in lowering the penalty.[17]

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[13] *Id*. at 34.

[14] *Id*. at 36.

[15] *Id*. at 38-40

[16] *Id*. at 40.

[17] *Id*. at 10-11.

The Issue

WHETHER OR NOT THE OFFICE OF THE OMBUDSMAN AND COURT OF APPEALS ERRED IN RULING THAT THE PENALTY OF DISMISSAL IS APPROPRIATE CONSIDERING THE CIRCUMSTANCES OF THIS CASE[18]

The Court's Ruling

The petition is meritorious.

Grave misconduct, with which Moreno stands charged, is define as wrongful, improper, or unlawful conduct committed in connection with the performance of official functions, motivated by a premeditated, obstinate or intentional purpose, and coupled with the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule.[19] It is an odious offense that has always been and will continue to be anathema in the civil service.[20] As such, pursuant to Rule IV, Section 52 (A) No. 3 of the Uniform Rules on Administrative Cases in the Civil Service (Uniform Rules),[21] the offense carries with it the ultimate penalty of dismissal even for the first infraction. This breathes life into the constitutional principle that public office is a public trust, guaranteeing that the concept is not a mere toothless iteration, and ultimately ensuring that only those who can live up to the most exacting standards are worthy of being part of the civil service.[22]

Nevertheless, jurisprudence is replete with cases in which the Court, after due consideration of all the prevalent conditions, refused to arbitrarily impose the extreme penalty. In these cases, the facts were evaluated in light of Section 53 of the Uniform

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[18] *Id*. at 10.

[19] *Ombudsman v. De Guzman*, G.R. No. 197886, October 1, 2017, 841 SCRA 616, 641.

[20] *Civil Service Commission v. Cortez*, 474 Phil. 670, 690 (2004).

[21] Civil Service Commission Memorandum Circular No. 9, s. 1999.

[22] *Duque III v. Veloso*, 688 Phil. 318, 328 (2012).

Rules, which allows the disciplining authority to mitigate or aggravate the erring public officer's liability depending on the attendant circumstances. Relevantly, in *Duque III v. Veloso*,[23] the Court held:

> In appreciating the presence of mitigating, aggravating, or alternative circumstances to a given case, two constitutional principles come into play which the Court is tasked to balance. The first is **public accountability**, which requires the Court to consider the improvement of public service and the preservation of the public's faith and confidence in the government by ensuring that only individuals who possess good moral character, integrity, and competence are employed in the government service. The second relates to **social justice**, which gives the Court the discretionary leeway to lessen the harsh effects of the wrongdoing committed by an offender for equitable and humanitarian considerations.[24] (Emphasis and underscoring supplied, citations omitted)

Thus, in a plethora of cases, the Court, taking these principles into account, downgraded the penalty of dismissal despite a clear finding that the offense committed amounted to grave misconduct.

In *Lirios v. Oliveros*,[25] the clerk of a Municipal Trial Court was found guilty of keeping inside his own vault amounts collected in connection with two civil cases, contrary to a Supreme Court circular requiring that such amounts be immediately deposited with an authorized government bank. He was eventually able to account for the funds and prove that, after audit, he deposited his connections with the Land Bank Considering the relatively mild nature of his offense, he was merely reprimanded and made to pay a fine of ₱10,000.00.

Likewise, in *Re: Delayed Remittance of Collections of Teresita Lydia R. Odtuhan*,[26] a branch clerk of court failed to immediately remit her collections. Despite of notice of her infractions, it

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[23] *Id.*

[24] *Id*. at 323-324.

[25] 323 Phil. 318 (1996).

[26] 445 Phil. 220 (2003).

took her over three years to make the proper deposit. Nevertheless, since she eventually remitted the subject funds and considering the fact that she was battling ovarian cancer, she was only fined ₱10,000.00 and warned that her next offense would be dealt with more severely.

In *Civil Service Commission v. Belagan*,[27] the superintendent of the Department of Education, Culture, and Sports, Baguio City, was charged with and found guilty of sexual harassment for making indecent advances in consideration for the issuance of a permit to operate a pre-school. It was held, however, that dismissal was too harsh a penalty in view of the fact that the public officer therein had devoted thirty-seven years of his life to the education department, rising within its ranks from Elementary Grade School Teacher to Schools Division Superintendent. In addition, it was noted that he had received numerous awards for his long years of service, that he had only been charged only once, and that he was on the verge of retirement. Accordingly, he was merely suspended from office for one year without pay.

The Court also dealt with sexual harassment in *Gonzales v. Serrano*,[28] where the Chief of the Legal Division of the Philippine Racing Commission was found to have forcibly kissed his female subordinate, uttering distasteful remarks thereafter. Considering his advanced age, the fact that the offense was committed in public, and his separation from the service, he was merely reprimanded and ordered to return an amount equivalent to six months o his salary and other benefits.

In *De Guzman, Jr. v. Mendoza*,[29] *Apuyan, Jr. v. Sta. Isabel*,[30] *Adoma v. Gatcheco*,[31] and *Albello v. Galvez*,[32] the Court uniformly

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[27] 483 Phil. 601 (2004).

[28] 755 Phil. 513 (2015).

[29] 493 Phil. 690, 696 (2005).

[30] 474 Phil. 1, 19 (2004).

[31] 489 Phil. 273, 282 (2005).

[32] 443 Phil. 323, 328 (2003).

held that illicit solicitation and acceptance of monetary consideration renders sheriffs liable for grave misconduct. However, in these cases, since the respondent sheriffs were first time offenders, they were simply meted out the penalty of suspension for one year without pay.

