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OF THE

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FROM

FEBRUARY 27, 2019 TO MARCH 11, 2019

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MANILA
2021

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by

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. Nos. 199729-30. February 27, 2019]

MANILA BANKERS' LIFE INSURANCE CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

[G.R. Nos. 199732-33. February 27, 2019]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **MANILA BANKERS' LIFE INSURANCE CORPORATION,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); SECTION 27(E) ON THE IMPOSITION OF MINIMUM CORPORATE INCOME TAX (MCIT) ON DOMESTIC CORPORATIONS; GROSS INCOME IN DETERMINING MCIT MEANS GROSS RECEIPTS LESS SALES RETURNS, ALLOWANCES, DISCOUNTS AND COST OF SERVICES. — Of particular importance to the case at bar is Section 27(E) of the NIRC, which provides for the imposition of MCIT x x x The provision allows the government to collect from corporations MCIT equivalent to 2% of "gross income" in lieu of the 30% of "gross income" basic income tax for domestic corporations, whenever the former is higher. It must be borne in mind, however, that although both rates of taxes are applied to "gross income"

as tax base, the definition of "gross income," for purposes of MCIT and basic corporate income tax, varies. Under Section 27(E)(4) above-quoted, "gross income" as used in determining MCIT means "gross receipts less sales returns, allowances, discounts and cost of services.'' This definition is much more limited in terms of inclusions, exclusions, and deductions, compared to the definition of "gross income" for purposes for computing basic corporate tax under Sections 32 and 34 of the NIRC.

2. **ID.; ID.; RMC 4-2003 CANNOT BE INVOKED IN ASSESSING MBLIC'S DEFICIENCY MCIT FOR 2001.** — [T]he issue pertaining to MBLIC's deficiency MCIT assessment stemmed from its alleged excessive claim of deductible "cost of services," resulting in the CIR's perceived understatement of the MCIT due. Specifically, the CIR argues that premium taxes on insurance and DSTs cannot be considered as deductible from gross receipts since they are not among those identified under RMC 4-2003 as costs of services. *x x x* The first point of contention is the applicability of RMC 4-2003. x x x Well-entrenched is the rule that statutes, including administrative rules and regulations, operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication. In the present case, there is no indication that the revenue regulation may operate retroactively. x x x RMC 4-2003 cannot therefore be invoked in assessing MBLIC's deficiency MCIT for 2001. Rather, the deductibility of premium taxes and DSTs from gross receipts ought to be measured against the standard set under Section 27(E)(4) of the NIRC itself.

3. **ID.; ID.; ID.; APPLICATION OF SECTION 27(E)(4) IN ASSESSING DEFICIENCY MCIT FOR 2001; PREMIUM TAXES ARE NOT DEDUCTIBLE COSTS OF SERVICES; DISCUSSED.** — Section 123 of the NIRC serves as basis for the imposition of premium taxes. x x x Without the availability of RMC 4-2003, we can only evaluate the deductibility of premium taxes *(i.e.)* whether or not they constitute cost of services) based solely on the wording of Section 27(E)(4). As per the provision, "cost of services" means all direct costs and expenses necessarily incurred to provide the services required by the customers and clients, including (A) salaries and employee benefits of personnel, consultants and specialists directly rendering the

service and (B) cost of facilities directly utilized in providing the service such as depreciation or rental of equipment used and cost of supplies. x x x [O]ne of the express requirements for deductibility [is] that the claimed deduction should be a *direct* cost or expense. A cost or expense is deemed "direct" when it is readily attributable to the production of the goods or for the rendition of the service. Measured against this standard, it is then easy to discern that premium taxes, though payable by MBLIC, are *not* direct costs within the contemplation of the phrase "cost of services," incurred as they are *after* the sale of service had already transpired. This cannot therefore be considered as the equivalent of raw materials, labor, and manufacturing cost of deductible "cost of sales" in the sale of goods. x x x The CTR's contention –that premium taxes are not deductions from gross receipts when determining the MCIT, but from "gross income" in calculating corporate taxes – should therefore be given due credence.

4. **ID.; ID.; ID.; DOCUMENTARY STAMP TAXES (DST) ARE NOT DEDUCTIBLE COSTS OF SERVICES. —** DST is incurred "by the person making, signing, issuing, accepting, or transferring" the document subject to the tax. And since a contract of insurance is mutual in character, either the insurer or the insured may shoulder the cost of the DST. x x x DSTs cannot qualify as direct costs "to provide the services required by the customers and clients" since, just like premium taxes, they are incurred *after* the service had been rendered.

5. **ID.; ID.; ID.; AN INCREASE IN THE ASSURED AMOUNT OF AN INSURANCE POLICY WOULD YIELD A CORRESPONDING INCREASE IN THE DST DUE. —** The imposition of DST on insurance policies is sourced on Section 183 of the NIRC, x x x Synthesized with Section 173 earlier quoted, DST becomes due at the same time the insurance policy is executed or had. By way of exception, however, [under] Section 198 x x x an insurance contract may again attract DST at the same rate when it is (a) assigned or transferred, or (b) renewed or continued by alteration or otherwise. Under the latter circumstance, an alteration of the policy may result in attracting DST, though no new policy is issued. MBLIC is then mistaken in its claim that it can only be liable under Section 183 whenever a new policy is issued. For the pivotal question is not the issuance or non-issuance of a new policy, but whether or not

an increase in the assured amount amounted to a renewal or continuance by alteration or otherwise. We approve the ruling of the CTA. Increases in the amount fixed in the policy by virtue of the automatic increase clause necessarily altered or affected the subject policies, and therefore, created or granted existing policyholders new and additional rights. This finding is in consonance with the Court's resolution in *Lincoln.* In *Lincoln,* it was held that an increase in the assured amount of an insurance policy would yield a corresponding increase in the DST due.

6. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE COURT MAY GIVE CREDENCE TO THE DEFENSE OF PRESCRIPTION EVEN THOUGH IT WAS RAISED FOR THE FIRST TIME ON APPEAL. — Under Rule 1, Section 3 of the Revised Rules of Procedure before the Court of Tax Appeals, the Rules of Court of the Philippines shall have suppletory application. In turn, Section 1, Rule 9 of the Rules of Court states: Section 1. Defenses and objections not pleaded. – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, **when it appears from the pleadings or the evidence on record** that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or **that the action is barred** by a prior judgment or **by statute of limitations, the court shall dismiss the claim.** x x x Indeed, the Court may give credence to the defense of prescription even though it was raised for the first time on appeal. However, the defense of prescription, though timely invoked, was not sufficiently established. x x x MBLIC failed to establish that the increase in coverage that resulted in the increase in DST due occurred between January and June of 2001. Without this detail, there is no way of knowing when the corresponding DST became due, when the tax return therefor should have been filed, and, consequently, when the three-year prescriptive period should be reckoned.

APPEARANCES OF COUNSEL

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De Guzman Dionido Caga & Jucaban Law Offices for Manila Bankers' Life Insurance Corporation.

D E C I S I O N

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

Nature of the Case

Before the Court are the consolidated petitions of Manila Bankers' Life Insurance Corporation (MBLIC) and the Commissioner of Internal Revenue (CIR) filed under Rule 45 of the Rules of Court. Both parties appealed from the August 18, 2011 Decision[1] and December 9, 2011 Resolution[2] of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case Nos. 620 and 621. Said rulings held (a) that premium taxes on insurance policies are considered "costs of service" in computing the Minimum Corporate Income Tax (MCIT); (b) that Documentary Stamp Taxes (DSTs) paid on the insurance policies are *not* considered "costs of service" in the MCIT computation; (c) that the DST may be assessed on the increase in the assured coverage of an insurance policy, even when no new policy is issued; (d) that MBLIC belatedly raised the defense of prescription; and (e) that compromise penalties cannot be imposed.

The Facts

CTA Case No. 7266

On June 8, 2004, MBLIC received a Preliminary Assessment Notice from the Bureau of Internal Revenue (BIR), assessing the following alleged deficiency taxes for the year 2001:[3]

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[1] Penned by Associate Justice Caesar A. Casanova with Associate Justices Juanito C. Castañeda. Lovell R. Bautista, Erlinda P. Uy, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino and Cielito N. Mindaro-Grulla and Presiding Justice Ernesto D. Acosta (on leave) concurring; *rollo* (G.R. Nos. 199732-33), pp. 36-61.

[2] *Id*. at 62-69.

[3] *Id*. at 38.

Item No.	Tax Type	Amount (Php)
1	MCIT	929,474.20
2	Expanded Withholding Tax	167,871.77
3	Premium Tax	1,004,636.84
4	Percentage Tax - Rental Income	25,991.70
5	DST on Loans	13,301.86
6	MCIT - Disallowed Direct Costs	586,788.11
7	DST - Increased Policies	7,189,683.70
Total Deficiency Taxes Assessed		**9,917,748.18**

On June 23, 2004, MBLIC settled items 1 to 5 of the deficiency assessments with the BIR's Large Taxpayers Service (LTS), but moved for reconsideration of items 6 and 7.[4]

However, on August 17, 2004, MBLIC received from the CIR a Formal Letter of Demand with Formal Assessment Notices (FAN), dated August 4, 2004, for its alleged MCIT and DST deficiencies for 2001 in the aggregate amount of ₱7,951,462.28, broken down as follows:[5]

Item	Details	Amounts (Php)	Total (Php)
MCIT	Basic MCIT Due	398,233.52	
	Interest as of August 11, 2004	185,855.58	
	Compromise Penalty	16,000.00	**600,089.10**
DST	Basic DST Due	4,841,002.50	
	Interest as of August 11, 2004	2,485,370.68	
	Compromise Penalty	25,000.00	**7,351,373.18**
		Grand Total	**7,951,462.28**

[4] *Id*.

[5] *Id*. at 38-39.

The basic MCIT for 2001 in the amount of ₱398,233.52 was based on the disallowances from MBLIC's claimed deductions. Essentially, according to the CIR, premium taxes and DSTs on insurance policies are not deemed "costs of service" that can be deducted from gross receipts for purposes of computing MCIT. The CIR cited Section 27(E)(4) of the National Internal Revenue Code of 1997 (NIRC) and Revenue Memorandum Circular No. 4-2003 (RMC 4-2003). Under RMC 4-2003, premium taxes and DSTs are not included in the enumeration of an insurance company's direct costs. Thus, MBLIC's basic deficiency MCIT due for 2001 was computed as follows: [6]

Disallowances: DST	Php 1,508,128.17
Premium Tax	18,403,548.01
Subtotal	**19,911,676.18**
MCIT Rate	2%
MCIT Due	**Php 398,233.52**

As regards the DST portion of the assessment, the base amount of **₱4,841,002.50** was arrived at by applying the rate of ₱0.50 for every ₱200.00 of ₱1,936,401,000.00, which pertains to the total increase in the sum assured under the existing insurance policies in 2001 as reported by MBLIC to the Insurance Commission. It was noted that the increase in the assured amount under the policies entailed a corresponding increase in the DST due. Inclusive of interest and penalties, the total amount of DST due is **₱7,351,373.18.**[7]

On September 15, 2004, MBLIC filed its letter protest before the LTS, contesting the assessment of the subject deficiencies. On November 12, 2004, MBLlC submitted before the LTS Audit and Investigation Division all the documents requested by the

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[6] *Id*. at 39.

[7] *Id*. at 40.

office. Thereafter, on June 7, 2005, MBLIC filed a petition for review with the CT A to protect its right to refute the assessment. The case was docketed as CTA Case No. 7266. The CIR filed his Answer on August 30, 2005.[8]

Subsequently, on October 12, 2005, MBLIC prayed for leave of court to file a Supplemental Petition, alleging therein that the deficiency DST on transactions made from January to June 2001 is null and void for having been issued beyond the three-year prescriptive period. The CTA admitted the Supplemental Petition over the opposition of the CIR.[9]

In turn, the CIR filed his Amended Answer,[10] alleging that the assessments were issued in accordance with existing law and regulations, and that they were issued within the prescriptive period. In any event, issues and defenses not raised in the administrative level, such as prescription herein, cannot be raised for the first time on appeal.

Anent the assessed deficiency MCIT, the CIR argued that RMC 4-2003 is applicable even though the assessment is for deficiencies in the year 2001 since it merely clarified an existing NIRC provision; that MBLIC failed to rebut the findings of the CIR that premium taxes and DSTs are not direct costs; and that the alleged expenses are not deductions from gross receipts for computing MCIT, but from gross income for computing the basic domestic corporate tax.

Regarding the deficiency DST, the CIR justified its assessment of the increased assured amount by citing Section 198 of the NIRC, which specifically provides that any alteration on any instrument or agreement subject to DST, a policy insurance included, shall be subject to incremental DST at the same rate

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[8] *Id*.

[9] *Id*. at 40-41.

[10] The pertinent portion of which is qnoted in the *rollo* of G.R. Nos. 199732-33, pp. 41-47.

as that imposed on the original instrument. Reliance was likewise made on *CIR v. Lincoln Philippine Life Insurance Company, Inc. (Lincoln).*[11]

Lastly, the CIR argued that claims for tax exemption ought to be construed *strictissimi juris* against the claimant MBLIC, and that the assessments are *prima facie* correct and presumed to have been made in good faith. Absent proof of irregularities in the performance of official duties, an assessment should not be disturbed.

CTA Case Nos. 7324 and 7378

CTA Case Nos. 7324 and 7378 arose from circumstances similar to CTA Case No. 7266. These pertain to deficiency DSTs assessed on the increases in the sums assured under existing insurance policies, this time for the years 2002 and 2003. A summary of the assessments is as follows:

CTA Case No.	Fiscal Year	Deficiency DST Due (Php)
7324	2002	2,528,424.74[12]
7378	2003	2,083,203.48[13]

[11] 429 Phil. 154 (2002).

[12] *Rollo* (G.R. Nos. 199732-33), pp. 47-48.

Total Issued Policies	825,958,000.00
Total Increases in sum assured for Group Insurance	1,169,854,000.00
Total Increases in sum assured for Ordinary Insurance	175,361,000.00
Total sum assured in policies	**2,171,173,000.00**
Tax Rate	0.50/200.00
Tax Due	**5,427,932.50**
DST payments made	3,663,353.09
Basic Deficiency DST Due	**1,764,579.41**
Interest (January 1, 2003 to March 5, 2005)	763,848.53
Total Deficiency DST	**2,528,424.74**

[13] *Id*. at 50.

Upon due observance of the procedure for administrative remedies, resulting in either the failure of the CIR to resolve the protest within the reglementary period or in the denial of MBLIC's protest, MBLIC filed petitions for review with the CTA, docketed as CTA Case Nos. 7324 and 7378. Upon motion of MBLIC, these cases were consolidated with CTA Case No. 7266.[14] Trial on the merits thereafter ensued.

Ruling of the CTA Second Division

On November 6, 2009, the CT A Second Division rendered a Decision[15] on the consolidated petitions of MBLIC, upholding the assessments made by the CIR with modifications.

According to the CTA Second Division, premium taxes are deemed cost of services deductible from gross receipts in computing for MCIT. It ruled, however, that DSTs are not so deductible. To quote:[16]

In light of the foregoing, premium tax may be considered as a direct cost and/or expense necessary to provide the service of insurance considering that insurance companies, such as petitioner, cannot effectively issue insurance policies without incurring the said tax. It

Total Issued Policies	801,548,000.00
Total Increases in sum assured for Group Insurance	1,142,428,000.00
Total Increases in sum assured for Ordinary Insurance	85,137,000.00
Total sum assured in policies	**2,029,114,000.00**
Tax Rate	0.50/200.00
Tax Due	**5,072,785.00**
DST payments made	3,383,075.51
Basic Deficiency DST Due	**1,689,709.49**
Interest (January 5, 2004 to February 5, 2005)	393,493.99
Total Deficiency DST	**2,083,203.48**

[14] *Id*. at 51

[15] Penned by Associate Justice Erlinda P. Uy, and concurred in by Associate Justices Juanito C. Castañeda, Jr, and Olga Palanca-Enriquez; *id*. at 80-113.

[16] *Id*. at 99-100.

must be pointed out that in the issuance of a policy or contract of insurance, its validity and binding effect depends (sic) upon the payment of the premium, which is closely intertwined with the payment of the premium tax that is accruing thereto.

x x x x x x x x x

However, [W]e can not say the same as regards the DST.

Unlike the premium tax, which is the direct liability of the insurance company, the DST x x x is imposed upon "the person making, signing, issuing, accepting or transferring" the document or facility evidencing the transaction. Thus, DST may be imposed upon either of the parties to the transaction in a contract of insurance, or upon either the insurance company or the insured.

It is not disputed herein that the corresponding DST (like the consequent premium tax) was included in the premiums charged to petitioner's clients. Thus, the latter are the ones who were made liable to pay the DST, and not the petitioner. This being the case, DST cannot be deemed as a direct cost or expense of petitioner necessary to provide the insurance service. Consequently, the same DST cannot form part of petitioner's costs of service for purposes of computing its MCIT for taxable year 2001. (Citations omitted)

Furthermore, the CTA Second Division ruled that the CIR erred in utilizing RMC 4-2003 as the basis for the disallowances of the deductions from gross receipts in computing for the MCIT, for the issuance, issued on December 31, 2002, cannot be applied retroactively to assess MBLIC for deficiency taxes for taxable year 2001.[17]

Anent the deficiency DST due, the CTA Second Division sided with the CIR and applied the *Lincoln* ruling. Thus, it was held that an increase in the coverage or the sum assured by an insurance policy is subject to DST even though no new policy for such an increase was issued.[18]

On the issue of prescription, the CTA Second Division cited *Aguinaldo Industries Corp. (Fishing Nets Division)*

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[17] *Id*. at 101-104.

[18] *Id*. at 105-108.

v. CIR, et al.,[19] *(Aguinaldo)*and ruled that the defense cannot be considered, asserted as it was for the first time in MBLIC's Supplemental Petition instead of during the administrative stages of the proceeding.[20]

Lastly, the compromise penalties imposed by the CIR were cancelled because there was no mutual agreement between the parties to compromise. A 25% surcharge was imposed in its stead.[21]

In sum, the CTA Second Division disposed of MBLIC's petitions in the following manner:[22]

WHEREFORE, in view of the foregoing considerations, the consolidated Petitions for Review seeking the cancellation of respondent's assessments for; deficiency Minimum Corporate Income Tax (MCIT) and deficiency Documentary Stamp Tax (DST) and increments for taxable year 2001 in **CTA Case No. 7266;** deficiency DST and increments for taxable year 2002 in **CTA Case No. 7324;** and deficiency DST and increments for taxable year 2003 in **CTA Case No. 7378** are **DENIED.** The Formal Assessment Notices issued by respondent against petitioner covering deficiency MCIT for taxable year 2001 and deficiency DST for taxable years 2001, 2002 and 2003 are hereby **AFFIRMED WITH MODIFICATIONS.** The compromise penalties are **CANCELLED.** However, a twenty-five percent (25%) surcharge is imposed, pursuant to Section 248(A) of the NIRC of 1997.

Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the amount of **FOURTEEN MILLION SIXTY-THREE THOUSAND SIX HUNDRED SEVEN PESOS AND 51/100 (₱14,063,607.51),** representing its deficiency MCIT for taxable year 2001 and deficiency DST for taxable years 2001, 2002, and 2003, inclusive of increments, computed as follows:

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[19] 197 Phil. 822 (1982).

[20] *Rollo* (G.R. Nos. 199732-33), pp. 108-110.

[21] *Id*. at 110.

[22] *Id*. at 110-112. (Emphasis in the original)

	2001	2002	2003	Grand Total
MCIT				
Basic MCIT Due	₱30,162.56			
25% Surcharge	7,540.64			
20% Interest	14,076.86			
	₱51,780.06			**₱51,780.06**
DST				
Basic DST Due	₱4,841,002.50	₱1,764,579.41	₱1,689,709.49	
25% Surcharge	1,210,250.63	441,144.85	422,427.37	
20% Interest	2,485,370.68	763,848.53	393 493.99	
	₱8,536,623.81	**₱2,969,572.79**	**₱2,505,630.85**	**₱14,011,827.45**
Total Amount Due	**₱8,588,403.87**	**₱2,969,572. 79**	**₱2,505,630.85**	**₱14,063,607.51**

In addition, petitioner is hereby **ORDERED TO PAY** twenty percent (20%) delinquency interest on ₱8,588,403.87, representing the total amount due for taxable year 2001, computed from August 11, 2004; as well as on the ₱2,969,572.79 and ₱2,505,630.85 total amounts due for taxable years 2002 and 2003, respectively, computed from March 5, 2005 until full payment thereof, pursuant to Section 249(C)(3) of the NIRC of 1997.

SO ORDERED.

The CTA Second Division would affirm the said Decision through its Resolution[23] dated April 6, 2010.

Ruling of the CTA *En Banc*

Unsatisfied, both parties assailed the rulings of the CTA Second Division. MBLIC maintained its posturing in its petitions. The CIR, on the other hand, alleged that the CTA Second Division erred (a) in allowing MBLIC to deduct premium taxes from gross receipts for the purpose of computing the MCIT due, and (b) in cancelling the compromise penalties assessed in the FANs.

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[23] *Id*. at 114-126.

The CTA *En Banc,* however, found no cogent reason to disturb the findings and conclusions spelled out in the assailed rulings of the CTA Second Division. In its discussion, the CTA *En Banc* merely amplified the justification for barring MBLIC from raising prescription as a defense. Thus, the CTA *En Banc* disposed of both petitions in the following wise:[24]

> **WHEREFORE,** the assailed Decision dated November 6, 2009 and Resolution dated April 6, 2010 of the CTA Former Second Division are hereby **AFFIRMED *in toto,*** and the instant Petitions for Review are hereby **DISMISSED** for lack of merit.
>
> **SO ORDERED.**

The parties' respective motions for reconsideration were denied by the CTA *En Banc* through its December 9, 2011 Resolution.[25]

Hence, the instant recourses.

The Issues

MBLIC framed the issues thusly:[26]

A. WHETHER OR NOT THE CTA *EN BANC* IN UPHOLDING THE DECISION AND RESOLUTION OF THE CTA-DIVISION COMMITTED REVERSIBLE ERROR IN HOLDING THAT PETITIONER CANNOT RAISE THE ISSUE OF PRESCRIPTION FOR THE FIRST TIME ON APPEAL IN ITS PETITION FOR REVIEW FILED BEFORE THE CTA-DIVISION IN CTA CASE NO. 7266

B. WHETHER OR NOT THE CTA *EN BANC* IN UPHOLDING THE DECISION AND RESOLUTION

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[24] *Id*. at 59. (Emphasis in the original)

[25] *Id*. at 62-69.

[26] *Rollo* (G.R. Nos. 199729-30), p. 112.

OF THE CTA-DIVISION COMMITTED REVERSIBLE ERROR IN HOLDING THAT DST IS NOT PART OF COST OF SERVICE FOR PURPOSES OF COMPUTING [THE] MINIMUM CORPORATE INCOME TAX ("MCIT")

C. WHETHER OR NOT THE CTA *EN BANC* IN UPHOLDING THE DECISION AND RESOLUTION OF THE CTA-DIVISION COMMITTED REVERSIBLE ERROR IN HOLDING THAT AN INCREASE IN THE COVERAGE OR THE SUM ASSURED BY AN INSURANCE POLICY IS SUBJECT TO DST ALTHOUGH NO NEW POLICY FOR SUCH INCREASE IS ISSUED

On the other hand, the CIR assigned the following errors:[27]

THE HONORABLE COURT [OF] TAX APPEAL[S] *EN BANC* ERRED ON A QUESTION OF LAW WHEN (1) IT AFFIRMED THE DECISION DATED NOVEMBER 6, 2009 AND RESOLUTION DATED APRIL 6, 2010 RENDERED BY THE FORMER COURT OF TAX APPEALS SECOND DIVISION FINDING THAT THE PREMIUM TAX IS DEEMED PART OF THE COST OF SERVICE FOR PURPOSES OF PETITIONER'S ASSESSMENT FOR DEFICIENCY MINIMUM CORPORATE INCOME TAX BUT NOT FOR PETITIONER'S ASSESSMENT FOR DEFICIENCY DOCUMENTARY STAMP TAX AND (2) WHEN IT CANCELLED THE COMPROMISE PENAL TIES AGAINST RESPONDENT.

To synthesize, the pivotal issue in the case at bar is whether or not the CIR erred in assessing MBLIC for deficiency taxes. Subsumed under this general statement are the following issues:

1. Whether or not MBLTC is liable for deficiency MCIT in 2001.

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[27] *Rollo* (G.R. Nos. 199712-33), p. 27.

a. Whether or not RMC 4-2003 can be retroactively applied as basis for the purported deficiency taxes in 2001.

b. Whether or not premium taxes constitute "cost of services" deductible from gross receipts.

c. Whether or not DSTs constitute "cost of services" deductible from gross receipts.

2. Whether or not MBLIC is liable for deficiency DST for increases in the assured or covered amount stated in its insurance policies even though no new instrument is issued.

3. Whether or not prescription was properly raised as a defense.

4. Whether or not compromise penalty could be imposed against MBLIC.

The Court's Ruling

The petition of the CIR is meritorious in part, while that of MBLIC deserves scant consideration. The Court shall now discuss the aforementioned issues in *seriatim.*

Liability for deficiency MCIT

Of particular importance to the case at bar is Section 27(E) of the NIRC, which provides for the imposition of MCIT in the following manner:

SEC. 27. Rates of Income tax on Domestic Corporations. –

x x x x x x x x x

(E) Minimum Corporate Income Tax on Domestic Corporations. –

(1) Imposition of Tax. – A minimum corporate income tax of two percent (2%) of the gross income as of the end of the taxable year, as defined herein, is hereby imposed on a corporation taxable under this Title, beginning on the fourth taxable year immediately following the year in which such corporation commenced its business

operations, when the minimum income tax is greater than the tax computed under Subsection (A) of this Section for the taxable year.

x x x x x x x x x

(4) Gross Income Defined. – For purposes of applying the minimum corporate income tax provided under Subsection (E) hereof, the term ***'gross income'*** shall mean gross sales less sales returns, discounts and allowances and cost of goods sold. ***'Cost of goods sold,*** shall include all business expenses directly incurred to produce the merchandise to bring them to their present location and use.

x x x x x x x x x

In the case of taxpayers engaged in the sale of service, ***'gross income'*** means gross receipts less sales returns, allowances, discounts and cost of services. ***'Cost of services'*** shall mean all direct costs and expenses necessarily incurred to provide the services required by the customers and clients including (A) salaries and employee benefits of personnel, consultants and specialists directly rendering the service and (B) cost of facilities directly utilized in providing the service such as depreciation or rental of equipment used and cost of supplies: Provided, however, That in the case of banks, ***'cost of services'*** shall include interest expense. (Emphasis supplied)

The provision allows the government to collect from corporations MCIT equivalent to 2% of "gross income" in lieu of the 30% of "gross income" basic income tax for domestic corporations,[28] whenever the former is higher. It must be borne in mind, however, that although both rates of taxes are applied to "gross income" as tax base, the definition of "gross income," for purposes of MCIT and basic corporate income tax, varies.

Under Section 27(E)(4) above-quoted, "gross income" as used in determining MClT means "gross receipts less sales returns, allowances, discounts and cost of services." This definition is much more limited in terms of inclusions, exclusions, and deductions, compared to the definition

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[28] Section 27(A) of the NIRC.

of "gross income" for purposes for computing basic corporate tax under Sections 32[29] and 34[30] of the

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[29] **SEC. 32. Gross Income.** –

(A) General Definition. – Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:

(1) Compensation for services in whatever form paid, including, but not limited to fees, Salaries, wages, commissions, and similar items;
(2) Gross income derived from the conduct of trade or business or the exercise of a profession;
(3) Gains derived from dealings in property;
(4) Interests;
(5) Rents;
(6) Royalties;
(7) Dividends;
(8) Annuities;
(9) Prizes and winnings;
(10) Pensions; and
(11) Partner's distributive share from the net income of the general professional partnership.

(B) Exclusions from Gross Income. – The following items shall not be included in gross income and shall be exempt from taxation under this title:

(1) Life Insurance. – **xxx**
(2) Amount Received by Insured as Return of Premium – **xxx**
(3) Gifts, Bequests, and Devises. – **xxx**
(4) Compensation for Injuries or Sickness. – **xxx**
(5) Income Exempt under Treaty. – **xxx**
(6) Retirement Benefits, Pensions, Gratuities, *etc*.– **xxx**
(7) Miscellaneous Items. –

(a) Income Derived by Foreign Government. – **xxx**
(b) Income Derived by the Government or its Political Subdivisions. – **xxx**
(c) Prizes and Awards. – **xxx**
x x x x x x x x x
(d) Prizes and Awards in sports Competition. – **xxx**
(e) 13th Month Pay and Other Benefits. – **xxx**
x x x x x x x x x
(f) GSIS, SSS, Medicare and Other Contributions – **xxx**
(g) Gains from the Sale of Bonds, Debentures or other Certificate of Indebtedness. – **xxx**
(h) Gains Crom Redemption of Shares in Mutual Fund. – **xxx**

[30] **SEC. 34 Deductions from Gross Income.** xxx

NIRC.[31] In formulaic terms, Section 27(E)(4) can be expressed thusly:

Gross Receipts		
Less:	Sales Returns	
	Sales Allowances	
	Sales Discounts	
	Cost of Services	
Gross Income		
MCIT Rate:		2%
Total MCIT Due		

(A) Expenses.

x x x **x x x** **x x x**

(B) Interest.

x x x **x x x** **x x x**

(C) Taxes.

x x x **x x x** **x x x**

(D) Losses.

x x x **x x x** **x x x**

(E) Bad Debts.

x x x **x x x** **x x x**

(F) Depreciation.

x x x **x x x** **x x x**

(G) Depletion of Oil and Gas Wells and Mines.

x x x **x x x** **x x x**

(H) Charitable and Other Contributions.

x x x **x x x** **x x x**

(I) Research and Development.

x x x **x x x** **x x x**

(J) Pension Trusts.

(K) Additional Requirements for Deductibility of Certain Payments. – **xxx**

(L) Optional Standard Deduction. – **xxx**

(M) Premium Payments on Health and/or Hospitalization Insurance of an Individual Taxpayer. **xxx**

[31] *CIR v. Philippine Airlines,* 609 Phil. 695, 713 (2009).

To refresh, the issue pertaining to MBLIC's deficiency MCIT assessment stemmed from its alleged excessive claim of deductible "cost of services," resulting in the CIR's perceived understatement of the MCIT due. Specifically, the CIR argues that premium taxes on insurance and DSTs cannot be considered as deductible from gross receipts since they are not among those identified under RMC 4-2003 as costs of services.

i. RMC 4-2003 cannot be retroactively applied

The first point of contention is the applicability of RMC 4-2003.[32] The circular reads:

Gross Receipts and Cost of Services Per Industry. – For purposes of applying the MCIT, the 'gross receipts' and 'cost of services' of taxpayers engaged in the following types of services, or any other kind but of a similar nature, shall be determined as follows:

x x x x x x x x x

(ii) Insurance and pension funding companies refer to those engaged in life and non-life insurance business as defined under the Insurance Code and pre-need companies, including health maintenance organizations. Their gross receipts shall mean actual or constructive receipts representing: net retained premiums (gross premiums net of returns, cancellations, and premiums ceded)/gross premium or collection from planholders; membership fees (in the case of HMOs); miscellaneous income; investment income not subject to final tax; released reserve and, in the case of pre-need companies, gross withdrawals from the trust funds set up independently as mandated by the Securities and Exchange Commission (SEC); and, all other items treated as gross income under Section 32 of the Tax Code. **Their costs of services shall refer to those incurred directly and exclusively in the insurance and pre-need business, including the generation of investment income not subject to final taxes, and shall be limited to the following:**

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[32] Clarifying Items That Would Constitute Gross Receipts and Costs in Determining "Gross Income" on Services for the Purpose of Computing the Minimum Corporate Income Tax (MCIT) Pursuant to Sections 27(E) and 28(A)(2) of the National Internal Revenue Code of 1997; promulgated on December 31, 2002.

01. Salaries, wages and other employee benefits of personnel directly engaged in said activities;

02. Commissions on direct writings/agents of pre-need companies;

03. Claims, losses, maturities and benefits net of reinsurance recoveries; and,

04. Net additions required by law to reserve fund (for insurance companies) and in the case of pre-need companies, contributions to the trust funds to be set up independently as mandated by the SEC. (emphasis added)

MBLIC claims that the restrictive language of RMC 4-2003 limits what constitutes "cost of service," compared to the more inclusive wording of the provision the issuance seeks to implement. Because RMC 4-2003 would preclude MBLIC from claiming deductions from gross receipts other than those expressly enumerated, the company claims that the retroactive application of RMC 4-2003 to its 2001 taxes is not only prejudicial but, in fact, violative of Section 246 of the NIRC, which provides:

SEC. 246. Non- Retroactivity of Rulings. – Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner **shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers,** except in the following cases:

(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
(c) Where the taxpayer acted in bad faith. (emphasis added)

Meanwhile, the CIR argues that invoking RMC 4-2003 herein is proper since it merely clarified what constitutes "cost of service" as defined under Section 27(E)(4). Since premium taxes and DSTs do not form part of the exhaustive enumeration in the issuance, the CIR therefore assessed MBLIC for deficiency MCIT.

We concur with MBLIC.

Well-entrenched is the rule that statutes, including administrative rules and regulations, operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication. In the present case, there is no indication that the revenue regulation may operate retroactively.[33]

Similarly, the Court held in *Pilipinas Total Gas, Inc. v. CIR*[34] that RMC 54-2014, requiring that the application for VAT refund or credit must already be accompanied by complete supporting documents, cannot be applied retroactively since it imposes new obligations upon taxpayers in order to perfect their administrative claim. To rule otherwise would unduly prejudice taxpayers who had already filed their claims before RMC 54-2014 was issued, in violation of Section 246 afore-quoted.

RMC 4-2003 cannot therefore be invoked in assessing MBLIC's deficiency MCIT for 2001. Rather, the deductibility of premium taxes and DSTs from gross receipts ought to be measured against the standard set under Section 27(E)(4) of the NIRC itself.

ii. Premium taxes are NOT deductible costs of services

Section 123 of the NIRC serves as basis for the imposition of premium taxes. Pertinently, the provision reads:

SEC. 123. Tax on Life Insurance Premiums. – There shall be collected from every person, company or corporation (except purely cooperative companies or associations) doing life insurance business of any sort in the Philippines a tax of five percent (5%) of the total premium collected, whether such premiums are paid in money, notes, credits or any substitute for money; x x x [.]

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[33] *BPI Leasing Corporation v. Court of Appeals*. 461 Phil. 451, 460 (2003).

[34] 774 Phil. 473 (2015).

Without the availability of RMC 4-2003, we can only evaluate the deductibility of premium taxes *(i.e.)* whether or not they constitute cost of services) based solely on the wording of Section 27(E)(4). As per the provision, "cost of services" means all direct costs and expenses necessarily incurred to provide the services required by the customers and clients, including (A) salaries and employee benefits of personnel, consultants and specialists directly rendering the service and (B) cost of facilities directly utilized in providing the service such as depreciation or rental of equipment used and cost of supplies.

In ruling that premium taxes are deductible from gross receipts, the CTA relied on the permissive wording of the provision. It held that the phrase "including" meant that "cost of services" could pertain to expenses other than salaries and production costs. On the premise that premium taxes are expenses incurred by MBLIC to further its business, the CTA then ruled that the same can be considered as part of its cost of services, though not specifically mentioned.[35]

While we agree that the enumeration in the provision is not exhaustive, the CTA paid little to no attention to one of the express requirements for deductibility – that the claimed deduction should be a *direct* cost or expense. A cost or expense is deemed "direct" when it is readily attributable to the production of the goods or for the rendition of the service.

Measured against this standard, it is then easy to discern that premium taxes, though payable by MBLTC, are *not* direct costs within the contemplation of the phrase "cost of services," incurred as they are *after* the sale of service had already transpired. This cannot therefore be considered as the equivalent of raw materials, labor, and manufacturing cost of deductible "cost of sales" in the sale of goods.

Contrarily, to accede to the CTA's rationalization would virtually allow all expenses to be deductible from gross receipts, erasing the distinction between "gross income" for purposes

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[35] *Rollo* (G.R. Nos. 199732-33), pp. 66-67.

of MCIT and "gross income" for purposes of basic corporate taxes. The CIR's contention – that premium taxes are not deductions from gross receipts when determining the MCIT, but from "gross income" in calculating corporate taxes – should therefore be given due credence.

iii. DSTs are NOT deductible costs of services

The CTA did not, however, err in holding that DSTs are *not* deductible costs of services. The general provision on DST states:

SEC. 173. Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers. - Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title, **by the person making, signing, issuing, accepting, or transferring the same** wherever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and **the same time such act is done or transaction had:** Provided, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party who is not exempt shall be the one directly liable for the tax. (emphasis added)

As can be gleaned, DST is incurred "by the person making, signing, issuing, accepting, or transferring" the document subject to the tax. And since a contract of insurance is mutual in character, either the insurer or the insured may shoulder the cost of the DST.