In *Fact-Finding and Intelligence Bureau v. Campaña*,[33] he Ombudsman found the Senior Vice-President of the Government Service Insurance System guilty of representing to third persons that a bond between the system and a private party was valid and binding when, in fact, no premium therefore was paid. The public officer charged was also held to have accepted late payments on said bond without the proper clearance from is superiors. In mitigating the penalty of dismissal to suspension for one year without pay, the Court took into account the public officer's thirty-four unblemished years of service and the fact that he was never charged in the past.

Finally, in *Araganosa-Maniego v. Salinas*,[34] a court utility worker was found guilty of stealing and encashing a check representing the special allowance of his superior judge. It was held that the court employee, who had appropriated the funds for his own personal use, deserved a mitigated penalty because he acknowledged his infraction, felt remorse, and returned the amount involved. The fact that it was his first offense in more than ten years of government service was also taken into consideration. Moreover, it was held that a penalty less punitive than dismissal would suffice since unemployment brings untold hardships not only to the laborer, but to his or her family as well. Accordingly, he was suspended for one year without pay and warned that repetition of the act would be dealt with more severely.

As culled from the foregoing, a finding of grave misconduct should not straightjacket the Court. While there is no doubt that misfeasance and malfeasance in office are not to be

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[33] 584 Phil. 654 (2008).

[34] 608 Phil. 334 (2009).

countenanced, each case must be decided with due consideration of all the attendant circumstances. In other words, compassion will be extended in favor of the deserving, but those who are not must meet the full force of the law. Equitable justice, after all, demands that erring public officers, regardless of rank and stature, be meted out penalties commensurate to the offenses they commit.

In this case, there is no doubt that the irregularities committed by Moreno amounted to grave misconduct. By repeatedly and falsely certifying the subject DVs as liquidated, he effectively attempted to unlawfully conceal Leviste's unliquidated cash advances. This clearly meets the jurisprudential definition of misconduct—that is, "an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior, especially by a government official."[35] Further, Moreno's act was properly qualified as grave, as it was done in flagrant disregard of Section 89 of P.D. No. 1445 *viz.*:

> **Section 89.** *Limitations on cash advance*. No cash advance shall be given unless for a legally authorized specific purpose. A cash advance shall be reported on and liquidated as soon as the purpose for which it was given has been served. **No additional cash advance shall be allowed to any official or employee unless the previous cash advance given to him is first settled or a proper accounting thereof is made.**[36] (Emphasis and underscoring supplied)

Certainly, Leviste would not have been able to secure subsequent cash advances, in violation of the foregoing provision, were it not for the false certification of the DVs pertinent to this case. As an accountant, Moreno was charged with ensuring that PRA officials, particularly Leviste, had liquidated their previous cash advances before securing subsequent ones.[37] Moreover, the frequency with which Moreno falsely certified

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[35] *Imperial, Jr. v. Government Service Insurance System*, 674 Phil. 286, 296 (2011).

[36] GOVERNMENT AUDITING CODE, Section 89.

[37] *Rollo*, p, 20.

DVs only served to highlight his flagrant disregard for government auditing rules. Thus, the Ombudsman and the CA correctly ruled that Moreno's offense amounted to Grave Misconduct.

However, the Court finds dismissal too severe a penalty.

For one, Moreno's participation in the act complained of was equivalent to that of a mere accessory. To be sure, it was never shown Moreno derived any financial gain from the false certification of said DVs. Verily, this lends credence to his defense that the PRA upper management compelled him to conform to the practice of certifying DVs as liquidated, regardless of whether Leviste still had outstanding obligations with the government. Since Moreno knew that what he was doing was highly irregular, the Court is hard-pressed to believe that his acts were free from external influence. After all, what reasonable person would deliberately put his or her career at risk without anything to gain in return?

Second, Moreno's track record reveals that he is an exemplar of public service. Notably, his meritorious tenure at the PRA earned him a scholarship funded by the Japan International Cooperation Agency. For this reason, he was sent to Japan from 2010 to 2012 to take up advanced studies on retirement and aging, thus allowing him to further contribute to the improvement of the PRA's services.[38] In addition, his sterling performance is evinced by the fact that he was promoted twice; first, from Accountant III to Division Chief and, second, from Division Chief to Department Manager.[39] Taken together, these show beyond doubt that he is an invaluable asset to the PRA and to the civil service as a whole.

Third, Moreno admitted his culpability and cooperated in the administrative investigation. As shown by the counter-affidavit[40] he filed before the Ombudsman, he never denied

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[38] *Id*. at 97.

[39] *Id*.

[40] *Id*. at 86-87.

certifying the subject DVs, averring instead that he did so pursuant to the orders of his superiors. Considering that this was his defense from the beginning, it can be gleaned that he never intended to conceal anything from the investigating authority. His admission, clearly not an afterthought in light of the circumstances under which it was made, saved the government precious resources and displayed the good faith that is typically deserving of the Court's sympathy.

Finally, Moreno, to this date, has nearly two decades of admirable public service to his name. As mentioned earlier, since the PRA hired him in 2001, he was promoted twice and admitted to a foreign scholarship program. Additionally, this is his first administrative offense. His long and unblemished service record must necessarily be appreciated in his favor.

Taking all of the above into account, the Court finds that Moreno should be meted out a penalty of suspension for two (2) months without pay. However, Moreno is warned that he will no longer merit any sympathy if he is again found guilty of a similar charge.

All told, equitable and humanitarian considerations dictate that the Ombudsman and the CA committed a reversible error in ordering Moreno's dismissal from the service. As elaborately put in *Duque III*,[41] the Court, in resolving administrative cases, must strike a balance between public accountability, the noble spirit behind the punishment meted out to an erring civil servant, and social justice, the principle that allows for the attenuation of said punishment based on the factual milieu of a given case. Here, Moreno, through the surrounding circumstances, has merited the Court's sympathy, therefore, justifying the mitigation of his liability. It must, however, be emphasized that this decision should not be construed as indiscriminate condonation of official transgression. Public officers, so long as our Constitution prevails, will remain to be accountable to the People,[42] and the Court, as

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[41] *Duque III v. Veloso*, *supra* note 22, at 323.

[42] 1987 CONSTITUTION, Art. XI, Sec. 1.

a bastion of democracy, will not hesitate to put to the proverbial sword those who betray the trust of the public they are meant to serve.

WHEREFORE, the petition is **GRANTED**. The February 22, 2017 Decision and March 14, 2018 Resolution of the Court of Appeals in CA- G.R. SP No. 145445 are **MODIFIED** insofar as the dismissal of the petitioner, Philip John B. Moreno, is concerned. He is hereby **SUSPENDED** from government service for two (2) months without pay, after which he shall be entitled to reinstatement without loss of seniority rights. In case he was placed under preventive suspension during the pendency of this appeal, he shall not be entitled to any backwages that may have accrued during the period of his suspension.

SO ORDERED.

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

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[*] Designated additional Member per Special Order No. 2624, dated November 28, 2019.

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underlying the provision on admission by silence is obvious and commonsensical; the application of that underlying wisdom, if not of the actual rule, is readily appreciable here. (Reynes *vs*. Ombudsman [Visayas], G.R. No. 223405, Feb. 20, 2019) p. 847

APPEALS

Appeal in criminal cases — A petition for review on *certiorari* under Rule 45 of the Rules of Court must, as a general rule, only raise questions of law; this Court generally gives weight to the factual findings of the lower courts "because of the opportunity enjoyed by the lower courts to observe the demeanor of the witnesses on the stand and assess their testimony"; in criminal cases, however, the accused has the constitutional right to be presumed innocent until the contrary is proven; the finding of guilt is essentially a question of fact; for this reason, the entire records of a criminal case are thrown open for this Court's review; the Court is not precluded from reviewing the factual findings of the lower courts, or even arriving at a different conclusion, "if it is not convinced that the findings are conformable to the evidence of record and to its own impressions of the credibility of the witnesses." (Lapi *y* Mahipus *vs*. People, G.R. No. 210731, Feb. 13, 2019) p. 38

Appeal in labor cases — In a Rule 45 review, the Court examines the correctness of the CA's decision in contrast with the review of jurisdictional errors under Rule 65; further, Rule 45 limits the review to questions of law; in ruling for legal correctness, the Court views the CA decision in the same context that the petition for *certiorari* was presented to the CA; grave abuse of discretion, amounting to lack or excess of jurisdiction, has been defined as the capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law; in labor

Petition for review on certiorari to the Supreme Court under Rule 45 — A question of fact pertains to the truth or falsity of the alleged acts or involves an examination of the probative value of the evidence presented. Meanwhile, a question of law arises when there is doubt to what the law is on certain state of facts – it can be resolved without reviewing or evaluating the evidence; In her petition for review on *certiorari*, Lozano raises questions of fact; in a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised; the said rule admits of exception such as when the conclusion is based on speculation or conjectures, or there is a misapprehension of facts; In addition, the Court may relax the strict application of the rules of procedure in the exercise of its equity jurisdiction when its rigid application will tend to obstruct rather than serve the broader interests of justice in light of the prevailing circumstances of the case. (Lozano *vs*. Fernandez, G.R. No. 212979, Feb. 18, 2019) p. 219

— Under the Rules, a Rule 45 petition for review on *certiorari* shall raise only questions of law and a review is not a matter of right, but of sound judicial discretion, and will be granted only when there are special and important reasons therefor; DMCI has not directly pointed to any of the exceptions where the Court may review the findings of fact of the CA in a Rule 45 *certiorari* petition; however, since the findings of fact of the trial court are at odds with those of the CA, the Court is allowed to make a fact-check. (D.M. Consunji, Inc. *vs*. Rep. of the Phils., G.R. No. 233339, Feb. 13, 2019) p. 194

Petition for review under Rule 43 — Miranda availed of the wrong remedy when she filed the petition for *certiorari* (with the CA) to assail the CSC Decision instead of filing a Petition for Review under Rule 43 of the 1997 Rules of Court; Hence, the same should have been dismissed outright; This Court has repeatedly held that where the remedy of appeal is available, the remedy of *certiorari* should not have been entertained; A special civil action for *certiorari* under Rule 65 is proper only

same case during the appeal with the CSC; the Court had ruled that the officer who reviews a case on appeal should not be the same person whose decision is under review; At the very start, he should have inhibited himself from the case and let the other Commissioners undertake the review; Miranda was effectively denied due process when Duque reviewed his own Decision by participating in resolving the motion for reconsideration of the case. (Miranda *vs*. Civil Service Commission, G.R. No. 213502, Feb. 18, 2019) p. 232

— The petitioner resorted to an improper remedy before this Court; Sec. 1(c), Rule 41 of the same Rules expressly provides that no appeal may be taken from an interlocutory order; an interlocutory order, as opposed to a final judgment or order, is one that does not dispose of the case completely but leaves something to be decided upon; petitioner resorted to a petition for review on *certiorari* under Rule 45 of the Rules of Court to question the denial of its motion for issuance of an injunctive relief; an order granting or denying an application for a TRO or a preliminary injunction is interlocutory in nature and, thus, unappealable; the proper remedy is to file a petition for *certiorari* and/or prohibition under Rule 65 of the same Rules. (Tiong Bi, Inc. [Owner of Bacolod Our Lady of Mercy Specialty Hospital] *vs.* Phil. Health Insurance Corp., G.R. No. 229106, Feb. 20, 2019) p. 906

ARRESTS

Arrest in flagrante delicto — A lawful arrest may be affected with or without a warrant; with respect to the latter, a warrantless arrest may be done when, *inter alia*, the accused is caught *in flagrante delicto*, such as in buy-bust operations in drugs cases; however, if the existence of a valid buy-bust operation cannot be proven, and thus, the validity of the *in flagrante delicto* warrantless arrest cannot be established, the arrest becomes illegal and the consequent search incidental thereto becomes unreasonable; resultantly, all the evidence seized by reason of the unlawful arrest is inadmissible in evidence for

specified number of days or months; the right to speedy disposition of cases is enshrined in Sec. 16, Art. III of the Constitution which declares in no uncertain terms that "All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies"; the right to a speedy disposition of cases is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays; what the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory. (*Id*.)