In this case, it was duly noted by the CTA that MBLIC never disputed charging DSTs from its clients as part of their premiums. Hence, it cannot readily be said that it was MBLIC who "necessarily incurred" the expense.[36] Moreover, DSTs cannot also qualify as direct costs "to provide the services required

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[36] *Id*. at 100.

by the customers and clients" since, just like premium taxes, they are incurred *after* the service had been rendered. No error is then attributable to the CTA in this regard.

Liability for DST

We now proceed to the assessed deficiency DST liability of MBLIC for increases in the assured amount of the insurance policies it issued. MBLIC had been reporting the said increases to the Insurance Commission. The veracity of these reports utilized by the CIR in its assessment was neither disputed nor denied by MBLIC. Instead, the company merely argued that it cannot be made liable for additional DST unless a new policy is issued.

We do not agree.

The imposition of DST on insurance policies is sourced on Section 183 of the NIRC, which states:

SEC. 183. Stamp Tax on Life Insurance Policies. – On all policies of insurance or other instruments by whatever name the same may be called, whereby any insurance shall be made or renewed upon any life or lives, there shall be collected a one-time documentary stamp tax at the following rates:

If the amount of insurance does not exceed ₱100,000	Exempt
If the amount of insurance exceeds ₱100,000 but does not exceed 300,000	Php 10.00
If the amount of insurance exceeds ₱300,000 but doe not exceed 500,000	Php 25.00
If the amount of insurance exceeds ₱150,000 but does not exceed 750,000	Php 50.00
If the amount of insurance exceeds ₱750,000 but does not exceed 1,000,000	Php 75.00
lf the amount of insurance exceeds ₱1,000,000	Php100.00

Synthesized with Section 173 earlier quoted, DST becomes due at the same time the insurance policy is executed or had. By way of exception, however, Section 198 reads:

SEC. 198. Stamp Tax on Assignments and Renewals of Certain Instruments. – Upon each and every assignment or transfer of any

mortgage, lease or policy of insurance, or the **renewal or continuance of any agreement,** contract, charter, or any evidence of obligation or indebtedness **by altering or otherwise,** there shall be levied, collected and paid a documentary stamp tax, at the same rate as that imposed on the original instrument. (emphasis added)

Plainly, an insurance contract may again attract DST at the same rate when it is (a) assigned or transferred, or (b) renewed or continued by alteration or otherwise. Under the latter circumstance, an alteration of the policy may result in attracting DST, though no new policy is issued. MBLIC is then mistaken in its claim that it can only be liable under Section 183 whenever a new policy is issued. For the pivotal question is not the issuance or non-issuance of a new policy, but whether or not an increase in the assured amount amounted to a renewal or continuance by alteration or otherwise.

We approve the ruling of the CTA. Increases in the amount fixed in the policy by virtue of the automatic increase clause necessarily altered or affected the subject policies, and therefore, created or granted existing policyholders new and additional rights.[37] This finding is in consonance with the Court's resolution in *Lincoln.*

In *Lincoln,* it was held that an increase in the assured amount of an insurance policy would yield a corresponding increase in the DST due. In the said case, private respondent issued a special kind of life insurance policy known as the Junior Estate Builder Policy. Its distinguishing feature is a clause providing for an automatic increase in the amount of life insurance coverage upon attainment of a certain age by the insured without the need of issuing a new policy. The clause was to take effect in the year 1984. DSTs due were paid by petitioner only on the initial sum assured. Nevertheless, the Court held that therein private respondent is liable for DST on the increase of the amount insured upon the effectivity of the automatic increase clause in 1984. As the Court ratiocinated:[38]

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[37] *Id.* at 108.

[38] *CIR v. Lincoln Philippine Life Insurance Company, Inc., supra* note 11, at 161-162.

It is clear from Section 173 that the payment of documentary stamp taxes is done at the time the act is done or transaction had and the tax base for the computation of documentary stamp taxes on life insurance policies under Section 183 is the amount fixed in policy, unless the interest of a person insured is susceptible of exact pecuniary measurement. **What then is the amount fixed in the policy? Logically, we believe that the amount fixed in the policy is the figure written on its face and whatever increases will take effect in the future by reason of the "automatic increase clause" embodied in the policy without the need of another contract.**

Here, although the automatic increase in the amount of life insurance coverage was to take effect later on, the date of its effectivity, as well as the amount of the increase, was already definite at the time of the issuance of the policy. Thus, the amount insured by the policy at the time of its issuance necessarily included the additional sum covered by the automatic increase clause because it was already determinable at the time the transaction was entered into and formed part of the policy.

The "automatic increase clause" in the policy is in the nature of a conditional obligation under Article 1181, by which the increase of the insurance coverage shall depend upon the happening of the event which constitutes the obligation. In the instant case, the additional insurance that took effect in 1984 was an obligation subject to a suspensive obligation, but still a part of the insurance sold to which private respondent was liable for the payment of the documentary stamp tax. (Citations omitted; emphasis supplied)

The case ended with a warning that tax laws cannot be circumvented in order to evade the payment of just taxes. And to claim that the increase in the amount insured should not be included in the computation of the documentary stamp taxes due would be a clear evasion of the law requiring that the tax be computed on the basis of the amount insured.[39]

On Prescription

MBLIC next argues that, even assuming for the sake of argument that It is liable for deficiency DST for guaranteed

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[39] *Id*. at 162.·

increases in the covered amount of its policies, it cannot be assessed deficiency DST for the entire fiscal year of 2001. More particularly, MBLIC averred that it had religiously been filing monthly DST returns. And since the CIR only has three years[40] from the filing of the return to collect any deficiency thereon, he is precluded from recovering deficiency DST for the January-June 2001 period covered by returns filed earlier than August 4, 2001 or three years from the issuance of the FAN.

The CIR, for its part, counters that the defense of prescription was belatedly raised in MBLIC's supplemental petition, and was not invoked during the protest before the CIR. MBLIC refuted, however, that the defense of prescription may be raised at any time.

The Court rules that although MBLIC is correct in saying that it may still raise prescription as a defense, it nevertheless failed to establish that the prescriptive period had already expired.

Under Rule I, Section 3 of the Revised Rules of Procedure before the Court of Tax Appeals, the Rules of Court of the Philippines shall have suppletory application. In turn, Section 1, Rule 9 of the Rules of Court states:

> Section 1. Defenses and objections not pleaded. – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, **when it appears from the pleadings or the evidence on record** that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or **that the action is barred** by a prior

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[40] **SEC. 203. Period of Limitation Upon Assessment and Collection.** – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law. the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

judgment or **by statute of limitations, the court shall dismiss the claim.** (emphasis added)

Thus, the Court in *China Banking Corporation v. CIR,*[41] citing *Heirs of Valientes v. Ramas,*[42] ruled that it is imbued with sufficient discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case; more so, when the provisions on prescription were enacted to benefit and protect taxpayers from investigation after a reasonable period of time. Resultantly, the Court therein appreciated the defense of prescription even though it was raised for the first time before the Court of last resort.

Indeed, the Court may give credence to the defense of prescription even though it was raised for the first time on appeal. However, as mentioned, the defense of prescription, though timely invoked, was not sufficiently established. For though MBLIC endeavored to prove that it filed DST returns covering the months of January-June 2001 before the August 5, 2004 FAN was issued, there was no showing that the deficiency DSTs assessed pertained to the said timeframe.

Stated in the alternative, MBLIC failed to establish that the increase in coverage that resulted in the increase in DST due occurred between January and June of 2001. Without this detail, there is no way of knowing when the corresponding DST became due, when the tax return therefor should have been filed, and, consequently, when the three-year prescriptive period should be reckoned.

Compromise Penalty cannot be imposed

Finally, no error can be attributed to the CTA when it deleted the compromise penalties that the CIR imposed on MBLIC. A compromise, by its nature, is mutual in essence.[43] It cannot

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[41] 753 Phil. 58 (2015).

[42] 653 Phil. 111 (2010).

[43] 417 Phil. 292, 302 (2001).

therefore be imposed without a predicate agreement. In this case, the fact that MBLIC protested the assessment could only signify that there was no agreement to speak of.

WHEREFORE, premises considered, the Court hereby resolves as follows:

a. The Petition for Review on *Certiorari* of Manila Bankers' Life Insurance Corporation, docketed as G.R. Nos. 199729-30, is hereby **DENIED** for lack of merit;

b. The Petition of the Commissioner of Internal Revenue, docketed as G.R. Nos. 199732-33, is **PARTLY MERITORIOUS;** and

c. The August 18, 2011 Decision and December 9, 2011 Resolution of the Court of Tax Appeals *En Banc* in CTA EB Case Nos. 620 and 621 are hereby **AFFIRMED** with the **MODIFICATION** that premium taxes are not deductible from gross receipts for purposes of determining the minimum corporate income tax due. As modified, the total deficiency taxes due from Manila Bankers' Life Insurance Corporation shall be as follows:

	2001	2002	2003	Grand Total
MCIT				
Basic MCIT Due	Php398,233.52			
25% Surcharge	99,558.38			
20% Interest	185,855.58			
	Php683,647.48			**Php683,647.48**
DST				
Basic DST Due	Php4,841,002.50	Php1,764,579.41	Php1,689,709.49	
25% Surcharge	1,210,250.63	441,144.85	422,427.37	
20% Interest	2,485,370.68	763,848.53	393,493.99	
	Php8,536,623.81	**Php2,969,572.79**	**Php2,505,630.85**	**Php14,011,827.45**
Total Amount Due	**Php9,220,271.29**	**Php2,969,572.79**	**Php2,505,630.85**	**Php14,695,474.93**

Accordingly, Manila Bankers' Life Insurance Corporation is hereby **ORDERED TO PAY** the Commissioner of Internal Revenue the amount of **FOURTEEN MILLION SIX HUNDRED**

NINETY-FIVE THOUSAND FOUR HUNDRED SEVENTY-FOUR PESOS AND 93/100 (₱14,695,474.93) representing the deficiency MCIT for taxable year 2001 and deficiency DST for taxable years 2001, 2002, and 2003.

In addition, Manila Bankers' Life Insurance Corporation is hereby **ORDERED TO PAY:**

(a) Delinquency interest at the rate of twenty percent (20%) on ₱9,220,271.29, representing the total amount due for taxable year 2001, computed from August 11, 2004 until December 31, 2017; as well as on the ₱2,969,572.79 and ₱2,505,630.85 total amounts due for taxable years 2002 and 2003, respectively, computed from March 5, 2005 until December 31, 2017, pursuant to Section 249(C)(3) of the NlRC of 1997, and

(b) From January 1, 2018 until full payment, the rate of delinquency interest on the total amounts due stated in the preceding paragraph for taxable years 2001, 2002 and 2003 shall be twelve percent (12%) pursuant to Section 249(C)(3) of the NIRC of 1997 as amended by Republic Act No. 10963, otherwise known as the "Tax Reform for Acceleration and Inclusion (TRAIN) Law" and implemented by Revenue Regulations No. 21-2018.[44]

SO ORDERED.

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

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[44] Section 6 of Revenue Regulations No. 21-2018 provides: **Section 6. TRANSITORY PROVISION.** – In cases where the tax liability/ies or deficiency tax/es became due before the effectivity of the TRAIN Law on January 1, 2018, and where the full payment thereof will only be accomplished after the said effectivity date, the interest rates shall be applied as follows:

Period	*Applicable Interest Type and Rate*
For the period up to December 31, 2017	Deficiency and/or delinquency interest at 20%
For the period January 1, 2018 until full payment of the tax liability	Deficiency and/or delinquency interest at 12%

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

THIRD DIVISION

[G.R. No. 202792. February 27, 2019]

LA SALLIAN EDUCATIONAL INNOVATORS FOUNDATION (DE LA SALLE UNIVERSITY-COLLEGE OF ST. BENILDE), INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. **TAXATION; TAX EXEMPTION; NON-STOCK, NON-PROFIT EDUCATIONAL INSTITUTIONS ARE NOT REQUIRED TO PAY TAXES ON ALL THEIR REVENUES AND ASSETS IF THEY ARE USED ACTUALLY, DIRECTLY AND EXCLUSIVELY FOR EDUCATIONAL PURPOSES. —** No less than the 1987 Constitution expressly exempt all revenues and assets of non-stock, non-profit educational institutions from taxes provided that they are actually, directly and exclusively used for educational purposes, to wit: Section 4.(1) The State recognizes the complementary roles of public and private institutions in the educational system and shall exercise reasonable supervision and regulation of all educational institutions. x x x (3) **All revenues and assets of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties.** This constitutional exemption is reiterated in Section 30 (H) of the 1997 Tax Code, as amended. x x x Clearly, non-stock, non-profit educational institutions are not required to pay taxes on all their revenues and assets if they are used actually, directly and exclusively for educational purposes. x x x Based on jurisprudence and tax rulings, a taxpayer shall be granted with this tax exemption after proving that: **(1) it falls under the classification of non-stock, non-profit educational institution;** and **(2) the income it seeks to be exempted from taxation is used actually, directly and exclusively for educational purposes**.

2. **ID.; ID.; ID.; MAKING PROFITS IS NOT MATERIAL SO LONG AS THE REVENUES AND INCOME ARE USED ACTUALLY, DIRECTLY AND EXCLUSIVELY FOR EDUCATIONAL**

PURPOSES. — [R]espondent claimed that petitioner Foundation is not a non-profit educational institution anymore due to its alleged enormous profits. x x x In several cases, this Court has ruled that a non-profit institution will not be considered profit driven simply because of generating profits. The reason behind this was explained by this Court in its earlier ruling in *Jesus Sacred Heart College v. Collector of Internal Revenue*, to wit: x x x Needless to say, **every responsible organization must be so run as to, at least insure its existence, by operating within the limits of its own resources, especially its regular income. In other words, it should always strive, whenever possible, to have a surplus**. x x x Furthermore, a simple reading of the Constitution would show that Article XIV, Section 4 (3) does not require that the revenues and income must have also been earned from educational activities or activities related to the purposes of an educational institution. The phrase "*all revenues*" is unqualified by any reference to the source of revenues. Thus, so long as the revenues and income are used actually, directly and exclusively for educational purposes, then said revenues and income shall be exempt from taxes and duties.

3. **REMEDIAL LAW; CIVIL PROCEDURE; REQUIRED PAYMENT OF DOCKET FEE AND OTHER LEGAL FEES WITHIN THE THIRTY (30) DAY REGLEMENTARY PERIOD TO APPEAL A TAX ASSESSMENT TO THE COURT OF TAX APPEALS (CTA) LIBERALLY CONSTRUED IF PROCEDURAL MISTAKE IS INCOMMENSURATE TO THE GRAVE INJUSTICE TO BE MADE. —** The tax exemption expressly granted by the 1987 Constitution, the supreme law of the land, cannot be set aside by any statute, especially by a mere technicality in procedure. While payment of docket fee and other legal fees within the thirty (30)-day reglementary period to appeal a tax assessment to the CTA is mandatory and jurisdictional, this Court will not hesitate to exercise its equity jurisdiction and allow a liberal interpretation of the rules of procedure if a rigid application will defeat substantial justice. x x x Here, a procedural controversy arose because the payment of the required docket and legal fees was done nine (9) days after the last day for filing the petition for review. x x x The question now is: should the late payment of the docket fees divest the CTA Division of jurisdiction over petitioner Foundation's petition for review making the VAT deficiency assessment of ₱122,414,521.70 against a tax-exempt entity final and executory? This Court

answers in the negative. x x x To reiterate, petitioner Foundation was able to establish that it is a tax exempt entity under the 1987 Constitution. It has timely filed its Protest to the tax deficiency assessment. It was also able to actually pay the full amount of the required docket and legal fees in the amount of ₱861,178.34, but it was nine (9) days late. Evidently, petitioner Foundation immediately paid the docket and legal fees upon the CTA's assessment of the proper amount which showed petitioner's good faith. Furthermore, the Court finds petitioner Foundation's procedural mistake incommensurate to the grave injustice to be made in violation of the 1987 Constitution's mandate, and petitioner Foundation's payment of ₱122,414,521.70, representing the VAT deficiency.

APPEARANCES OF COUNSEL

Casey M. Barleta & Maricris E. Oronea for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

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

Before this Court is a Petition for Review on *Certiorari*[1] taken under Rule 16 of the Revised Rules of the Court of Tax Appeals, in relation to Rule 45 of the Rules of Court seeking to nullify the Decision[2] dated April 19, 2012 and Resolution[3] promulgated on July 17, 2012 of the Court of Tax Appeals (CTA) *En Banc*.

The Factual Antecedents

Petitioner La Sallian Educational Innovators Foundation, Inc. (De La Salle University-College of St. Benilde Foundation)/

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[1] *Rollo*, pp. 11-64.

[2] Penned by Associate Justice Esperanza R. Fabon-Victorino; *id*. at 69-111.

[3] Penned by Associate Justice Esperanza R. Fabon-Victorino; *id*. at 138-142.

for brevity) is a non-stock, non-profit domestic corporation duly organized and existing under the laws of the Philippines.[4] Respondent is the Commissioner of Internal Revenue who has the power to decide, cancel, and abate tax liabilities pursuant to Section 204(B) of the Tax Code, as amended.[5]

On June 17, 2005, respondent issued two (2) Assessment Notices, both numbered 33-FY 05-31-02, for fiscal year ending May 31, 2002. The notices have demand letters against petitioner for deficiency income tax. The alleged deficiency income tax is in the amount of ₱122,414,521.70, inclusive of interest, computed as follows:[6]

Gross Income Per Return on Educational		₱ 618,449,079.00
Less: Expenses Per Return on Educational		459,848,867.00
Net Income Per Return		₱ 158,600,212.00
Add: Adjustments Per Investigation		
Interest Expense		
- Disallowed (Sec. 34 (B) NIRC)	₱ 21,827,506.66	
Provision For Retirement		
- Not Deductible (Sec. 34 NIRC)	27,059,453.34	
Provision For Doubtful Accounts		
- Not Deductible (Sec. 34 NIRC)	4,252,393.73	
Not Subject to Withholding Tax		
- Sec. 34 NIRC		
Rental	123,147.00	
Income Not Subjected to Income Tax		
- Depository Accounts		
(Sec. 32 NIRC)	575,702,650.00	
Unlocated/Unsupported Invoices		
& Vouchers (Sec. 34 NIRC)	2,150,270.66	631,170,895.82
Adjusted Taxable Income		₱789,771,107.82
Tax Due		₱ 78,977,110.78
Less: Tax due per return		-
Deficiency Income Tax (subject to increments)		₱ 78,977,110.78
Add: 25% surcharge (Sec. 248)		
20% interest from __ to 06-20-05 (Sec. 249)		₱ 43,437,410.92
Compromise Penalty (Sec. 254)		
TOTAL AMOUNT DUE & COLLECTIBLE		₱ 122,414,521.70

[4] *Id*. at 397-398.

[5] *Id*. at 398.

[6] *Id*. at 398-399.