— Unlike in the *Tatad, Duterte, Coscolluela* and *Angchangco, Jr*. cases where the delay were manifestly oppressive and arbitrary, the facts of the cases subject of the present petition do not evince vexatious, capricious and oppressive delay in the conduct of preliminary investigation; the Court finds no compelling reason to accord in the case at bench the same radical relief of dismissal granted by the Court in those cases cited by petitioner Salcedo; to conclude, there was no arbitrary and inordinate delay contemplated under the Constitution to support Salcedo's assertion that his right to speedy disposition of cases was violated; the prolonged termination of the preliminary investigation in the subject cases should not be a cause for an unfettered abdication by the Sandiganbayan of its duty to try and determine the controversies in Criminal Cases Nos. SB-13-CRM-0001 to 0046 and Criminal Case Nos. SB-13-CRM-0047 to 0092. (*Id*.)

CERTIORARI

Grave abuse of discretion — The grant of a Rule 65 petition for *certiorari* requires grave abuse of discretion amounting to lack or excess of jurisdiction; grave abuse of discretion exists where an act is performed with a capricious or whimsical exercise of judgment equivalent to lack of jurisdiction; the abuse of discretion must be so patent and so gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the

COMMISSION ON AUDIT

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

no question can be raised as to the authenticity of the dangerous drug presented in court; *Mallillin v. People*, cited; it is incumbent upon the prosecution to establish that the confiscated drugs and the drugs submitted in court are one and the same by providing a clear account of the following: 1) the date and time when, as well as the manner, in which the illegal drug was transferred; 2) the handling, care and protection of the person who had interim custody of the seized illegal drug; 3) the condition of the drug specimen upon each transfer of custody; and 4) the final disposition of the seized illegal drug. (People *vs*. Tampan, G.R. No. 222648, Feb. 13, 2019) p. 110

— *People v. Nandi* specified four (4) links that must be established in a confiscated item's chain of custody: 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*. Royol *y* Asico, G.R. No. 224297, Feb. 13, 2019) p. 156

— Sec. 21, Art. II of R.A. No. 9165, the applicable law at the time of the commission of the alleged crime, outlines the procedure which the police officers must strictly follow to preserve the integrity of the confiscated drugs and/or paraphernalia used as evidence: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; (2) that the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the DOJ, all of whom shall be required to sign the copies of the inventory and be given a copy of the same and the seized drugs must be turned over to a forensic laboratory within twenty-

is set in motion when these requisites are satisfied: 1) the existence of justifiable grounds; and 2) the integrity and evidentiary value of the seized items are properly preserved by the police officers; the first requirement enjoins the prosecution to identify and concede the lapses of the buy-bust team and thereafter give a justifiable and credible explanation therefor. (People *vs*. Caranto *y* Austria, G.R. No. 217668, Feb. 20, 2019) p. 748

— The chain of custody rule is embodied in Sec. 21, Art. II of R.A. No. 9165; on July 15, 2014, Sec. 21 was amended by R.A. No. 10640; since the offenses were committed on October 7, 2010, the Court is constrained to evaluate the apprehending officers' compliance with the chain of custody requirement in accordance with Sec. 21 of R.A. No. 9165; the law sets forth the fine points of the physical inventory and photograph of the seized illegal drug such that: 1. They must be done immediately after seizure or confiscation; 2. They must be done in the presence of the following persons: a) the accused or his representative or counsel; b) representative from the media; c) representative from the DOJ; and d) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; and 3. They shall be conducted at the following places: a) place where the search warrant is served; or b) at the nearest police station or nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizure; equally telling is the marking of the seized illegal drugs and other related items which serves as the starting point of the custodial link; a member of the buy-bust team or the poseur-buyer writes his/her initials and places his signature on the seized item so that from the time of its confiscation up to its final disposition, the marked evidence remains isolated from the corpus of all other similar or related evidence; while R.A. No. 9165 is silent on the marking requirement, the Court cannot overstress its significance in illegal drugs cases as it erases any suspicion on the authenticity of

procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same; in this regard, case law recognizes that "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team"; hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody; the law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if prior to the amendment of R.A. No. 9165 by R.A. No. 10640, "a representative from the media *and* the DOJ, and any elected public official"; or (b) if after the amendment of R.A. No. 9165 by R.A. No. 10640, "an elected public official and a representative of the National Prosecution Service *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." (Badio *y* Dicampung *vs.* People, G.R. No. 236023, Feb. 20, 2019) p. 930

Identity and integrity of the seized drugs — In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction; it is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty; in order to obviate any unnecessary doubt on its identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to its presentation in court as evidence of the crime. (People *vs.* Caranto *y* Austria, G.R. No. 217668, Feb. 20, 2019) p. 748

— To secure conviction for illegal sale of dangerous drugs, the prosecution must establish: (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; for illegal possession of dangerous drugs, on the other hand, these elements must concur: (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; in both offenses, the existence of the drug is of paramount importance such that no drug case can be successfully prosecuted and no judgment of conviction can be validly sustained without the identity of the dangerous substance being established with moral certainty, it being the very *corpus delicti* of the violation of the law. (People *vs*. Tampan, G.R. No. 222648, Feb. 13, 2019) p. 110