The other Assessment Notice is for a deficiency value-added tax (VAT) in the amount of ₱2,752,228.54, inclusive of interest, computed as follows:

Taxable Income Subject to VAT			
ICC Revenue		₱ 24,830,069.00	
Auxiliary Service Income		637,280.35	
Concessionaire		606,726.00	
Mimeo/Xerox		425,489.60	
Book store-School Supplies		559,140.96	
Parking Fund		2,729,330.75	
Boarding House		2,513,338.02	
Locker Rental		309,172.00	32,610,546.68
VAT Output Tax Due -			
Sec. 106/08 NIRC			₱ 3,261,054.67
Less: Creditable Input Tax			
Carried Over from Previous Quarter		₱ 770,351.28	
Current Input Tax		943,242.91	
Total			
Less: Excess/To be Applied to Succeeding Year -			
Sec. 110 NIRC	₱ 121,991.53		
Unsupported -			
Sec. 110 NIRC	393,240.74		
Pro-rated between Hotel & School			
- Sec. 110, NIRC	309,956.13	825,188.40	888,405.79
VAT Due			₱ 2,372,648.88
Less: Payment			652,506.04
Deficiency VAT			₱ 1,720,142.84
Add: 25% surcharge (Sec. 248)			
20% interest from __ to 06-20-05 (Sec. 249)			1,032,085.70
Compromise Penalty (Sec. 254)			
TOTAL AMOUNT DUE & COLLECTIBLE			₱ 2,752,228.54[7]

On the same date, a separate demand letter was also sent by respondent to petitioner for a compromise penalty in deficiency VAT in the amount of ₱25,000.00.[8]

To contest the deficiency taxes assessed, petitioner Foundation filed a Protest or Request for Reconsideration to respondent

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[7] *Id*. at 399.

[8] *Id*.

on July 20, 2005.[9] After the petitioner Foundation has submitted all the documents in support of its protest, and in view of respondent's inaction thereto, petitioner Foundation filed a Petition for Review before the Special First Division of the CTA Division. It was sent through registered mail on April 17, 2006, the last day of filing the appeal.[10] However, petitioner was only able to pay the docket and other legal fees nine days after or on April 26, 2006.[11]

Notably, petitioner Foundation executed an Agreement Form with the Bureau of Internal Revenue (BIR) on April 21, 2006, and paid the deficiency VAT liability of ₱601,487.70 on May 9, 2006.[12]

However, respondent alleged that the petitioner Foundation has already lost its tax-exempt status, making it liable to deficiency income tax. The Details of Discrepancies issued by the BIR enumerated the following findings, to wit:[13]

a. The foundation may be a non-stock entity but it is definitely a profit-oriented organization wherein majority of its revenue-operating activities are generating huge amount of profit amounting to ₱643 million that earned from expensive tuition fees collected from its students, mostly belong to a [sic] upper class family.

b. The foundation's Cash in Bank in the amount of ₱775 million comprise of investing activities and has significant movement in relation to its charitable purposes, which mean that the foundation are [sic] not giving sufficient donations which is the main reasons [sic] for its qualification[s] [sic] for exemption. During the school year the foundations [sic] has a total cash receipts of approximately 1.222 Billion out of which only 77 Million goes to the revolving fund.

c. Based on the Cash Flow of the foundation activities the taxpayer has used 583 Million for operating activities, 54 Million interest/

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[9] *Id*. at 400.

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

[11] *Id*. at 84.

[12] *Id*. at 388.

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

settlement of loan and 203 Million for investing activities or 70% of foundation's earnings goes to the administrative purposes and improvement of the school to increase number of its enrollees and increase further its profit and not to further its charitable purposes.

Pursuant to Section 30 of the NIRC, "Notwithstanding the provisions in the preceding Paragraphs, the income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from any of their activities conducted for profit [r]egardless of the disposition made by such income, shall be subject to tax imposed under this Code."

d. The taxpayer's Ruling for exemption from the BIR was obtained in 1988, hence, all Ruling issued before the implementations or RA No. 8424 or CTRP was repealed, thereby, requiring the taxpayer to apply for new Revenue Ruling for exemption taking consideration of its income earning activities.

On the other hand, petitioner Foundation consistently argued that it enjoys a tax-exempt status from all taxes as a non-stock, non-profit educational institution as expressly provided under Paragraph 4, Section 4, Article XIV of the 1987 Constitution, which reads:

ARTICLE XIV

EDUCATION, SCIENCE AND TECHNOLOGY, ARTS, CULTURE, AND SPORTS

EDUCATION

x x x x x x x x x

Section 4. x x x.

x x x x x x x x x

(3) All revenues and assets of non-stock, non-profit educational institution used actually, directly and exclusively for educational purposes shall be exempt from taxes and duties. x x x.

Moreover, petitioner Foundation denied the respondent's allegations that it engaged in disproportionate profit-earning activities contrary to its educational purpose. Contrary to the allegations, it explained that the sum of ₱643,279,148.00

is not profit, but merely the gross receipts from school-year 2002.[14]

Bearing in mind that the total expenses of the Foundation is in the amount of ₱582,903,965.00, the net receipt of petitioner Foundation is only ₱60,375,183.[15] This was corroborated by the Foundation's Audited Financial Statement.[16] Remarkably, this amount is equivalent to just 9.38% of its total operating receipts.[17]

Furthermore, petitioner Foundation's claim that all the said income is actually, directly and exclusively used or earmarked for promoting its educational purpose and not a single centavo inure to the benefit of any of the Foundation's members, trustees and officers.[18] The Independent Certified Public Accountant, Mr. Edwin Ramos, also testified and explained that the administrative expenses of the Foundation would necessarily be lower than 27.35%.

Thereafter, respondent filed its Answer on June 15, 2006,[19] and petitioner Foundation filed its Reply on June 30, 2006[20] to the CTA Division.

Ruling of CTA Division

On July 16, 2010, the CTA Division promulgated a Decision[21] ruling in favor of petitioner Foundation, and cancelling Assessment Notice No. 33-FY 05-31-02 for fiscal year ending May 31, 2002, with demand letter. The dispositive portion reads:

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

[15] *Id*. at 183.

[16] *Id*.

[17] *Id*. at 410.

[18] *Id*.

[19] *Id*. at 400.

[20] *Id*. at 407.

[21] *Id*. at 397-419.

WHEREFORE, the *Petition for Review* is hereby GRANTED. The Assessment Notice No. 33-FY 05-31-02 for fiscal year ending May 31, 2002, with demand letter, against petitioner for deficiency income tax in the amount of ONE HUNDRED TWENTY-TWO MILLION FOUR HUNDRED FOURTEEN THOUSAND FIVE HUNDRED TWENTY-ONE PESOS & 70/100 (₱122,414,521.70) is hereby CANCELLED.

SO ORDERED.[22]

The CTA Division also ruled that there's nothing in the Foundation's books that will show that it operated for profit or that any of its income inured to the benefit of its members or trustees.[23] The CTA Division found that (1) petitioner Foundation maintained its tax-exempt status under Section 4, Article XIV of the 1987 Constitution, and (2) the Final Assessment Notices issued by respondent against petitioner Foundation are not valid for failing to state their legal and factual basis hence, all other issues raised are moot and academic.[24]

Dissatisfied with CTA Division's decision, respondent filed a Motion for Reconsideration dated August 3, 2010,[25] which petitioner Foundation opposed by filing an Opposition to Motion for Reconsideration dated August 16, 2010.[26]

The CTA Division resolved it by promulgating a Resolution dated November 18, 2010 denying respondent's motion for reconsideration for lack of merit.[27] In the body of the resolution, the CTA Division agreed with petitioner Foundation that respondent's motion for reconsideration merely raised the same arguments which have been sufficiently addressed and passed by the CTA Division in the assailed decision.[28]

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[22] *Id*. at 418.

[23] *Id* at 412.

[24] *Id*. at 418.

[25] *Id*. at 420-431.

[26] *Id*. at 432-436.

[27] *Id*. at 438-442.

[28] *Id*. at 440.

Thereafter, respondent filed a petition for review before the CTA *En Banc* dated December 21, 2010 against the resolution denying its Motion for Reconsideration,[29] to which petitioner Foundation filed its Comment on February 3, 2011.[30]

Ruling of the CTA *En Banc*

On April 19, 2012, the CTA *En Banc* promulgated a Decision[31] granting respondent's petition for review and reversing the decision of the CTA Division, to wit:

> WHEREFORE, the Petition for Review dated December 21, 2010, filed by the Commissioner of Internal Revenue, is hereby GRANTED. The Decision dated July 16, 2010 and the Resolution dated November 18, 2010 are REVERSED and SET ASIDE. Consequently, the Petition for Review dated April 17, 2006 filed before the Court in Division is DISMISSED, on jurisdictional grounds.
>
> SO ORDERED.[32]

The CTA *En Banc* ruled that the CTA Division should not have given due course to petitioner Foundation's petition for review.[33] Payment of docket fees and other legal fees within the thirty (30)-day reglementary period to appeal is mandatory and jurisdictional. The late payment of docket fees prevented the CTA Division from acquiring jurisdiction.[34] Petitioner Foundation's appeal was allegedly not perfected because the payment of the docket fees was made only on April 26, 2006 or nine (9) days after April 17, 2006, the last day for filing the appeal.[35] As a result, the assailed assessment has allegedly become final and executory.[36]

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[29] *Id*. at 443-473.

[30] *Id*. at 474-490.

[31] *Id*. at 69-111.

[32] *Id*. at 110.

[33] *Id*. at 84.

[34] *Id*.

[35] *Id*.

[36] *Id*. at 109.

Moreover, even assuming that the CTA Division had jurisdiction over the petition, the latter allegedly erred in cancelling the assessment notice because the presumption of its correctness has not been overturned. The CTA *En Banc* emphasized that petitioner Foundation's tax exempt status has been impliedly revoked due to its excessive profit-earning activities.[37]

Aggrieved, petitioner Foundation filed its Motion for Reconsideration[38] dated May 18, 2012, but it was likewise denied by the CTA *En Banc*.[39]

Hence, this petition for review on *certiorari*.[40]

The Issues

Although the parties raised a number of issues, this Court shall decide only the pivotal issues which we summarized as follows:[41]

I. WHETHER THE PETITIONER FOUNDATION HAS LOST ITS TAX-EXEMPT STATUS UNDER THE 1987 CONSTITUTION

II. WHETHER THE CTA EN BANC COMMITTED A REVERSIBLE ERROR WHEN IT REVERSED AND SET ASIDE THE DECISION OF THE CTA DIVISION DATED JULY 16, 2010 AND RESOLUTION DATED NOVEMBER 18, 2010

Ruling of the Court

The petition is meritorious.

No less than the 1987 Constitution expressly exempt all revenues and assets of non-stock, non-profit educational

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[37] *Id*. at 85.

[38] *Id*. at 112-137.

[39] *Id*. at 138-142.

[40] *Id*. at 11-64.

[41] *Id*. at 19.

institutions from taxes provided that they are actually, directly and exclusively used for educational purposes, to wit:[42]

> Section 4.(1) The State recognizes the complementary roles of public and private institutions in the educational system and shall exercise reasonable supervision and regulation of all educational institutions.
>
> x x x x x x x x x
>
> (3) **All revenues and assets of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties.** (Emphasis and underscoring supplied)

This constitutional exemption is reiterated in Section 30 (H) of the 1997 Tax Code, as amended, which provides as follows:

> Sec. 30. Exemptions from Tax on Corporations. – The following organizations shall not be taxed under this Title in respect to income received by them as such:
>
> x x x x x x x x x
>
> (H) A non[-]stock and non[-]profit educational institution[.]

Clearly, non-stock, non-profit educational institutions are not required to pay taxes on all their revenues and assets if they are used actually, directly and exclusively for educational purposes.

According to the BIR, petitioner Foundation has failed to comply with the constitutional requirements for being a profit-oriented educational institution. Hence, it is no longer a tax-exempt entity, and is subject to a 10% income tax rate as a taxable proprietary educational institution.[43]

The Court disagrees.

Petitioner Foundation has presented adequate legal and factual basis to prove that it remains as a tax exempt entity under Article XIV, Section 4, Paragraph 3 of the 1987 Constitution.

Based on jurisprudence and tax rulings, a taxpayer shall be granted with this tax exemption after proving that: **(1) it falls**

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[42] 1987 Constitution, Article XIV, Section 4(3).

[43] *Id.* at 425.

under the classification of non-stock, non-profit educational institution; and **(2) the income it seeks to be exempted from taxation is used actually, directly and exclusively for educational purposes**.[44]

Petitioner Foundation has fulfilled both of the abovementioned requirements.

For the first requirement, there is no contest as both the parties have stipulated that petitioner Foundation is a non-stock, non-profit educational institution.[45]

Nonetheless, the Petitioner Foundation's primary and secondary purposes in its Amended Articles of Incorporation clearly provide that it is a non-stock, non-profit educational entity, to wit:[46]

SECOND: That the purposes and objectives for which such corporation is incorporated are:

That the primary purpose for which said corporation is formed is to establish a school that will offer elementary, secondary, collegiate and post graduate courses of study, as well as technical, vocational and special courses under one campus with emphasis on its being innovative in its approach to undergraduate education through self-learning devices, kits, individually guided teaching, credit by equivalence, credited internships, and practicism, as the Board of Trustees may determine, the primary intention being to form the whole man through integration of a liberal Christian education with professional competence for participation in Philippine development.

AND IN THE FURTHERANCE OF THE FOREGOING, the institution shall:

x x x x x x x x x

8. Any profits derived from activities and undertakings described in paragraph 2, 3, 5 and 6 immediately preceding shall not inure to any

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[44] *Commission of Internal Revenue v. De La Salle University Inc.*, 799 Phil. 141, 167 (2016); and Revenue Memorandum Order No. 20-2013.

[45] *Rollo*, p. 409.

[46] *Id*. at 36-37.

of the members, trustees or officers but shall be used exclusively for the maintenance of the Corporation.

Moreover, petitioner Foundation has no capital divided into shares.[47] No part of its income can be distributed as dividends to its members, trustees and officers.[48] The members of the Board of Trustees do not receive any compensation for the performance of their duties, including attendance in meetings.[49]

It is also important to mention that in BIR Ruling No. 176-88 dated August 23, 1988, the BIR already declared that petitioner Foundation is a non-stock, non-profit educational institution that is exempt from certain taxes.[50]

As pointed out by respondent, petitioner Foundation did not secure a new BIR Ruling on its claim for exemption after the Tax Code has been amended. However, this Court finds such fact insignificant. The application for a new BIR Ruling is unnecessary considering that the BIR Ruling was never revoked, and the primary purpose of petitioner Foundation remained the same. Notably, respondent also failed to mention any legal basis that will require petitioner Foundation to secure a new BIR Ruling to confirm its tax exempt status.

Furthermore, the respondent claimed that petitioner Foundation is not a non-profit educational institution anymore due to its alleged enormous profits. Respondent accused it of operating contrary to the nature of a non-profit educational institution by generating massive profits in the amount of ₱643,000,000.00 from tuition fees, and having cash worth ₱775,000,000 in its bank.[51]

However, these allegations were completely unsupported by facts and evidence.

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[47] *Id.* at 410.

[48] *Id.*

[49] *Id.* at 47.

[50] *Id.* at 47-48.

[51] *Id.* at 47-48.

Based on the evidence presented, the ₱643,000,000.00 is not petitioner Foundation's profit as it is just the gross receipt from school year 2002.[52] Unfortunately, respondent easily overlooked petitioner Foundation's administrative and non-administrative expenses amounting to ₱582,903,965.00.[53] This sum constituted the total operating expenses of petitioner Foundation for the fiscal year ended May 31, 2002.[54] Thus, the income of petitioner Foundation is only ₱60,375,183.00 or 9.38% of its operating receipts.[55] This is way below the average gross profit margin rate of 20% for most business enterprises.[56]

Furthermore, the alleged ₱775,000,000 cash of petitioner Foundation is in reality a part of its Cash and Cash Equivalents account. The amount of ₱575,700,000.00 therein constitutes Funds Held in Trust to finance capital improvements, scholarship, faculty development, retirement and for other restricted uses.[57] The rest of the account consists of highly liquidated debt instruments purchased with a short term maturity.[58] Clearly, there is nothing in the petitioner Foundation's books that will indicate that it is driven by profit or that its income is used for anything but in pursuit of its primary purpose.

In several cases, this Court has ruled that a non-profit institution will not be considered profit driven simply because of generating profits.[59] The reason behind this was explained by this Court

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[52] *Id.* at 410.

[53] *Id.* at 410.

[54] *Id.*

[55] *Id.*

[56] *Id.* at 410.

[57] *Id.* at 48.

[58] *Id.*

[59] *Commissioner of Internal Revenue v. St. Luke's Medical Center*, 805 Phil. 607, 619 (2017); *Commissioner of Internal Revenue v. St. Luke's Medical Center*, 695 Phil. 867, 885 (2012); and *Hospital De San Juan De Dios, Inc. v. Pasay City, et al.*, 123 Phil. 38, 42 (1966).

in its earlier ruling in *Jesus Sacred Heart College v. Collector of Internal Revenue*,[60] to wit:

> To hold that an educational Institution is subject to income tax whenever it is so administered as to reasonably assure that it will not incur in deficit, is to nullify and defeat the aforementioned exemption. Indeed, the effect, in general, of the interpretation advocated by appellant would be to deny the exemption whenever there is net income, contrary to the tenor of said section 27(*e*) which positively exempts from taxation those corporations or associations which, otherwise, would be subject thereto, because of the existence of said net income.
>
> Needless to say, **every responsible organization must be so run as to, at least insure its existence by operating within the limits of its own resources, especially its regular income. In other words, it should always strive, whenever possible, to have a surplus**.[61] (Emphasis and underscoring supplied)

Considering the clear explanation of the nature of the money involved, it is evident that all of petitioner Foundation's income is actually, directly and exclusively used or earmarked for promoting its educational purpose.[62] To reiterate, respondent never argued that the income of petitioner Foundation was used in any manner other than for promoting its purpose as a non-stock, non-profit educational institution, in fact, there is not even a single argument or evidence presented to cast a doubt in the proper usage of petitioner Foundation's income.

Furthermore, a simple reading of the Constitution would show that Article XIV, Section 4 (3) does not require that the revenues and income must have also been earned from educational activities or activities related to the purposes of an educational institution. The phrase "*all revenues*" is unqualified by any reference to the source of revenues.[63] Thus, so long as the revenues and

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[60] 95 Phil. 16 (1954).

[61] *Id*. at 21.

[62] *Id*. at 89.

[63] *CIR v. De La Salle University*, 799 Phil. 141, 169 (2016).

income are used actually, directly and exclusively for educational purposes, then said revenues and income shall be exempt from taxes and duties.[64]

In the instant case, petitioner Foundation firmly and adequately argued that none of its income inured to the benefit of any officer or entity. Instead, its income has been actually, exclusively and directly used for performing its purpose as an educational institution. Undoubtedly, petitioner Foundation has also proven this second requisite.