Illegal sale of dangerous drugs — The crime that the accused-appellant was charged with and tried, and for which he was found guilty of, was the crime of illegal sale of dangerous drug defined and punished under the first paragraph of Sec. 5 of R.A. No. 9165; in prosecuting the charge, the State bore the burden to prove the following elements of the violation, namely: (*a*) the identities of the buyer and the seller, the object of the sale, and the consideration; and (*b*) the delivery of the thing sold and its payment; the delivery to the poseur-buyer of the dangerous drug by the accused as the seller, and the receipt by the latter of the marked money consummated the illegal sale of the dangerous drug during the buy-bust transaction. (People *vs*. Yagao *y* Llaban, G.R. No. 216725, Feb. 18, 2019) p. 253

— The elements required to sustain convictions for violation of Sec. 5 of the Comprehensive Dangerous Drugs Act are settled; in *People v. Morales*: In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of

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 therein does not *ipso facto* render the seizure and custody over the items void and invalid; however, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved; it has been repeatedly emphasized by the Court that the prosecution has the positive duty to explain the reasons behind the procedural lapses; without any justifiable explanation, which must be proven as a fact, the evidence of the *corpus delicti* is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt. (People *vs.* Caranto *y* Austria, G.R. No. 217668, Feb. 20, 2019) p. 748

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; 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. (Badio *y* Dicampung *vs.* People, G.R. No. 236023, Feb. 20, 2019) p. 930

thus, even before the settlement of the estate, an heir may file an action for reconveyance of possession as a co-owner thereof, provided that such heir recognizes and acknowledges the other co-heirs as co-owners of the property as it will be assumed that the heir is acting on behalf of all the co-heirs for the benefit of the co-ownership. (Clemente *vs*. Rep. of the Phils., G.R. No. 220008, Feb. 20, 2019) p. 788

— Upon the execution of the Deed of Donation and the acceptance of such donation in the same instrument, ownership was transferred to the Republic, as evidenced by the new certificate of title issued in the name of the Province of Quezon; because the condition in the Deed of Donation is a resolutory condition, until the donation is revoked, it remains valid; however, for the donation to remain valid, the donee must comply with its obligation to construct a government hospital and use the Subject Property as a hospital site; the failure to do so gives the donor the right to revoke the donation. (*Id*.)

EMPLOYMENT, KINDS OF

Labor-only contracting — Labor-only contracting is prohibited and defined under Sec. 5 of DO 18-02: *Section 5. Prohibition against labor-only contracting.* Labor-only contracting is hereby declared prohibited; for this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies, or places workers to perform a job, work or service for a principal, and any of the following elements is present: i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or ii) The contractor does not exercise the right to control over the performance of the work of the contractual employee. (Daguinod *vs*. Southgate Foods, Inc., G.R. No. 227795 [Formerly UDK-15556], Feb. 20, 2019) p. 878

who puts out or farms out a job, service or work to a contractor or subcontractor. (Daguinod *vs*. Southgate Foods, Inc., G.R. No. 227795 [Formerly UDK-15556], Feb. 20, 2019) p. 878

— The ownership of substantial capital in the form of tools, equipment, machineries, work premises, and other properties, by the contractor is another factor in establishing whether it is legitimate; the documents submitted are insufficient to prove that Generation One possesses substantial capital to be considered a legitimate labor contractor. The Certificate of Registration as an independent contractor issued by the DOLE to Generation One does not automatically vest it with the status of a legitimate labor contractor; it is merely presumptive proof; the totality of circumstances reveals that Generation One, despite its DOLE registration, is not a legitimate labor contractor; The Service Agreement between Generation One and Southgate which provided for the scope of the agreement as well as the proviso that there would be no employer-employee relationship between Southgate and Generation One's employees are not the sole determining factor in ascertaining the true nature of the relationship between the principal contractor, and employees. (*Id*.)

EMPLOYMENT, TERMINATION OF

Gross and habitual neglect of duty — Jacolbe's repeated and consistent failure to meet the prescribed AHT mark over a prolonged period of time falls squarely under the concept of gross inefficiency and is analogous to gross and habitual neglect of duty under Art. 297 of the Labor Code which justified his dismissal; the 7-minute AHT metric is not unique to Jacolbe as it is in fact a key performance metric, which measures the effectivity and efficiency of a CSR in handling customer's concerns in each call; it does not appear to be arbitrary and unreasonable; on the contrary, the Court finds it necessary and relevant to the achievement of TP's objectives and a reasonable work standard imposed by TP in the exercise of its management

statements, the records are bereft of evidence to indicate any irregularity in the contents of the document or to the act of notarization itself. (Lozano *vs*. Fernandez, G.R. No. 212979, Feb. 18, 2019) p. 219

EXECUTIVE DEPARTMENT

Declaration of martial law — Rebellion, within the context of the situation in Mindanao, encompasses no definite time nor particular locality of actual war and continues even when actual fighting has ceased; the state of rebellion results from the commission of a series or combination of acts and events, past, present and future, primarily motivated by ethnic, religious, political or class divisions which incites violence, disturbs peace and order, and poses serious threat to the security of the nation; the ultimate objective of the malefactors is to seize power from the government, and specifically "for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof, of any body of land, naval or other armed forces, depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives." (Rep. Lagman *vs*. Exec. Sec. Medialdea, G.R. No. 243522, Feb. 19, 2019) pp. 317-318