Thus, the tax exempt status of petitioner Foundation under the 1987 Constitution is clear.

It can be recalled that the questioned CTA *En Banc* decision only ruled on the procedural aspect of the case on the ground that it is jurisdictional and determinative of the validity of the whole process.[65] The late payment of docket fees allegedly divested the CTA Division of jurisdiction or authority to take cognizance of the petition for review filed before it.[66] As a result, the decision of the CTA Division was rendered without jurisdiction, and is totally null and void. Thus, the impugned tax deficiency assessment has become final and executory, and its correctness cannot be disputed anymore.[67]

This Court cannot agree.

The tax exemption expressly granted by the 1987 Constitution, the supreme law of the land, cannot be set aside by any statute, especially by a mere technicality in procedure. While payment of docket fee and other legal fees within the thirty (30)-day reglementary period to appeal a tax assessment to the CTA is mandatory and jurisdictional, this Court will not hesitate to exercise its equity jurisdiction and allow a liberal interpretation of the rules of procedure if a rigid application will defeat substantial justice.

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[64] *Id*.

[65] *Rollo*, pp. 100-101.

[66] *Id*. at 108.

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

This Court has ruled in the past that if a rigid application of the rules of procedure will tend to obstruct rather than serve the broader interests of justice and depending on the prevailing circumstances of the case, such as where strong considerations of substantive justice are manifest in the petition, the Court may relax the strict application of the rules of procedure in the exercise of its equity jurisdiction.[68]

The Court's pronouncement in *Heirs of Amada Zaulda v. Zaulda*[69] is instructive on this matter, to wit:

> The reduction in the number of pending cases is laudable, but if it would be attained by precipitate, if not preposterous, application of technicalities, justice would not be served. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice. **"It is a more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not miscarriage of justice."** x x x
>
> **What should guide judicial action is the principle that a party-litigant should be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor, or property on technicalities. The rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice.** Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. At this juncture, the Court reminds all members of the bench and bar of the admonition in the often-cited case of *Alonso v. Villamar*[70] (Emphasis and underscoring supplied; citation omitted)

Otherwise stated, procedural rules are important tools designed to facilitate the dispensation of justice, but legal technicalities

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[68] *Marlon Curammeng y Pablo v. People of the Philippines*, 799 Phil. 575, 581 (2016).

[69] 729 Phil. 639 (2014).

[70] *Id*. at 651-652.

may be excused when strict adherence thereto will impede the achievement of justice it seeks to serve.

In the present case, petitioner Foundation timely opposed the tax deficiency assessments against it by filing a Protest or Request for Reconsideration, the proper remedy, before the BIR. Due to respondent's inaction, it filed a petition for review, also the proper remedy, within the reglementary period required by law. In addition, it completely paid the required docket and legal fees in the amount of ₱861,178.34.

However, a procedural controversy arose because the payment of the required docket and legal fees was done nine (9) days after the last day for filing the petition for review. To recall, petitioner Foundation's petition for review was filed through a registered mail on April 17, 2006, the last day of filing. It was not able to pay the docket and legal fees on the day of filing because the CTA received the petition and made a computation of the required fees only on April 26, 2006 or nine (9) days after.

The question now is: should the late payment of the docket fees divest the CTA Division of jurisdiction over petitioner Foundation's petition for review making the VAT deficiency assessment of ₱122,414,521.70 against a tax-exempt entity final and executory?

This Court answers in the negative.

Indeed, the general rule is that a petition for review is perfected by timely filing it and paying the requisite docket fees and other lawful fees. However, all general rules admit of certain exceptions.[71]

In *Mactan Cebu International Airport Authority v. Mangubat*[72] where the docket fees were paid six (6) days late, this Court said that where the party immediately paid the

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[71] *Tanenglian v. Lorenzo, et al.*, 573 Phil. 472, 484 (2008).

[72] 371 Phil. 393 (1999).

required fees showing willingness to abide by the rules, and in view of the significance of the issues raised in the case the same calls for judicial leniency, thus:

> In all, what emerges from all of the above is that the rules of procedure in the matter of paying the docket fees must be followed. However, there are exceptions to the stringent requirement as to call for a relaxation of the application of the rules, such as: (1) most persuasive and weighty reasons; (2) **to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure**; (3) **good faith of the defaulting party by immediately paying within a reasonable time from the time of the default**; (4) the existence of special or compelling circumstances; (5) **the merits of the case**; (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) the other party will not be unjustly prejudiced thereby; (9) fraud, accident, mistake or excusable negligence without appellant's fault; (10) peculiar legal and equitable circumstances attendant to each case; (11) in the name of substantial justice and fair play; (12) importance of the issues involved; and (13) exercise of sound discretion by the judge guided by all the attendant circumstances. Concomitant to a liberal interpretation of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules. Anyone seeking exemption from the application of the Rule has the burden of proving that exceptionally meritorious instances exist which warrant such departure.[73] (Emphasis and underscoring supplied)

In other words, while procedural rules are important in the administration of justice, they may be excused for the most persuasive and meritorious reasons in order to relieve a litigant of an injustice that is not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[74]

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[73] *KLT Fruits, Inc. v. WSR Fruits, Inc.*, 563 Phil. 1038, 1052-1053 (2007); and *Villena v. Rupisan*, 549 Phil. 146, 167 (2007).

[74] *Sps. Bergona, et al. v. Court of Appeals*, 680 Phil. 334, 343 (2012).

To reiterate, petitioner Foundation was able to establish that it is a tax exempt entity under the 1987 Constitution. It has timely filed its Protest to the tax deficiency assessment. It was also able to actually pay the full amount of the required docket and legal fees in the amount of ₱861,178.34, but it was nine (9) days late. Evidently, petitioner Foundation immediately paid the docket and legal fees upon the CTA's assessment of the proper amount which showed petitioner's good faith.

Moreover, the issue involved in this case is no less than the tax assessment over a non-stock, non-profit educational institution, which the 1987 Constitution mandated to be tax exempt. Otherwise stated, what is at stake is the opportunity for the proper and just determination of petitioner Foundation's status as a tax-exempt entity under the 1987 Constitution, and a deprivation of a substantial amount of property.

Taking into account the importance of the issues raised in the petition filed before the CTA Division, and what petitioner stands to lose, the CTA *En Banc* should have considered the merits of said petition. By ruling for the denial of the said petition solely based on technicalities, the CTA *En Banc* absolutely foreclosed the resolution of the issues raised therein. Definitely, justice would have been better served if the CTA *En Banc* allowed the resolution of the issues that were raised in the petition.

This Court agrees with the decision of the CTA Division to give due course to the petition. Consequently, the CTA Division acquired jurisdiction to examine the assailed VAT deficiency assessment, and the latter did not become final and executory.

Furthermore, the Court finds petitioner Foundation's procedural mistake incommensurate to the grave injustice to be made in violation of the 1987 Constitution's mandate, and petitioner Foundation's payment of ₱122,414,521.70, representing the VAT deficiency.

It is worthy to note that this kind of lenient application of the rules of procedure for exceptionally persuasive and meritorious reasons is not novel. In fact, in the case of *Tanenglian v.*

Lorenzo, et al.,[75] this Court gave due course to the appeal which was not only made through a wrong mode but was even filed beyond the reglementary period. This Court recognized the broader interest of justice and reasoned that:[76]

> We have not been oblivious to or unmindful of the extraordinary situations that merit liberal application of the Rules, allowing us, depending on the circumstances, to set aside technical infirmities and give due course to the appeal. In cases where we dispense with the technicalities, we do not mean to undermine the force and effectivity of the periods set by law. In those rare cases where we did not stringently apply the procedural rules, there always existed a clear need to prevent the commission of a grave injustice. **Our judicial system and the courts have always tried to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that every litigant be given the full opportunity for the just and proper disposition of his cause.** x x x.
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> x x x x x x x x x
>
> In *Sebastian v. Morales*, we ruled that rules of procedure must be faithfully followed except only when, **for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure**, thus:
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> x x x x x x x x x
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> The Court has allowed some meritorious cases to proceed despite inherent procedural defects and lapses. This is in keeping with the principle that rules of procedure are mere tools designed to facilitate the attainment of justice and that strict and rigid application of rules which would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided. **It is a far better and more prudent cause o action for the court to excuse a technical lapse and afford the parties a review of the case to attain the ends of justice, rather than dispose of the case on technicality and cause grave injustice to the parties, giving false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.** (Emphasis supplied; citations omitted).

Finally, it is crucial to be reminded that the constitutionally mandated tax privilege granted to non-stock non-profit educational

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[75] *Supra* note 71.

[76] *Id*. at 485-489.

institutions plays an important role in promoting quality and affordable education in the country. In the consolidated cases of *Commissioner of Internal Revenue v. De La Salle University Inc.*,[77] this Court discussed the important role of this tax privilege for educating the students, to wit:

> We find that the text demonstrates the policy of the 1987 Constitution, discernible from the records of the 1986 Constitutional Commission to provide **broader tax privilege to non-stock, non-profit educational institutions as recognition of their role in assisting the State provide a public good. The tax exemption was seen as beneficial to students who may otherwise be charged unreasonable tuition fees if not for the tax exemption extended to all revenues and assets of non-stock, non-profit educational institutions**. (Emphasis and underscoring supplied; citations omitted).

Evidently, petitioner Foundation, being a non-stock, non-profit educational institution, is not liable to the payment of VAT deficiency assessment, and the CTA *En Banc* erred in finding otherwise and in reversing the CTA Division.

WHEREFORE, premises considered, the petition is **GRANTED**. The assailed Decision dated April 19, 2012 and Resolution promulgated on July 17, 2012 of the Court of Tax Appeals *En Banc* in C.T.A. EB Case No. 703 are **ANNULLED** and **SET ASIDE**. Assessment Notice No. 33-FY 05-31-02 for fiscal year ending May 31, 2002 against petitioner La Sallian Educational Innovators Foundation (De La Salle University-College of St. Benilde), Inc. for deficiency income tax in the amount of **ONE HUNDRED TWENTY-TWO MILLION FOUR HUNDRED FOURTEEN THOUSAND FIVE HUNDRED TWENTY-ONE PESOS** & 70/100 (₱122,414,521.70) is hereby **CANCELLED**.

SO ORDERED.

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

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[77] *Supra* note 44, at 168-169.

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

THIRD DIVISION

[G.R. No. 226088. February 27, 2019]

FOOD FEST LAND, INC. and JOYFOODS CORPORATION, *petitioners, vs.* **ROMUALDO C. SIAPNO, TEODORO C. SIAPNO, JR. and FELIPE C. SIAPNO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE LOWER COURTS, RESPECTED. —** This Court, as has often been said, is not a trier of facts. In an appeal by *certiorari*, such as the instant case, We generally defer to the factual findings of lower courts and confine our review exclusively to the assigned errors of law. Though this norm is by no means absolute, it bears to stress that any deviation therefrom is only ever taken under defined circumstances — such as when the factual finding of the trial court is reversed by the CA on appeal, or when such finding is "*manifestly mistaken, absurd, or impossible*" or the same is otherwise *"grounded entirely on speculation, surmises, or conjectures"* or in instances where there has been grave abuse of discretion. None of such circumstances, however, affect the factual determinations in discussion.

2. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; NOVATION.—** Novation is the extinguishment of an obligation by its modification and replacement by a subsequent one. It takes place when an obligation is modified in any of the following ways: (a) by changing its object or principal conditions, (b) by *substituting the person of the debtor*, or (c) by subrogating a third person in the rights of the creditor. In such instances, the obligation ceases to exist as a new one — bearing the modifications agreed upon — takes its place. Novation is, thus, a juridical act of dual function — for as it extinguishes an obligation, it also creates a new one *in lieu* of the old.

3. **ID.; ID.; ID.; ID.; NOVATION BY SUBSTITUTING THE PERSON OF THE DEBTOR; REQUIRES THE CONSENT OF THE CREDITOR. —** Novation of an obligation by *substituting the person of the debtor*, as the term suggests, entails the

> replacement of the debtor by a third person. When validly made, it releases the debtor from the obligation which is then assumed by the third person as the new debtor. To validly effect such kind of novation, however, it is not enough for the debtor to merely assign his debt to a third person, or for the latter to assume the debt of the former; the *consent of the creditor* to the substitution of the debtor is essential and must be had. x x x The consent of the creditor to the substitution of a debtor, *as a rule*, may be given expressly or impliedly. As can be observed, the law does not require that the creditor's consent to the substitution to come at a particular time or in a particular form. What it only demands is that the consent of the creditor be given one way or another. This notwithstanding, **there is also nothing that precludes the parties in an obligation, pursuant to their *freedom to contract*, to agree to a specific form by which the creditor's consent to any potential novation should be expressed**. Once an agreement is reached that subjects the creditor's consent to certain formal requirements, such requirements naturally become binding upon the parties.

APPEARANCES OF COUNSEL

Santiago & Santiago for petitioners.

Regino Palma Raagas Esguerra and Associates Law Office, collaborating counsel for petitioners.

Ramos Angeles Marata Law Office for respondents.

D E C I S I O N

PERALTA, *J.*:

At bench is an appeal[1] from the Decision[2] dated January 6, 2016 and the Resolution[3] dated July 22, 2016 of the Court of

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[1] By way of a Petition for Review on *Certiorari* under to Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Noel G. Tijam (now a retired Associate Justice of the Supreme Court) for the 4th Division of the CA, with Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr. concurring; *rollo*, pp. 6-16.

[3] *Id*. at 17-19.

Appeals (*CA*) in CA- G.R. CV No. 101302, affirming the Decision and Resolution, dated February 20, 2013 and July 5, 2013, respectively, of the Regional Trial Court (*RTC*), Branch 41, Dagupan City in Civil Case No. 2009-0084-D.

The facts.

The Contract of Lease

Respondents Romualdo C. Siapno, Teodoro C. Siapno and Felipe C. Siapno are the registered owners[4] of a 521-square-meter parcel of land (*subject land*) in Dagupan City.

On April 14, 1997, respondents entered into a Contract of Lease[5] involving the subject land with petitioner Food Fest Land, Inc. (*Food Fest*), a local corporation who wanted to use such land as the site of a fastfood restaurant.[6] The contract has the following particulars —

1. The term of the lease shall be fifteen (15) years.[7] On the third (3rd) year of the lease, however, Food Fest shall have the right to pre-terminate the lease.[8]
2. During the subsistence of the lease, Food Fest shall have the right to use the subject land for such lawful purposes, including but not limited to the operation of a restaurant business therein.[9]

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[4] Covered by Transfer Certificate of Title (TTC) No. 63128.

[5] *Rollo*, pp. 79-84.

[6] Specifically, a Kentucky Fried Chicken branch.

[7] *See* Item 2 of the Contract of Lease Under the contract, the term of the lease shall begin either from the start of Food Fest's commercial operations or the lapse of ninety (90) days from the date of turnover of the leased premises, whichever comes first. (*Rollo*, p. 80).

[8] See Item 2 of the Contract of Lease (*Id*.).

[9] See Item 4 of the Contract of Lease (*Id*. at 81).

3. In consideration therefor, Food Fest shall pay respondents rent in the following amounts:[10]

   a. For the first year, the rate of rent shall be ₱43,901.00 per month.[11]

   b. For the succeeding years, however, the rate of monthly rent shall escalate by 10% annually. They are payable within the first ten (10) days of the following month.

In addition to the foregoing, the Contract of Lease also featured a non- waiver clause:[12]

16. NON-WAIVER- The failure of the parties to insist upon a strict performance of any of the terms, conditions and covenants hereof shall not be deemed a relinquishment or waiver of any rights or remedy that said party may have, nor shall it be construed as a waiver of any subsequent breach or default of the terms, conditions and covenants hereof which shall continue to be in full force and effect. **No waiver by the parties of any of their rights under this Contract of Lease shall be deemed to have been made unless expressed in writing and signed by the party concerned**.[13]

Pursuant to the Contract of Lease, Food Fest proceeded to build and operate its restaurant within the subject land.

In October 1998, Food Fest assigned all its rights and obligations under the Contract of Lease unto one Tucky Foods,

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[10] See Item 3 of the Contract of Lease (*Id*. at 80).

[11] The amount corresponds to the rent due for the lease of a 399.10-square-meter portion of the subject land. Under the contract, an additional rent was to be charged against Food Fest upon turn-over of the remaining 121.90 square meters. However, it does not appear from the records that an additional rent was ever imposed against Food Fest. The full rent for the first year in the sum of ₱526,812.00 (₱43,901 x 12) was also supposed to be paid in advance by Food Fest upon physical turn-over of the 399.10-square meter portion of the subject land. (*Id*.)

[12] *Rollo*, p. 83.

[13] Emphasis supplied.

Inc. (*Tucky Foods*).[14] In September 2001, Tucky Foods assigned all the said rights and obligations under such contract to petitioner Joyfoods Corporation (*Joyfoods*).[15]

Payment of Rentals and Pre-Termination of the Lease

From the first up to the fifth year of the lease,[16] Food Fest and its assignees paid rent at the monthly rate prescribed for under the Contract of Lease.[17] The rental escalation clause in the said contract, which requires the annual escalation of monthly rent by 10%, was consistently observed on the second to the fifth year.

Thus, by the fifth year of the lease,[18] Joyfoods was paying the respondents a monthly rent of ₱64,275.45.

The rental escalation clause, however, was not observed during the sixth up to the tenth year of the lease. For the sixth up to ninth year of the lease,[19] respondents continued to receive rent at the rate of ₱64,275.45 per month.[20] On the tenth year of the lease,[21] on the other hand, respondents were paid rent at the rate of ₱68,774.71 per month.[22]

At the start of the eleventh year of the lease,[23] however, respondents called the attention of Food Fest and Joyfoods

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[14] *Id*. at 96.

[15] *Id*. at 97.

[16] According to Food Fest and Joyfoods, such period covers May 20, 1997 up to May 19, 2002. (*Id*. at 27).

[17] *Id*.

[18] According to Food Fest and Joyfoods, such period covers May 20, 2001 up to May 19, 2002. (*Id*.)

[19] From May 20, 2002 up to May 19, 2006.

[20] See *rollo*, p. 76. (PTO order)

[21] According to Food Fest and Joyfoods, such period covers May 20, 2006 up to May 19, 2007. (*Id*. at 27).

[22] *Id*.

[23] According to Food Fest and Joyfoods, such period covers May 20, 2007 up to May 19, 2008. (*Id*.)

regarding its intent to enforce the rental escalation clause of the Contract of Lease for the said year.[24] Accordingly, respondents informed Food Fest and Joyfoods that the rent for the eleventh year of the lease shall be ₱113,867.89 per month, unless such amount is renegotiated.

In reply, Food Fest and Joyfoods, on June 27, 2007, sent to respondents a letter[25] wherein they acknowledged that the applicable rate of rent following the Contract of Lease would indeed be ₱113,867.89 per month, but proposed that the same be reduced to only ₱80,000.00 per month. The proposal was rejected by the respondents.

On July 4, 2007, Joyfoods sent to respondents another letter[26] wherein it proposed the amount of ₱85,000.00 as monthly rental for the eleventh and twelfth years of the lease. But this too was met with rejection by the respondents.

On October 27, 2008, during the lease's twelfth year, Joyfoods sent to respondents a letter[27] conveying its intent to pre-terminate the lease. In the letter, Joyfoods stated that "*due to severe and irreversible business losses*" it will cease its operations on the 29th of November 2008 and will turnover the subject land to the respondents on the 13th of December 2008.[28]

The Complaint and the Rulings of the RTC and the CA

On April 20, 2009, respondents lodged before the RTC of Dagupan City a Complaint[29] for sum of money against Food Fest and Joyfoods. In it, respondents mainly seek payment of the sum of ₱988,907.74 from Food Fest and Joyfoods — which sum respondents refer to as the "*escalation for the years*

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[24] *Id*. at 90.

[25] *Id*.

[26] *Id*. at 85.

[27] *Id*. at 86-87.

[28] *Id*.

[29] *Id*. at 89-92.

2007 and 2008."[30] In essence, the sum ₱988,907.74 was supposed to represent the balance between the amount of rent due under the Contract of Lease for the period beginning from the lease's eleventh year of up to its pre-termination, on one hand, *and* the amount of rent that was actually paid by Food Fest and Joyfoods during the said period, on the other (*unpaid balance*).

On February 20, 2013, the RTC rendered a Decision[31] in favor of respondents, ordering Food Fest and Joyfoods to, among others, pay respondents the unpaid balance in the amount of ₱988,907.74. Food Fest and Joyfoods filed a Motion for Reconsideration, but such motion was denied by the RTC via a Resolution[32] dated July 5, 2013.

Food Fest and Joyfoods appealed to the CA.

On January 6, 2016, the CA rendered a Decision[33] dismissing such appeal and affirming the decision of the RTC. Food Fest and Joyfoods moved for a reconsideration, but the CA was steadfast.[34]

Hence, this appeal.

The Present Appeal[35]

In substance, Food Fest and Joyfoods admit the existence of an unpaid balance under the Contract of Lease. They, however, deviate from the decisions of the RTC and the CA on two (2) points:

First. Food Fest and Joyfoods challenge with the *amount* of the unpaid balance awarded by the RTC and the CA. Instead

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[30] *Id*. at 90.

[31] Penned by Presiding Judge Emma M. Torio of Branch 41 of the RTC of Dagupan City. (*Id*. at 72-78).

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

[33] *Id*. at 6-16.

[34] *Id*. at 17-19.

[35] *Id*. at 24-53.

of the sum of ₱988,907.74 claimed by the respondents, Food Fest and Joyfoods assert that the proper award should have been just for ₱382,055.22.

Food Fest and Joyfoods allege that the rental escalation clause of the Contract of Lease — by reason of an unwritten agreement between Joyfoods and the respondents — was actually suspended *indefinitely* beginning from the sixth year of the lease. Hence, according to Food Fest and Joyfoods, the monthly rent payable from the sixth year of the lease onwards is no longer determined by the stipulations of the Contract of Lease, but by negotiation between Joyfoods and respondents.

For the eleventh and twelfth year of the lease, Food Fest and Joyfoods aver that respondents and Joyfoods had actually come to an agreement fixing the monthly rentals thereon at ₱90,000.00 per month. Such agreement was precipitated, say Food Fest and Joyfoods, by Joyfoods' letter dated July 4, 2007 to respondents. To recall, it is in such letter that Joyfoods proposed the amount of ₱85,000.00 as monthly rental for the eleventh and twelfth year of the lease.

Food Fest and Joyfoods assert that the respondents replied to the July 4, 2007 letter and made a counter-proposal of ₱90,000.00 monthly rent for the eleventh and twelfth years of the lease. The counter-proposal was supposedly handwritten by the respondents in the July 4, 2007 letter, which they then sent back *via* facsimile to Joyfoods. And Joyfoods, apparently, agreed to this counter-proposal.

Food Fest and Joyfoods point out that when the rate of monthly rent for the eleventh and twelfth year is reckoned at ₱90,000.00, the unpaid balance would have amounted only to ₱382,055.22, to wit:

A. Amount of rent rightfully due under for the period beginning from the lease's eleventh year of up to its pre-termination (18 months)	₱90,000.00 x 18 months = ₱1,620,000.00

B. Amount of rent actually paid by Food Fest and Joyfoods during the same period	₱ 68,774.71 x 18 months= ₱1,237,944.78
UNPAID BALANCE (A-B)	₱1,620,000.00- ₱1,237,944.78 = **₱382,055.22**

Second. Food Fest and Joyfoods also disagree with their respective *liabilities* for the unpaid balance as held by the RTC and the CA. Food Fest and Joyfoods submit that both of them cannot be held liable for the said balance, in light of Food Fest's assigmnent of its rights and obligations under the Contract of Lease to Tucky Foods in 1998 and of Tucky Foods' assignment of the same rights and obligations to Joyfoods in 2001. Under such circumstances, it is postulated that the liability for the unpaid balance now solely rests with Joyfoods.

Our Ruling

We deny the appeal. We affirm the decision of the CA.

I

We reject the challenge against the amount of the unpaid balance awarded by the RTC and the CA.

Food Fest and Joyfoods' position pegging the unpaid balance at ₱382,055.22 is problematic. It proceeds from a *factual assumption* that contradicts the actual factual findings of the RTC and the CA. As is apparent from their arguments, Food Fest and Joyfoods' position is hinged on the existence of two purported (2) agreements between the respondents and Joyfoods, to wit:

1. An agreement suspending indefinitely the rental escalation clause of the Contract of Lease (*first agreement*); and
2. An agreement fixing the rate of rent for the lease's eleventh and twelfth year at ₱90,000 per month (*second agreement*).

Such an assumption, however, was already rebuffed by the RTC and the CA. Both courts did not consider the first and

second agreements as established facts, mainly because they found that the existence of such agreements is not supported by any credible evidence on record.[36] Accordingly, the RTC and the CA found nothing that could bar the respondents from enforcing and applying the rental escalation clause for the eleventh and twelfth years of the lease.[37]

We are not inclined to review — much less disturb — the foregoing factual findings of the RTC and the CA, knowing fully well our limitations as an appellate court and the proper office of appeals by *certiorari*.[38] This Court, as has often been said, is not a trier of facts.[39] In an appeal by *certiorari*, such

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[36] See *rollo*, pp. 6-16, 72-78 and 161-162. The *first* agreement was not considered due to there being no evidence on record proving its existence. In its decision, the CA intimated that the evidence on record was actually certain of only two (2) facts in relation to the suspension of the rental escalation clause of the Contract of Lease: *one*, that the rental escalation clause had been suspended during the sixth up to the tenth year of the lease, and *two*, that at the start of the lease's eleventh year, respondents informed Joyfoods regarding its intent to enforce such clause for the said year (see *rollo*, pp. 11-14) Taking such established facts together, the CA concluded that while the respondents may be said to have acceded to the suspension of the rental escalation clause, such suspension is only temporary and not indefinite as Food Fest and Joyfoods' claim (*rollo*, p. 14). The CA and the RTC were uniform in finding that the only valid inference that may be drawn from the standing facts is that **the respondents only agreed to the suspension of the rental escalation clause insofar as the sixth up to the tenth year of the lease are concerned — but not so for the eleventh and succeeding years** (see *rollo*, pp. 14 and 162).

On the other hand, the second agreement was not considered because the only evidence supporting its existence — *i.e.*, a copy of Joyfoods' July 4, 2007 letter that allegedly contains the respondents' handwritten note counter-proposing the amount of ₱90,000.00 as monthly rent for the eleventh and twelfth year of the lease — was found to be undeserving of any weight. The CA noted that the letter is unreliable and highly suspect as it was not even proven who actually wrote the said note, much less if the one who wrote it had authority to make such counter-proposal (*rollo*, p. 14).

[37] See *rollo*, pp. 14 and 162.

[38] See Section 1 of Rule 45 of the Rules of Court.

[39] *Quintos v. Nicolas*, 736 Phil. 438, 451 (2014); *Angeles v. Pascual,* 673 Phil. 499, 505 (2011); *FNCB Finance v. Estavillo*, 270 Phil. 630, 633 (1990).

as the instant case, We generally defer to the factual findings of lower courts and confine our review exclusively to the assigned errors of law. Though this norm is by no means absolute, it bears to stress that any deviation therefrom is only ever taken under defined circumstances — such as when the factual finding of the trial court is reversed by the CA on appeal, or when such finding is "*manifestly mistaken, absurd, or impossible*" or the same is otherwise "*grounded entirely on speculation, surmises, or conjectures*" or in instances where there has been grave abuse of discretion.[40] None of such circumstances, however, affect the factual determinations in discussion.

All in all, We find no cogent reason to overturn the RTC and the CA's determination negating the existence of the first and second agreements due to lack of credible proof. Without such agreements, Food Fest and Joyfoods' challenge against the amount of the unpaid balance inevitably loses its potency. We, therefore, cannot accept such challenge and must instead sustain the amount of unpaid balance awarded by the RTC and the CA.

II

We also reject the plea to limit liability for the unpaid balance solely with Joyfoods.

Food Fest and Joyfoods' plea is, in substance, an invocation of the concept of novation — particularly, novation of an obligation by the *substitution of the person of the debtor*. Their basic assertion is that the assignment by Food Fest of its rights and obligations under the Contract of Lease to Tucky Foods, and the assignment by Tucky Foods of the same rights and obligations to Joyfoods, ought to have resulted in Food Fest's release from its obligations under the Contract of Lease and its substitution therein by Joyfoods.

We do not agree.

Novation is the extinguishment of an obligation by its modification and replacement by a subsequent one. It takes

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[40] See *Microsoft Corporation v. Farajallah*, 742 Phil. 775 (2014).

place when an obligation is modified in any of the following ways: (a) by changing its object or principal conditions, (b) by *substituting the person of the debtor*, or (c) by subrogating a third person in the rights of the creditor.[41] In such instances, the obligation ceases to exist as a new one — bearing the modifications agreed upon — takes its place. Novation is, thus, a juridical act of dual function— for as it extinguishes an obligation, it also creates a new one *in lieu* of the old.[42]

Novation of an obligation by *substituting the person of the debtor*, as the term suggests, entails the replacement of the debtor by a third person. When validly made, it releases the debtor from the obligation which is then assumed by the third person as the new debtor. To validly effect such kind of novation, however, it is not enough for the debtor to merely assign his debt to a third person, or for the latter to assume the debt of the former; the *consent of the creditor* to the substitution of the debtor is essential and must be had. As Article 1293 of the Civil Code provides:

> ARTICLE 1293. Novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, **but not without the consent of the creditor**. Payment by the new debtor gives him the rights mentioned in articles 1236 and 1237.[43]

In *De Cortes v. Venturanza*,[44] We explained the rationale of this requirement:

> x x x A personal novation by substitution of another in place of the debtor may be effected with or without the knowledge of the debtor but not without the consent of the creditor (Art. 1205, Civil Code [now Art. 1293, New Civil Code]). This is the legal provision applicable to the case at bar. **The reason for the requirement that the creditor**

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[41] See Article 1291 of the Civil Code.

[42] Tolentino, Arturo M., *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. 4, 1991, p. 381.

[43] Emphasis supplied.

[44] 170 Phil. 55 (1977).

give his consent to the substitution is obvious. The substitution of another in place of the debtor may prevent or delay the fulfillment or performance of the obligation by reason of the inability or insolvency of the new debtor; hence, the consent of the creditor is necessary. This kind of substitution may take place without the knowledge of the debtor when a third party assumes the obligation of the debtor with the consent of the creditor. The novation effected in this way is called *expromision*. Substitution may also take place when the debtor offers and the creditor accepts a third party who assumes the obligation of the debtor. The novation made in this manner is called *delegacion*. (Art. 1206, Civil Code [now Art. 1295, New Civil Code]). In these two modes of substitution, the consent of the creditor is always required. x x x."[45]

The consent of the creditor to the substitution of a debtor, *as a rule,* may be given expressly or impliedly.[46] As can be observed, the law does not require that the creditor's consent to the substitution to come at a particular time or in a particular form.[47] What it only demands is that the consent of the creditor be given one way or another.[48] This notwithstanding, **there is also nothing that precludes the parties in an obligation, pursuant to their *freedom to contract*,[49] to agree to a specific form by which the creditor's consent to any potential novation should be expressed**. Once an agreement is reached that subjects the creditor's consent to

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[45] *Id*. at 69-70, citing *Rio Grande Oil Co. v. Coleman*, 39 O.G. No. 33, 986. (Emphasis supplied; citations omitted).

[46] Tolentino, Arturo M., *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Volume 4, 1991, p. 391, citing *Asia Banking Corporation v. Elser*, 54 Phil. 994 (1929), *Barreto v. Alba*, 62 Phil. 593 (1935), and *Santisimo Rosario de Malo v. Gemperle*, 39 O.G. No. 59, 1410.

[47] *De Cortes v. Venturanza*, *supra* note 44, citing *Rio Grande Oil Co. v. Coleman*, *supra* note 45.

[48] *Id*.

[49] Article 1306 of the Civil Code provides:

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

certain formal requirements, such requirements naturally become binding upon the parties.[50]

Going back to the instant case, We find that the established facts do not permit the conclusion that novation had taken place.

First. The settled facts do not show that respondents had *expressly* consented *in writing* to the substitution of Food Fest by Joyfoods. The consent of respondents to such substitution has to be in writing, in light of the *non-waiver clause* of the Contract of Lease. As can be recalled, the non- waiver clause of the Contract of Lease required the parties thereto to express any waiver of their *rights* under said contract in writing lest their waiver be considered null, *viz*.:

> 16. NON-WAIVER – The failure of the parties to insist upon a strict performance of any of the terms, conditions and covenants hereof shall not be deemed a relinquishment or waiver of any rights or remedy that said party may have, nor shall it be construed as a waiver of any subsequent breach or default of the terms, conditions and covenants hereof which shall continue to be in full force and effect. **No waiver by the parties of any of their rights under this Contract of Lease shall be deemed to have been made unless expressed in writing and signed by the party concerned**.[51]

Respondents' consent to the substitution of Food Fest falls within the ambit of the foregoing clause, because a **novation by the substitution of the person of the debtor *implies* a waiver on the part of the creditor of his right to enforce the obligation as against the original debtor**.[52] This correlation has been made in the case of *Testate Estate of Lazaro Mota v. Serra*:[53]

> It should be noted that in order to give novation its legal effect, the law requires that the creditor should consent to the substitution of

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[50] See Article 1308 of the Civil Code.

[51] Emphasis supplied.

[52] See *Testate Estate of Mota v. Serra*, 47 Phil. 464, 470 (1925).

[53] *Id*.

a new debtor. This consent must be given expressly for the reason that, **since novation extinguishes the personality of the first debtor who is to be substituted by a new one, it implies on the part of the creditor a waiver of the right that he had before the novation** which waiver must be express under the principle that *renuntiatio non praesumitor*, recognized by the law in declaring that a waiver of right may not be performed unless the will to waive is indisputably shown by him who holds the right.[54]

Verily, without the consent of the respondents — conveyed in the form required under the Contract of Lease — there can be no substitution of Food Fest by Joyfoods. On this score alone, Food Fest and Joyfoods' plea is dismissible.

Second. Yet, even if we are to set aside the non-waiver clause of the Contract of Lease, Food Fest and Joyfoods' claim of novation is still doomed to fail. This is so because the consent of respondents to the substitution of Food Fest, just the same, cannot be deduced or *implied* from any of the established acts of the former. Indeed, under the settled facts, the respondents did nothing in the way of releasing Food Fest from its obligations other than, perhaps, its acceptance of rental payments from Joyfoods.

The consent of respondents to the substitution of Food Fest by Joyfoods, however, cannot be presumed from the *sole* fact that they accepted payments from Joyfoods. It is well settled that mere acceptance by a creditor of payments from a third person for the benefit of the debtor, *sans any agreement that the original debtor will also be released from his obligation*, does not result in novation but merely the addition of debtors. As *Ajax Marketing Development Corporation v. Court of Appeals*[55] instructs:

The well-settled rule is that novation is never presumed. Novation will not be allowed unless it is clearly shown by express agreement, or by acts of equal import. Thus, to effect an objective novation, it

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[54] *Id.* at 469-470. (Emphasis ours).

[55] 318 Phil. 268 (1995).

is imperative that the new obligation expressly declare that the old obligation is thereby extinguished, or that the new obligation be on every point incompatible with the new one. **In the same vein, to effect a subjective novation by a change in the person of the debtor it is necessary that the old debtor be released expressly from the obligation, and the third person or new debtor assumes his place in the relation. There is no novation without such release as the third person who has assumed the debtor's obligation becomes merely a co-debtor or surety**.[56]

All things considered, We find no valid reason to overturn the RTC and the CA's ruling holding both Food Fest and Joyfoods liable for the unpaid balance. Under the limited facts of the instant ease, no novation by the substitution of the person of debtor can be appreciated. Accordingly, Food Fest cannot be considered as released from its obligations under the Contract of Lease. And Joyfoods' assumption of the debt of Food Fest only made the former a co-debtor of the latter.[57]

WHEREFORE, premises considered, the instant appeal is **DENIED**. The Decision dated January 6, 2016 and the Resolution dated July 22, 2016 of the Court of Appeals in CA-G.R. CV No. 101302 are **AFFIRMED**.

SO ORDERED.

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

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[56] *Id*. at 274-275. (Emphasis supplied; citations omitted).

[57] See *Servicewide Specialists, Inc. v. Intermediate Appellate Court*, 255 Phil. 787 (1989).

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

FIRST DIVISION

[G.R. No. 229099. February 27, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOY ANGELES *y* AGBOLOS,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT (R.A. 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS ESTABLISHED IN CASE AT BAR. — As regards illegal sale of dangerous drug, the prosecution established: (i) the identity of the seller (appellant) and the buyer (PO3 Cayabyab), the object (a sachet of *shabu*) and consideration (₱500.00 marked money) of the sale as well as (ii) the delivery of the thing sold and the payment for the same. x x x Moreover, the *corpus delicti* was identified and presented in court as evidence. For indeed "the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the buy-bust money[, as in this case,] consummate the illegal transaction." On the other hand, the elements of illegal possession of dangerous drugs were also proved here. Appellant was found to be in possession of two heat-sealed sachets containing white crystalline granules, which upon examination, tested positive for methamphetamine hydrochloride (*shabu*). Likewise, her possession thereof was not shown to be authorized by law; and, she freely and consciously possessed such illegal drugs. Given these, and pursuant to the rule that the findings of fact of the trial court and its conclusions are given high respect, if not conclusive effect, when affirmed by the CA, we see no reason to disregard these findings and conclusion, there being no showing that the lower courts overlooked or misinterpreted any relevant matter that would influence the outcome of the case.