— The factual basis for the extension of martial law is the continuing rebellion being waged in Mindanao by Local Terrorist Rebel Groups (LTRG) - identified as the ASG, BIFF, DI, and other groups that have established affiliation with ISIS/DAESH, and by the Communist Terrorist Rebel Groups (CTRG) - the components of which are the Communist Party of the Philippines (CPP), New People's Army (NPA), and the National Democratic Front (NDF); the cited events demonstrate the spate of violence of rebel groups in Mindanao in pursuit of the singular objective to seize power over parts of Mindanao or deprive the President or Congress of their power and prerogatives over these areas; the test of sufficiency is not accuracy nor preciseness but reasonableness of the factual basis

of the uprising or movement is either (a) to remove from the allegiance to the Government or its laws: (i) the territory of the Philippines or any part thereof; or (ii) any body of land, naval, or other armed forces; or (b) to deprive the Chief Executive or Congress, wholly or partially, of any of their powers and prerogatives." (Rep. Lagman *vs*. Exec. Sec. Medialdea, G.R. No. 243522, Feb. 19, 2019) pp. 317-318

Extension of martial law and suspension of the privilege of the writ of habeas corpus — All forms of human rights violations and abuses during the implementation of martial law and suspension of powers should not go unpunished; consistent with the previous rulings of the Court in *Lagman v. Medialdea* and *Lagman v. Pimentel III*, the alleged violations and abuses should be resolved in a separate proceeding; the purported human rights abuses mentioned in the petitions, particularly in the Bayan Muna and Valle Petitions, fail to persuade that these are sufficient to warrant a nullification of the extension; a declaration of martial law does not suspend fundamental civil rights of individuals as the Bill of Rights enshrined in the Constitution remain effective; while it is recognized that, in the declaration of martial law and the suspension of the privilege of the writ of *habeas corpus*, the powers given to officials tasked with its implementation are susceptible to abuses, these instances have already been taken into consideration when the pertinent provisions on martial law were drafted; in relation to the international human rights principles established under the Universal Declaration of Human Rights, the law enforcement officials are also guided by the principles and safeguards declared in the International Covenant on Civil and Political Rights. (Rep. Lagman *vs*. Exec. Sec. Medialdea, G.R. No. 243522, Feb. 19, 2019) pp. 317-318

— The Court in the case of *Lagman v. Medialdea* explained the only limitations to the exercise of congressional authority to extend such proclamation or suspension: a) the extension should be upon the President's initiative; b) it should be grounded on the persistence of the invasion

in the present case, the crime for which accused-appellant must be convicted for should only be rape; time and again, this Court has held that forcible abduction is absorbed in the crime of rape when the intent of the abductor is to have canal knowledge of the victim. (People *vs*. Villanueva *y* Bautista, G.R. No. 230723, Feb. 13, 2019) p. 179

FORUM SHOPPING

Certificate against forum shopping — Under Sec. 5, Rule 7 of the Rules of Court, the following details must be stated in the certificate against forum shopping: (a) the party has not commenced any action involving the same issues in any court or tribunal, or that there is no pending case involving the same issue to the best of his knowledge; (b) a complete statement of the present status if there is such other pending action; and (c) notify the court wherein the complaint or initiatory pleading is filed, within five (5) days should the party thereafter learn that the same or similar action has been filed or is pending; contrary to Fernandez's position the rules do not make use of the phrase "promptly inform" as it specifically provides that the party should notify the court within five days from discovering a similar case pending before another court. (Lozano *vs*. Fernandez, G.R. No. 212979, Feb. 18, 2019) p. 219

Existence of — Forum shopping exists when a party repetitively avails himself of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved adversely by, some other court; it is considered an act of malpractice as it trifles with the courts and abuses their processes; normally, petitions for *certiorari* and appeals are beyond the scope of forum shopping because of their nature and purpose which is to grant a litigant the remedy to elevate his case to a superior court for review; this presupposes, however, that the appeal or the petition for

1977"; under this law, all government employees who have not reached the mandatory retirement age are compulsorily required to become members of the GSIS; this membership entitles employees, except those in the judiciary and constitutional commissions, to life insurance, retirement, and other benefits (*e.g.* disability, survivorship, separation, and unemployment); for retirement benefits, in particular, R.A. No. 8291 provides the following conditions before a member may become qualified to receive this benefit, *viz.*: (a) the employee must have rendered at least 15 years of service; (b) the employee must be at least 60 years old at the time of retirement; and (c) the employee must not be receiving a monthly pension as a result of permanent total disability. (GSIS *vs.* Palmiery, G.R. No. 217949, Feb. 20, 2019) p. 770

ILLEGAL DISMISSAL

Liability of employer — Art. 294 of the Labor Code provides that an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges, full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement; When reinstatement is no longer viable such as when the parties have strained relations, separation pay may be awarded as an alternative; reinstatement is no longer feasible in this case. (Daguinod *vs.* Southgate Foods, Inc., G.R. No. 227795 [Formerly UDK-15556], Feb. 20, 2019) p. 878

Procedural due process — The employer must comply with substantive and procedural due process in the dismissal of an employee; Substantive due process pertains to the just and authorized causes for dismissal as provided under Arts. 297, 298, and 299 of the Labor Code; Procedural due process pertains to the twin requirements of notice and hearing; in this case, there was non-compliance with procedural due process as the notice to explain (NTEs) did not contain the specific information

offender is a public officer who is "entrusted with the collection of taxes, licenses, fees and other imposts"; second, that he or she engages in any of the three (3) specified acts or omissions under Art. 213(2): "demanding, directly or indirectly, the payment of sums different from or larger than those authorized by law; failing voluntarily to issue a receipt, as provided by law, for any sum of money collected by him officially; or collecting or receiving, directly or indirectly, by way of payment or otherwise, things or objects of a nature different from that provided by law." (Reynes *vs*. Ombudsman [Visayas], G.R. No. 223405, Feb. 20, 2019) p. 847