2. ID.; ID.; CHAIN OF CUSTODY RULE; FOUR LINKS THAT MUST BE ESTABLISHED. — Section 21 of RA 9165, prior to its amendment by RA 10640, provides for the procedure governing the custody of seized drug and related items to ensure the preservation of the *corpus delicti* and guarantee that the item/s seized from the accused would be the same one/s that would be presented in court, x x x Generally, there are four links that

must be established to comply with the chain of custody rule, to wit: "*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."

3. ID.; ID.; ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; PENALTIES. — [P]ursuant to Sections 5 and 11, Article II of RA 9165, as amended, the penalties imposed against appellant are in order. Particularly, for having been found guilty of illegal sale of *shabu*, the RTC, as affirmed by the CA, correctly imposed against her the penalty of life imprisonment and a fine of ₱500,000.00. On the other hand, for having been found guilty of illegal possession of *shabu* weighing less than five grams (0.04 gram, and 0.03 gram), the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to seventeen (17) years, as maximum, and a fine amounting to ₱300,000.00 were properly imposed against her.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO,[*] *J.*:

On appeal is the February 29, 2016 Decision[1] of the Court of Appeals (CA) in CA-GR. CR-HC No. 07048 which affirmed

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[*] Acting Chairperson, Per Special Order No. 2638 dated February 26, 2019.

[1] CA *rollo*, pp. 125-162; penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Ramon A. Cruz and Henri Jean Paul B. Inting.

the August 19, 2014 Joint Decision[2] of the Regional Trial Court (RTC) of Lingayen, Pangasinan, Branch 69 in Criminal Case Nos. L-9907 and 9908 finding accused-appellant Joy Angeles *y* Agbolos (appellant) guilty of illegal sale and possession of dangerous drugs in violation of Sections 5 and 11, respectively, Article II of Republic Act (RA) No. 9165.[3]

Factual Antecedents

Appellant was charged with illegal sale and illegal possession of dangerous drugs in two separate Informations, reading as follows:

[Crim. Case No. L-9907]

That on or about 3:30 in the early morning of November 19, 2013 in Brgy. Maniboc, Lingayen, Pangasinan, and within the jurisdiction of the Honorable Court, the above-named accused, did, then and there, willfully, unlawfully and feloniously sell one (1) heat[-]sealed plastic sachet containing Methamphetamine Hydrochloride (Shabu), a dangerous drug, to PO3 Raul Cayabyab worth PHP500.00 without lawful authority to do so.

Contrary to Sec. 5, Article II of R.A. 9165.[4]

[Crim. Case No. L-9908]

That on or about 3:30 in the early morning of November 19, 2013 in Brgy. Maniboc, Lingayen, Pangasinan, and within the jurisdiction of the Honorable Court, the above-named accused, did, then and there, willfully, unlawfully and feloniously have in her possession, control and custody two (2) heat[-]sealed plastic sachets containing Met[h]amphetamine Hydrochloride (Shabu), a dangerous drug, without lawful authority to do so.

Contrary to Sec. 11, Article II of RA. 9165.[5]

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[2] Records in Crim. Case No. L-9907, pp. 88-99; penned by Presiding Judge Loreto S. Alog, Jr.

[3] The Comprehensive Dangerous Drugs Act of 2002.

[4] Records in Crim. Case No. L-9907, p. 1.

[5] Records in Crim. Case No. L-9908, p. 1.

Upon arraignment, appellant pleaded "Not Guilty"[6] to both charges. Trial then ensued.

Version of the Prosecution

On November 16, 2013, Lingayen Police Station operatives PO3 Raul Cayabyab (PO3 Cayabyab), SPO1 Jolly Yanes (SPO1 Yanes) and SPO1 Marday delos Santos[7] (SPO1 delos Santos), and a confidential informant (CI), conducted a surveillance against an alias Joy (later identified as appellant). Three days thereafter, or on November 19, 2013, P/Supt. Reynaldo Panay (P/Supt. Panay), the Chief of Police of Lingayen, designated PO3 Cayabyab as Team Leader and poseur-buyer, and directed him, SPO1 Yanes and SPO1 delos Santos to conduct a buy-bust operation against appellant, with the CI accompanying them in the operation.[8]

Consequently, at about 3:00 a.m. of the same day, the CI texted appellant to meet her at Sarah's Store in Maniboc, Lingayen, Pangasinan. The buy-bust team arrived thereat at around 3:25 a.m. PO3 Cayabyab and the CI stayed in front of Sarah's Store while SPO1 Yanes and SPO1 delos Santos positioned themselves at a distance of 5 to 10 meters. Appellant thereafter arrived in a motorcycle followed by a tricycle, which provided illumination in the area.[9]

After alighting from the motorcycle, appellant approached the CI. PO3 Cayabyab then told her that he was buying ₱500.00 worth of items. Appellant gave PO3 Cayabyab a plastic sachet containing crystalline granules, and the latter handed appellant the ₱500.00 marked money. Immediately, PO3 Cayabyab raised his left hand as signal for SPO1 Yanes and SPO1 delos Santos to approach them.[10] When they came near appellant, SPO1

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[6] Records in Crim. Case No. L-9907, pp. 24-26.

[7] TSN, July 8, 2014, p. 15.

[8] TSN, April 8, 2014, pp. 2-4.

[9] *Id*. at 5-6.

[10] *Id*. at 6-7; July 8, 2014, p. 14.

Yanes and SPO1 delos Santos introduced themselves as police officers and informed appellant of her rights. Upon inspection, they found in appellant's left pants pocket two plastic sachets and the marked money that was used in the buy-bust. Meanwhile, SPO1 delos Santos relayed to P/Supt. Panay that appellant was arrested; and consequently, PO3 Danny Santos of their Action Team coordinated with the barangay officials and the representative of the Department of Justice (DOJ), who, later arrived at the place of incident.[11]

At the place of incident and in the presence of the Barangay Kagawad Federico Dizon of Barangay Maniboc, and Assistant Provincial Prosecutor Jeffrey Catungal, PO3 Cayabyab marked the item he bought from appellant with "RGC1." He also marked the two sachets recovered from appellant with "RGC2" and "RGC3."[12] He likewise prepared the Confiscation Receipt at the place of incident. The Duty Investigator, PO2 Rodolfo Q. Naungayan (PO2 Naungayan) took pictures of the marking and inventory of the recovered items from appellant.[13]

The police officers brought appellant to the police station where PO3 Cayabyab turned over the recovered plastic sachets to PO2 Naungayan. Afterwards, PO3 Cayabyab brought appellant to the Don Mariano Community Hospital for medical examination. Upon his return to the police station, PO3 Cayabyab received from PO2 Naungayan the Request for laboratory examination as well as the sachets he earlier gave the latter. Subsequently, he brought appellant, said Request and the subject sachets at the Crime Laboratory. Later, appellant was brought back to the police station where she was detained.[14]

Meanwhile, PCSI Emelda B. Roderos (PCSI Roderos) testified that she was a Forensic Chemist at the Pangasinan Provincial Crime Laboratory Office; on November 19, 2013, she received three heat-sealed plastic sachets with these initials: "RGC1,"

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[11] TSN, April 8, 2014, pp. 7-9.

[12] TSN, July 8, 2014, pp. 3, 19-20.

[13] TSN, April 8, 2014, pp. 9-10.

[14] *Id*. at 10-13.

"RGC2," and "RGC3;" and, she placed the control number (D-217-2013L), the names of the specimens (A-1, A-2, A-3), their corresponding weight (0.1 gram, 0.04 gram, and 0.03 gram), and her initials ("EBR") on the specimens. According to PCSI Roderos, per her examination, these items tested positive for the presence of methamphetamine hydrochloride. She also confirmed in court that the specimens shown to her were the same ones she earlier examined at the Crime Laboratory.[15]

Version of the Defense

For her part, appellant denied the accusations against her and instead averred that:

> x x x [O]n 18 November 2013, at around 11:00 o'clock in the evening, not having any other means to buy medicine for her sick mother, as she was, likewise, sick, [appellant] enlisted the help of one Oliver Roxas (Oliver for brevity), a tricycle driver in their place at Bengson Street, Lingayen, Pangasinan and a friend. When Oliver dropped by to get the One Hundred pesos (Php100.00) for the medicine, the latter requested to use her cellular phone as he had no load/credit left.
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> x x x As it took a while for Oliver to come back, [appellant] called him and asked what was keeping him[. T]he former reasoned that he still has a passenger and directed her to wait for him on a street different from the one where they met earlier. When Oliver arrived, instead of handing over the medicine he bought, [he] tried to give [appellant] a Five Hundred Peso (Php500.00) bill. It was then that police officers appeared, poked their guns at her, boarded her on the tricycle and brought her to the police station.
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> x x x At the police station, [appellant] overheard the policemen talking about going back to Sarah['s] Store in Camanggaan Street to plot the evidence against her. True enough, she was brought back to Sarah['s] Store and ordered to sit down while the police officers put the drugs near her and took pictures thereof. At the same time, she was crying loudly and calling for her mother, thus, one of the police officers threatened to kick her on the face. Thereafter, the case prosecutor and a barangay official arrived to witness the proceedings.

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[15] TSN, May 15, 2014, pp. 4-6; Records in Crim. Case No. L-9907, p. 17.

She was subsequently charged with Sale and Possession of Dangerous Drugs.[16]

Ruling of the Regional Trial Court

The RTC found appellant guilty of both charges and sentenced her to suffer the penalty of life imprisonment and her to pay a ₱500,000.00 fine, for illegal sale of dangerous drug, and imprisonment ranging from twelve (12) years and one (1) day, as minimum, to seventeen (17) years, as maximum, and to pay a ₱300,000.00 fine, for illegal possession of prohibited drugs.

Ruling of the Court of Appeals

The CA affirmed the RTC Decision. It agreed with the findings of the RTC that the elements of the crimes charged were established, and that the chain of custody rule was properly observed.

Undaunted, appellant filed this appeal.

Issue

Whether appellant is guilty beyond reasonable doubt of illegal sale and possession of dangerous drugs.

Our Ruling

Appellant contends that the identity of the drug evidence was not sufficiently proved because there were gaps in the chain of custody. She argues that the lack of her or her representative's signature as well as that of a media representative in the inventory of the seized items constituted gaps in the chain of custody of the recovered items.[17]

Such contentions, however, are untenable considering that the prosecution proved with moral certainty the elements of illegal sale and illegal possession of dangerous drugs as well as the existence of the *corpus delicti*, such that her guilt was established beyond reasonable doubt.

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[16] CA *rollo*, pp. 36-37.

[17] *Rollo*, pp. 45-47.

Elements; illegal sale, possession of dangerous drugs

As regards illegal sale of dangerous drug, the prosecution established: (i) the identity of the seller (appellant) and the buyer (PO3 Cayabyab), the object (a sachet of *shabu*) and consideration (₱500.00 marked money) of the sale as well as (ii) the delivery of the thing sold and the payment for the same.[18]

Put in another way, appellant committed illegal sale of dangerous drug because it was shown that during the buy-bust operation, appellant sold a sachet of *shabu* worth ₱500.00 to PO3 Cayabyab. Moreover, the *corpus delicti* was identified and presented in court as evidence. For indeed "the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the buy-bust money[, as in this case,] consummate the illegal transaction."[19]

On the other hand, the elements of illegal possession of dangerous drugs were also proved here. Appellant was found to be in possession of two heat-sealed sachets containing white crystalline granules, which upon examination, tested positive for methamphetamine hydrochloride (*shabu*). Likewise, her possession thereof was not shown to be authorized by law; and, she freely and consciously possessed such illegal drugs.[20]

Given these, and pursuant to the rule that the findings of fact of the trial court and its conclusions are given high respect, if not conclusive effect, when affirmed by the CA, we see no reason to disregard these findings and conclusion, there being no showing that the lower courts overlooked or misinterpreted any relevant matter that would influence the outcome of the case.[21]

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[18] *People v. Taboy*, G.R. No. 223515, June 25, 2018.

[19] *People v. Pundugar,* G.R. No. 214779, February 7, 2018.

[20] *Id.*

[21] *People v. Calvelo*, G.R. No. 223526, December 6, 2017.

Compliance with the Chain of Custody Rule

In addition, it is settled that in drug-related cases, it is primordial that the *corpus delicti* or the drug subject of the offense charged is identified, proved, and adduced in court as evidence.[22] In this case, overwhelming evidence proved the existence of the *corpus delicti*, such that it cannot be denied that appellant was guilty of the offenses charged against her.

Section 21 of RA 9165, prior to its amendment by RA 10640,[23] provides for the procedure governing the custody of seized drug and related items to ensure the preservation of the *corpus delicti* and guarantee that the item/s seized from the accused would be the same one/s that would be presented in court, *viz*.:

(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;

In addition, Section 21(a) of the Implementing Rules and Regulations of RA 9165 which implements the afore-quoted provision reads:

(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

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[22] *People v. De Asis*, G.R. No. 225219, June 11, 2018.

[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." Approved: July 15, 2014.

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;

Generally, there are four links that must be established to comply with the chain of custody rule, to wit: "*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."[24]

In this case, the prosecution established that the buy-bust team fully complied with the requirements under Section 21, RA 9165, as amended.

In particular, after the buy-bust operation and at the place of incident, PO3 Cayabyab **immediately marked** with his initials and their corresponding numbers ("RGC1," "RGC2," and "RGC3") the item subject of the buy-bust sale as well as the two sachets recovered from appellant. He also promptly conducted an inventory of these items at the place of incident. Such marking and inventory were made *in the presence of an elective public official* (Barangay Kagawad Dizon) *and a representative from the DOJ*(Prosecutor Catungal). Added to these, PO2 Naungayan **took pictures** of the marking and inventory of the recovered items.

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[24] *People v. Calvelo*, *supra* note 21.

Thereafter, at the police station, PO3 Cayabyab **turned over to their Duty Investigator** PO2 Naungayan the seized sachets; in turn, the investigator prepared the necessary request for the examination of these items; thereafter, PO3 Cayabyab brought the Request and the items to the Crime Laboratory; PCSI Roderos, the **Forensic Chemist at the Crime Laboratory received the Request and the sachets** with these initials: "RGC1," "RGC2," and "RGC3;" she placed thereat the control number (D-217-2013L), the names of the specimens (A-1, A-2, A-3), their respective weight (0.1 gram, 0.04 gram, and 0.03 gram), as well as her initials ("EBR"). PCSI Roderos **testified** that the subject items *tested positive* for the presence of methamphetamine hydrochloride, and **that the specimens presented in court were the same ones she earlier examined at the Crime Laboratory**.

Despite the foregoing clear presentation of the custodians of the items from their seizure until their identification in court, appellant still insists that there were gaps in the chain of custody of these items because the inventory sheet or the "Receipt of Confiscated/Recovered Items" did not contain her or that of her representative's signature and no representative from the media was present during the marking and inventory of the seized items.

We are unconvinced.

First, it was specifically indicated in the "Receipt of Confiscated/ Recovered Items" that appellant "refuse[d] to sign"[25] the same. That such was indeed the situation was bolstered by the following narrations of the police officers in their Joint Affidavit:

> x x x [T]he inventory and the markings of the confiscated evidenc[e] were made in the presence of DOJ representative[,] Prosecutor Catungal, Elected Bry[.] Official Bry[.] Kgd[.] Federico Dizon, *we called the presence of [appellant] however she stepped away and refused*[.]

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[25] Records in Crim. Case No. L-9907, p. 13.

That I (PO3 Raul Cayabyab) made the markings on the confiscated evidences in which the one (1) Plastic transparent heat sealed containing suspected shabu that I [bought] from the suspect I marked it with "RGC-1" while the recovered two (2) Plastic transparent heat sealed containing suspected shabu were marked as "RGC-2 and RGC-3" as my initial respectively and it was also made in the presence of DOJ representative Prosecutor Jeffrey Catungal, Elected Brgy[.] Official[,] Brgy[.] Kgd[.] Federico Dizon and in the presence of the suspect;

That after the markings and inventory of the confiscated evidences, we together with DOJ representative Jeffrey Catungal, Elected Brgy[.] Official[,] Brgy[.] Kgd[.] Federico Dizon *showed, read and explained to her the content of the confiscated receipt and asked her to sign but she again refused*[.][26]

Clearly, the absence of appellant's signature in the inventory sheet was due to no fault of the buy-bust team as appellant herself refused to sign the same.

Second, prior to the amendment in RA 9165, the witnesses necessary during the marking and inventory of the seized items include: (a) an elective public official; (b) a representative from the DOJ; and, (c) a representative from the media.

It is worthwhile to note that the prosecution gave a clear explanation on its failure to secure the presence of a media representative. PO3 Cayabyab testified that their Duty Investigator sent text messages to reporters from ABS-CBN (Melanie Heng)[27] and GMA (Joyce Ann Sigui)[28] (media outlets) but the reporter from ABS-CBN was in Infanta, Pangasinan and would take an hour to arrive at the place of incident; on the other hand, no response was received from the reporter from GMA.[29] To our mind, such explanation proved that the buy-bust team exerted serious efforts to secure the presence of a media representative during its operation. The failure to

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[26] *Id*. at 9; emphases ours.

[27] *Id*.

[28] *Id*.

[29] TSN, April 8, 2014, p. 8.

secure the same was, nevertheless, justified given the unavailability of the reporters from the media outlets that the police coordinated with.

Penalty properly imposed against appellant.

Finally, pursuant to Sections 5[30] and 11,[31] Article II of RA 9165, as amended, the penalties imposed against appellant are in order. Particularly, for having been found guilty of illegal sale of *shabu*, the RTC, as affirmed by the CA, correctly imposed against her the penalty of life imprisonment and a fine of ₱500,000.00. On the other hand, for having been found guilty of illegal possession of *shabu* weighing less than five grams (0.04 gram, and 0.03 gram), the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to seventeen (17) years, as maximum, and a fine amounting to ₱300,000.00 were properly imposed against her.

WHEREFORE, the appeal is **DISMISSED**. The assailed February 29, 2016 Decision of the Court of Appeals in CA-GR. CR-HC No. 07048 is hereby **AFFIRMED**.

SO ORDERED.

Jardeleza and *Gesmundo, JJ.,* concur.

Bersamin, C.J. and *Carandang, J.*, on official leave.

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[30] SECTION 5. *Sale x x x of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell x x x any dangerous drug x x x regardless of the quantity and purity involved x x x.