INJUNCTION

Elements of injunctive writ — To be entitled to the injunctive writ, petitioner must show that (1) there exists a clear and unmistakable right to be protected; (2) this right is directly threatened by an act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage; as correctly ruled by the CA, essential for the grant of the injunctive relief is the existence of an urgent necessity to prevent serious damage; a TRO is issued only if the matter is of such extreme urgency that grave injustice and irreparable injury will arise unless it is issued immediately; parenthetically, the burden is on the petitioner to show in the application that there is meritorious ground for the issuance of the TRO in its favor. (Tiong Bi, Inc. [Owner of Bacolod Our Lady of Mercy Specialty Hospital] *vs.* Phil. Health Insurance Corp., G.R. No. 229106, Feb. 20, 2019) p. 906

Nature of — The grant or denial of a TRO or an injunctive writ rests on the sound discretion of the court taking cognizance of the case, since the assessment and evaluation of evidence towards that end involves findings of facts left to the said court for its conclusive determination; verily, the exercise of judicial discretion by a court in injunctive matters must not be interfered with, unless

outside of these exceptions, the court that rendered the judgment only has the ministerial duty to issue the writ of execution; the judgment also becomes the law of the case regardless of any claim that it is erroneous; any amendment or alteration that substantially affects the final and executory judgment is null and void for lack of jurisdiction, and the nullity extends to the entire proceedings held for that purpose. (Dagondon *vs*. Ladaga, G.R. No. 190682, Feb. 13, 2019) p. 1

LAND REGISTRATION

Alienable and disposable land — In the recent case of *In Re: Application for Land Registration, Suprema T. Dumo v. Republic of the Philippines*, the Court reiterated the requirement it set in *Republic v. T.A.N. Properties, Inc.* (*T.A.N. Properties*) that there are two documents which must be presented to prove that the land subject of the application for registration is alienable and disposable: (1) a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records, and (2) a certificate of land classification status issued by the CENRO or the Provincial Environment and Natural Resources Office (PENRO) based on the land classification approved by the DENR Secretary. (D.M. Consunji, Inc. *vs*. Rep. of the Phils., G.R. No. 233339, Feb. 13, 2019) p. 194

— The Court in *Sps. Fortuna* ruled: Mere notations appearing in survey plans are inadequate proof of the covered properties' alienable and disposable character; these notations, at the very least, only establish that the land subject of the application for registration falls within the approved alienable and disposable area per verification through survey by the proper government office; The applicant, however, must also present a copy of the original classification of the land into alienable and disposable land, as declared by the DENR Secretary or as proclaimed by the President. The survey plan and the DENR-CENRO certification are not proof that the President or the DENR Secretary has reclassified and released the public land

disease; the seaman is entitled to disability benefits if the seaman proves that the conditions inside the vessel increased or aggravated the risk of the seaman of colon cancer. (Jebsens Maritime, Inc. *vs*. Alcibar, G.R. No. 221117, Feb. 20, 2019) p. 814

Liberal construction — A work-related illness is "any sickness resulting to disability or death as a result of an occupational disease listed under Sec. 32-A of this contract with the conditions set therein satisfied"; the 2000 POEA-SEC creates a disputable presumption that illnesses not mentioned therein are work-related; however, on the ground of due process, the claimant may still prove by substantial evidence, or that amount of relevant evidence which a person might accept as adequate to justify a conclusion, that the seafarer's work conditions caused or, at least, increased the risk of contracting the disease; rationale; substantial evidence is required to prove the concurrence of the conditions that will merit compensability, consistent with the liberal interpretation accorded the provisions of the Labor Code and the social justice guarantee in favor of the workers. (German Marine Agencies, Inc. *vs*. Caro, G.R. No. 200774, Feb. 13, 2019) p. 11

— In the early case of *Iloilo Dock & Engineering Co. v. Workmen's Compensation Commission*, the Court has already made the pronouncement that the question of compensation coverage necessarily revolves around the core requirement of work-connection, and the corresponding evidence that establishes it; this liberal construction of the rules pertaining to compensability has been affirmed time and again, as in the recent case of *Canuel v. Magsaysay Maritime Corporation; Wallem Maritime Services, Inc. v. NLRC*, also cited. (*Id*.)

Post-employment Medical Examination — Sec. 20(B) of the POEA Standard Employment Contract requires a post-employment medical examination to prove a seafarer's claim to disability benefits; in addition, the CBA executed between Alcibar and petitioners provides for the evidence

prescriptive period. (Clemente *vs*. Rep. of the Phils., G.R. No. 220008, Feb. 20, 2019) p. 788

Condition in the deed of donation — The Deed of Donation is bereft of any period within which the donee should have complied with the condition of constructing a government hospital; thus, the action has not yet prescribed; based on the Deed of Donation, however, it is apparent that a period was indeed intended by the parties; by agreeing to the conditions in the Deed of Donation, the donee agreed, and it bound itself to construct a government hospital and to use the Subject Property solely for hospital purposes; it can be deduced that the parties intended that the hospital should be built within a reasonable period, although the Deed of Donation failed to fix a period for such construction. (Clemente *vs*. Rep. of the Phils., G.R. No. 220008, Feb. 20, 2019) p. 788

— While ideally, a period to comply with the condition should have been fixed by the Court, this will be an exercise in futility because of the fact that it has been more than fifty (50) years since the Deed of Donation has been executed; and thus, the reasonable time contemplated by the parties within which to comply with the condition has already lapsed; if it becomes indubitable that the event, in this case the construction of the hospital, will not take place, then the obligation of the donor to honor the donation is extinguished; the donor-obligee can seek rescission of the donation if the donee-obligor has manifested no intention to comply with the condition of the donation. (*Id*.)

PRESUMPTIONS

Presumption of regular performance of duty — The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right; the burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein; here, reliance on the presumption of

determination. (Reynes *vs*. Ombudsman [Visayas], G.R. No. 223405, Feb. 20, 2019) p. 847

— Jurisprudence has settled that probable cause for the filing of an information is "a matter which rests on likelihood rather than on certainty; it relies on common sense rather than on 'clear and convincing evidence'"; in *Reyes v. Pearlbank Securities, Inc.*: Probable cause, for the purpose of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof; the term does not mean "actual and positive cause" nor does it import absolute certainty; it is merely based on opinion and reasonable belief; probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction; it is enough that it is believed that the act or omission complained of constitutes the offense charged. (*Id*.)

Grave abuse of discretion — Atty. Mernado's fixation on petitioner's burden to "present the Ordinance on garbage fees" may have revealed that he did not quite grasp petitioner's position; worse, it could betray a deliberate distortion or design to prevent petitioner from successfully pursuing his case; regardless, by his insistence, he engaged in a "whimsical exercise of judgment"; his demand for petitioner to discharge a vacuous, even foolish, burden amounts to an evasion of his positive and legally-ordained duty to appraise cases within "the jurisprudential parameters of probable cause"; it is grave abuse of discretion. (Reynes *vs*. Ombudsman [Visayas], G.R. No. 223405, Feb. 20, 2019) p. 847

Judicial non-interference — Acting on the basis of the evidence presented to them, public prosecutors are vested "with a wide range of discretion, the discretion of whether, what and whom to charge"; thus, "the prosecuting attorney cannot be compelled to file a particular criminal information"; in accordance with judicial non-interference, "not even the Supreme Court can order the prosecution

suspension for one (1) year; in conformity with Section 52 of the Revised Rules, she shall also be meted the accessory penalty of disqualification from promotion for the entire period of the suspension; *Civil Service Commission v. Manzano*, cited. (*Id.*)

Grave misconduct — Grave misconduct is defined as a serious transgression of some established and definite rule of action (such as unlawful behavior or gross negligence by the public officer or employee) that tends to threaten the very existence of the system of administration of justice an official or employee serves; the misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence; thus, in grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rule must be manifest. (Miranda *vs*. Civil Service Commission, G.R. No. 213502, Feb. 18, 2019) p. 232

— Grave misconduct is defined as wrongful, improper, or unlawful conduct committed in connection with the performance of official functions, motivated by a premeditated, obstinate or intentional purpose, and coupled with the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule; it is an odious offense that has always been and will continue to be anathema in the civil service. (Moreno *vs*. Court of Appeals, G.R. No. 238566, Feb. 20, 2019) p. 941

— The Court finds dismissal too severe a penalty; for one, Moreno's participation in the act complained of was equivalent to that of a mere accessory; to be sure, it was never shown that Moreno derived any financial gain from the false certification of said DVs; discussed; penalty. (*Id.*)

— The irregularities committed by Moreno amounted to grave misconduct; by repeatedly and falsely certifying the subject DVs as liquidated, he effectively attempted

grave; It bears stressing that the right to substantive and procedural due process is equally applicable in administrative proceedings; a basic requirement of due process is that a person must be duly informed of the charges against him and that (b) a person cannot be convicted of an offense with which he was not charged. (*Id*.)

R.A. NO. 8291 *VIS-À-VIS* THE LAW CREATING AND ESTABLISHING A GOVERNMENT SERVICE INSURANCE SYSTEM (C.A. NO. 186)

Section 12(g) of C.A. No. 186 — While it is true that Sec. 12(g) of C.A. No. 186 explicitly provides for giving full credit to the prior years of service upon the refund of benefits previously received, the absence of a similar provision in R.A. No. 8291 does not necessarily mean that the law has abandoned this policy; this provision prescribed the requirements for an employee-member to avail of the retirement benefits under C.A. No. 186, as well as the specific benefits to which such member may be entitled, given the various enumerated conditions; the full credit of services is conditioned upon the refund of contributions for retirement, and the benefits previously received under any pension or retirement plan; thus, taken in its proper context, Sec. 12(g) of C.A. No. 186 applies to a specific category of employees and their corresponding benefits; the provision's subsequent absence in R.A. No. 8291 is attributable to the revised conditions for retirement under the new law, which was streamlined to only three (3) requirements for eligibility. (GSIS *vs*. Palmiery, G.R. No. 217949, Feb. 20, 2019) p. 770

RAPE

Commission of — The prosecution sufficiently established that AAA was raped while she was unconscious; moreover, the abductors' intent to commit such horrific acts on her was made apparent when, upon arriving at the place she was detained, the assailants tried kissing her and slapped her when she resisted; she was only released the following morning after her abductors were done having their way

SALES

Contract of — Jurisprudence teaches us that "a person can sell only what he owns or is authorized to sell; the buyer can as a consequence, acquire no more than what the seller can legally transfer"; no one can give what he does not have — *nemo dat quod non habet*.(Augusto *vs*. Carlota Dy, G.R. No. 218731, Feb. 13, 2019) p. 72

Purchaser in good faith — A purchaser in good faith is one who buys property without notice that some other person has a right to or interest in such property and pays its fair price before he or she has notice of the adverse claims and interest of another person in the same property; in this case, they purchased the property knowing that it was registered in the name of another person, not of the seller; this fact alone should put them in inquiry as to the status of the property; hence, they cannot invoke good faith on their part; remedy. (Augusto *vs*. Carlota Dy, G.R. No. 218731, Feb. 13, 2019) p. 72

SEARCHES AND SEIZURES

Search incidental to a lawful arrest — 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 becomes 'unreasonable' within the meaning of said constitutional provision; 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; one of the recognized exceptions to the need for a warrant before a search may be affected is a search incidental to a lawful arrest. (Trinidad *y* Bersamin *vs*. People, G.R. No. 239957, Feb. 18, 2019) p. 305

Warrantless search and seizure — A citizen's right to be secure against any unreasonable searches and seizures is sacrosanct; no less than the Constitution guarantees that the State cannot intrude into the citizen's persons,

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