[31] SECTION 11. *Possession of Dangerous Drugs*. — x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of x x x methamphetamine hydrochloride or "shabu"[.]

FIRST DIVISION

[G.R. No. 229823. February 27, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROGER ACABO,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED. —** As a rule, the trial courts' findings and conclusions on the credibility of witnesses are accorded respect because it has the first-hand opportunity to observe the demeanor of witnesses when they testify. Absent any arbitrariness, oversight or misappropriation of facts, the Court has no reason to overturn the factual findings of the trial court, as in this case.

2. **ID.; EVIDENCE; DENIAL AND ALIBI; NOT APPRECIATED FOR BEING SELF-SERVING AND UNRELIABLE AS AGAINST THE POSITIVE IDENTIFICATION OF APPELLANT AS THE KILLER. —** Appellant's defenses of denial and alibi must fail for being self-serving and unreliable as against the positive identification of Josephine that appellant killed Alberto. For the defense of alibi to prosper, not only must the accused prove that he was at some other place at the time of the perpetration of the crime but also that it was physically impossible for him to be at the place where the crime was committed.

3. **CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; REQUISITES. —** We affirm the findings of the trial court and the CA that the killing of Alberto was attended with treachery, which qualified the crime to murder. There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to ensure its execution without risk to himself arising from the defense which the offended party might make. To establish treachery, the prosecution must establish the concurrence of these conditions: (1) that the victim was in no position to defend himself when attacked; and (2) the offender deliberately adopted the specific manner of the attack.

4. ID.; ID.; MURDER; PENALTY AND DAMAGES. — [A]ll the elements of the crime of murder were proven: (1) that a person was killed; (2) that the accused killed that person; (3) that the killing was attended by treachery; and (4) that the killing is not parricide or infanticide. We, therefore affirm the conviction of appellant. The trial court, thus, correctly imposed upon appellant, as affirmed by the CA, the penalty of *reclusion perpetua*. As regards the damages imposed, the Court finds the awards of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages, to be in order. However, the award of exemplary damages should be increased to ₱75,000.00 pursuant to prevailing jurisprudence. In addition, the award ₱33,000.00 as actual damages is deleted; in lieu thereof, temperate damages in the amount of ₱50,000.00 is awarded likewise pursuant to prevailing jurisprudence. Finally, all damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO,[*] *J.*:

On appeal is the August 30, 2016 Decision[1] of the Court of Appeals (CA) in CA-G.R. CEB-CR-HC No. 02082 which affirmed with modification the June 22, 2015 Judgment[2] of the Regional Trial Court (RTC), Branch 32, Dumaguete City, finding Roger Acabo (appellant) guilty beyond reasonable doubt of the crime of murder.

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[*] Acting Chairperson, Per Special Order No. 2638 dated February 26, 2019.

[1] CA *rollo*, pp. 89-100; penned by Associate Justice Germano Francisco D. Legaspi and concurred in by Executive Justice Gabriel T. Ingles and Associate Justice Marilyn B. Lagura-Yap.

[2] Records, Vol. I, pp. 197-213; penned by Judge Roderick A. Maxino.

Factual Antecedents

Appellant and Pael Acabo (Pael) were charged with murder in an Information dated November 20, 2014 which reads:

> That in the morning of September 19, 2014 at Sitio Talatala, Barangay Siit, Municipality of Siaton, Province of Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above named accused ROGER ACABO and PAEL ACABO, conspiring, helping and mutually aiding one another, with treachery, evident premeditation and abuse of superior strength, with intent to kill, did then and there willfully, unlawfully and feloniously attack, shoot and wound ALBERTO OYHOC PALTINGCA with the use of a short firearm of an unknown caliber, with which said accused were then armed and provided, inflicting upon the said victim fatal injuries on the different parts of his body that caused his untimely death, to the damage and prejudice of his surviving heirs.
>
> CONTRARY to Article 248 of the Revised Penal Code.[3]

Appellant was arraigned and pleaded not guilty while his co-accused, Pael, remained at large. Trial, thereafter, ensued.

Version of the Prosecution

Witness Josephine Enrera (Josephine) testified that at around 6:00a.m. of September 19, 2014, while on her way uphill to *Sitio* Talatala, Siit, Siaton to sell seashells, she met Alberto Paltingca (Alberto) who was also going uphill to pasture his cow.[4] Suddenly, two men appeared and waylaid them.[5] Josephine recognized their assailants as appellant, who was her neighbor, and Pael.[6] She saw appellant shoot Alberto's legs with a handgun, causing Alberto to stumble and fall backwards.[7] Immediately thereafter, Pael pointed a gun at her and pulled the trigger but

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[3] *Id*. at 2.

[4] TSN, March 31, 2015, p. 10.

[5] *Id*. at 11 and 15.

[6] *Id*. at 11 and 20.

[7] *Id*. at 11-13 and 19.

the gun did not fire, thereby providing her an opportunity to run and hide behind the bushes.[8] She then saw appellant run after Alberto and shoot him the second time.[9] Alberto, who was shot on his armpits, fell down and rolled downhill.[10] At this time, appellant and Pael ran towards the stream and escaped.[11] Josephine shouted and cried for help.[12] She ran home confused and told her children about what happened.[13] It was only in the afternoon that she was able to relay to Romeo Paltingca (Romeo), Alberto's brother, what she witnessed.[14]

Dr. Mitylene Besario Tan (Dr. Tan), the Municipal Health Officer of Siaton, Negros Oriental, examined the cadaver of Alberto. She testified that Alberto sustained a gunshot wound on the upper left arm penetrating the lateral side of the chest and another gunshot wound on the upper right thigh exiting below the gluteal region.[15] Dr. Tan opined that the cause of Alberto's death was the gunshot wound on the upper left arm that could have hit the heart causing hypovolymic shock, secondary to massive bleeding.[16]

Jennifer Paltingca (Jennifer), Alberto's wife, testified that at around 11:00 a.m. of September 19, 2014, she went looking for her husband who would usually come home at 8:00 a.m. after pasturing their cow.[17] She went uphill and there she saw her husband lying in a pool of blood beside the road.[18] She

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[8] *Id*. at 12-16.

[9] *Id*. at 13.

[10] *Id*.

[11] *Id*.

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

[13] *Id*. at 14 and 17.

[14] *Id*.

[15] *Id*. at 4.

[16] *Id*. at 5.

[17] *Id*. at 24.

[18] *Id*.

stated that the expenses incurred for the wake and burial of Alberto was shouldered by Alberto's sister, Mary Ann Gomial (Mary Ann).[19]

Romeo, Alberto's brother, testified that he assisted Jennifer in calling for help when the latter saw the lifeless body of her husband.[20] He also narrated that Josephine went to his house at 4:00 p.m. and told him who killed Alberto.[21] On cross-examination, Romeo stated that he heard gunshots from afar at around 7:00 a.m. before he sent his children to school.[22]

The Chapel Manager of Siaton Funeral Homes, Anthony E. Elma, also testified that Alberto's sister, Mary Ann, paid the total amount of ₱33,000.00 as premiums for the funeral plan used for the burial of Alberto.[23] Mary Ann was likewise presented as witness to confirm that she paid for the funeral plan she assigned to her brother.[24]

Version of the Defense

Appellant interposed the defense of denial and alibi, alleging that on September 19, 2014, he was working in a construction project in Tunga- Tunga, Dauin, Negros Oriental. He narrated that he was on duty the previous day, rendered overtime work until 10:00 p.m. and thereafter slept in his bunkhouse situated near the construction site.[25] He woke-up at around 5:00 a.m. of September 19, 2014, prepared his breakfast, washed his clothes, and waited for the alarm to signal the start of their work at 8:00 a.m.[26] He admitted knowing Alberto whom he met a couple

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[19] *Id*. at 25; TSN, April 23, 2015, p. 2.

[20] TSN, April 23, 2015, p. 6.

[21] *Id*. at 7.

[22] *Id*. at 8.

[23] TSN, May 27, 2015, p. 6.

[24] *Id*. at 10.

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

[26] *Id*. at 17-20.

of times and averred that he had no disagreement with Jennifer and Romeo.[27]

To corroborate appellant's testimony, the defense presented Engr. Jay Te (Engr. Te), appellant's employer; Gregorio Erolon (Gregorio), the foreman in Engr. Te's construction project; Stephen Jun Titu (Stephen), the timekeeper of the construction project; and Mario Campos (Mario) and Miguel Astrorias (Miguel), appellant's co-workers.

Engr. Te testified that appellant had been his employee for about 10 years and that appellant reported for work in the construction site on September 19, 2014 based on their daily time record (DTR).[28] Gregorio, on the other hand, testified that he monitored the attendance of the construction workers and made entries in the DTR, which entries were verified by Stephen.[29] Both Gregorio and Stephen stated that appellant reported for work on September 19, 2014;[30] however, Gregorio, on cross-examination, admitted that he did not actually see appellant report for work at 8:00 a.m. of September 19, 2014.[31] Both also admitted that the DTR did not show the particular time a worker reports for work and that it was not signed by the workers.[32] Both Mario and Miguel testified that they saw appellant in his bunkhouse near the construction site on September 19, 2014 before they reported for work at 8:00 a.m.[33]

Ruling of the Regional Trial Court

The RTC found appellant guilty as charged. It lent credence to Josephine's positive identification of the appellant as the

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[27] *Id*. at 22-24.

[28] *Id*. at 31.

[29] *Id*. at 40-41.

[30] *Id*. at 42-43 and 56.

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

[32] *Id*. at 45, 49, 58, and 62.

[33] TSN, June 3, 2015, pp. 4 and 10.

person who killed Alberto. It appreciated the attendant aggravating circumstances of treachery and abuse of superior strength, having found that "[Alberto], as revealed by the nature, condition and location of the gunshot wounds sustained by him, proved that he was an easy prey of [appellant] x x x."[34] Appellant's defenses of denial and alibi were disregarded by the RTC because the evidence of the defense failed to prove that appellant reported for work at the time the crime was committed, thereby failing to show that it was impossible for him not to be at the crime scene.

The dispositive portion of the RTC's Judgment reads:

> WHEREFORE, after considering all evidences, the Court finds accused ROGER ACABO, GUILTY beyond reasonable doubt of the crime of MURDER and is hereby sentenced to suffer the penalty of *Reclusion Perpetua* with accessory penalties provided by law; and the accused is also ordered to pay the heirs of the deceased victim, the following sums:
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> 1) Seventy-five Thousand Pesos (₱75,000.00) as civil indemnity ex delicto;
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> 2) Funeral expenses in the amount of Thirty Three Thousand Pesos Php.33,000.00 (Php.560.00 per month x 60 payments);
>
> 3) Fifty Thousand Pesos (₱50,000.00) as moral damages;
>
> 4) Fifty Thousand Pesos (₱50,000.00) as exemplary damages; and
>
> 5) Sixty Thousand Pesos (₱60,000.00) as temperate damages.[35]

Ruling of the Court of Appeals

On appeal, the CA agreed with the RTC that appellant killed Alberto with treachery. Like the RTC, the CA gave full credence to Josephine's categorical, spontaneous, and straightforward testimony that clearly narrated the killing of Alberto and positively identified appellant as the assailant vis-á-vis appellant's weak

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[34] Records, p. 211.

[35] *Id.* at 213.

defenses of alibi and denial. While the CA was doubtful whether the aggravating circumstance of abuse of superior strength attended the killing, it found that treachery qualified the killing to murder.

The CA, however, modified the monetary awards granted. It increased the award of moral damages from ₱50,000.00 to ₱75,000.00; decreased the amount of exemplary damages from ₱50,000.00 to ₱30,000.00; and deleted the award of temperate damages considering that the trial court had already awarded ₱33,000.00 as funeral expenses representing actual damages.

The dispositive portion of the CA Decision reads:

> WHEREFORE, the instant appeal is DENIED. The assailed 22 June 2015 Judgment of Branch 32 of the Regional Trial Court of Dumaguete City in Crim. Case No. 2015-22724 is hereby AFFIRMED with MODIFICATION. Moral damages awarded to the heirs of Alberto Paltingca is INCREASED to ₱75,000.00, while exemplary damages is DECREASED to ₱30,000.00. The award of civil indemnity *ex delicto* in the amount of ₱75,000.00 and the award of funeral expenses in the amount of ₱33,000.00 are RETAINED. The grant of temperate damages is DELETED.
>
> The aggregate amount of the monetary awards stated herein shall earn interest at the rate of six percent (6%) per annum from the finality of this Decision until the same is fully paid.
>
> SO ORDERED.[36]

Hence, appellant instituted this present appeal, arguing in his Appellant's Brief[37] that the prosecution's evidence failed to prove his guilt beyond reasonable doubt. Appellant argues that the testimony of Josephine, as the alleged lone eyewitness, was unreliable, incredible and uncorroborated. Appellant finds Josephine's account of events as highly improbable, specifically her statement that immediately after Alberto was shot, she escaped and ran uphill towards the culprits' path. This, according to appellant, runs counter to human experience which dictates

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[36] CA *rollo*, pp. 99-100.

[37] *Id*. at 17-36.

that a person, when confronted with a life-threatening incident, would run away from the source of threat. Next, appellant finds it absurd that the culprits did not prevent Josephine from escaping when in the first place, they also tried to shoot her. Appellant, thus, maintains that credence should be given to his alibi which was corroborated by five other witnesses.

Appellant likewise contends that the evidence of the prosecution failed to prove the attendance of the qualifying circumstances of treachery and abuse of superior strength. First, it cannot be said that Alberto was completely defenseless since he was armed with a bolo (which was tucked in his waist) at the time of the attack. Second, there was no concrete proof that there were two persons who attacked Alberto. Pael was not brought to trial and his identity was not sufficiently proven by the prosecution.

Our Ruling

After a careful review of the records of the case, we find the appeal to be devoid of merit. The Court finds no reason to reverse the CA in affirming the ruling of the RTC finding appellant guilty beyond reasonable doubt of the crime of murder.

As a rule, the trial courts' findings and conclusions on the credibility of witnesses are accorded respect because it has the first-hand opportunity to observe the demeanor of witnesses when they testify.[38] Absent any arbitrariness, oversight or misappropriation of facts, the Court has no reason to overturn the factual findings of the trial court,[39] as in this case.

We find no cogent reason to disturb the assessment of the RTC, and affirmed by the CA, that Josephine was a credible witness and that her testimony was sufficient to establish appellant's guilt beyond reasonable doubt. Based on Josephine's direct and straightforward testimony, it was established that appellant was one of the perpetrators of the crime. She gave

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[38] *People v. Las Piñas*, 739 Phil. 502, 517 (2014).

[39] *People v. Villamor*, 348 Phil. 202, 217 (1998).

credible testimony that in the early hours of September 19, 2014, she and Alberto were walking uphill when appellant and Pael waylaid them. Alberto was shot by appellant on his legs, causing him to stumble and fall backwards. Appellant then ran after Alberto and shot him the second time on the left arm, causing him to fall again, roll downhill and die.[40] Josephine's testimony suffers no material inconsistency as would affect its credibility. Josephine's account of the incident was, moreover, consistent with Dr. Tan's post-mortem examination results finding that Alberto suffered two gunshot wounds. It corroborated the testimony of Josephine that appellant shot Alberto twice, first on the thigh/leg and second on the upper arm.

Appellant, however, contends as contrary to human experience the testimony of Josephine that appellant and Pael did not prevent her from escaping especially since she ran uphill towards their direction.

We are not persuaded.

The Court has held that "there is no standard form of behavior when one is confronted by a shocking incident."[41] In the case at bar, Josephine must have been so afraid of Pael's sudden attack on her that she just found herself running uphill towards an area where she could hide behind the bushes. She also explained that she ran unconsciously towards the assailants' path upon noticing that appellant and Pael were more interested in running after and killing Alberto. We fully concur with the following disquisition of the CA on this matter:

> It could be true that Josephine, upon seeing Alberto being shot, ran uphill toward the direction of [appellant] and Pael, and at one point [appellant] or Pael could have easily caught her and killed her in order to silence her. To [appellant], Josephine's reaction [was] contrary to human experience because she even testified that Pael also tried to shoot her, but Pael's gun did not fire. We believe, however, that this imputation does not necessarily make Josephine's

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[40] TSN, March 31, 2015, pp. 10-13.

[41] *People v. Radomes*, 225 Phil. 480, 488 (1986).

testimony incredible or destroy her credibility. As Josephine herself explained, when she ran uphill to hide, [appellant] and Pael were occupied with chasing Alberto downhill. x x x The fact that [appellant] or Pael did not look for Josephine after killing Alberto may not be as unnatural as [appellant] would want it to be. Notably, after (committing] a heinous crime, it [was] also x x x natural for [appellant] and Pael to flee and escape immediately. At any rate, it is settled that "witnessing a crime is an unusual experience that elicits different reactions from witnesses for which no clear-cut standard of behavior can be drawn; different people react differently to a given situation, and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience." The same may be said of perpetrators of a crime. They may be nervous, rash, and reckless. In this case, [appellant] and Pael chose to run and escape.[42]

Appellant's defenses of denial and alibi must fail for being self-serving and unreliable as against the positive identification of Josephine that appellant killed Alberto. For the defense of alibi to prosper, not only must the accused prove that he was at some other place at the time of the perpetration of the crime but also that it was physically impossible for him to be at the place where the crime was committed.[43] Here, this requirement was not met. The trial court had taken notice that the distance between *Sitio* Talatala where the incident took place, and the construction site where appellant claimed he was at the time of the incident, could be traversed for only about 15 to 20 minutes. The distance, certainly, was not too far as to preclude appellant's presence at *Sitio* Talatala to commit the crime, and to return to the construction site in time for work at 8:00 a.m. Besides, the evidence for the defense were not corroborative of appellant's claims. Both the foreman and the timekeeper failed to show the exact time the appellant reported for work in the morning of September 19, 2014. Even the testimony of Engr. Te that appellant reported for work on that day was based only on the

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[42] CA *rollo*, pp. 95-96.

[43] *People v. Ambatang*, G.R. No. 205855, March 29, 2017, 822 SCRA 118, 125-126.

DTR[44] prepared and verified by the foreman and timekeeper. However, the DTR did not show the exact time appellant reported for work. The veracity and authenticity of the details entered in the DTR were also doubtful because they were not signed by the workers concerned. We also note that Mario was a neighbor and a close friend of appellant[45] while Miguel was a buddy and a co-worker.[46] As such, their testimonies deserve scant consideration because they are easily suspect and biased given their close relation to appellant.

We affirm the findings of the trial court and the CA that the killing of Alberto was attended with treachery, which qualified the crime to murder. There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to ensure its execution without risk to himself arising from the defense which the offended party might make.[47] To establish treachery, the prosecution must establish the concurrence of these conditions: (1) that the victim was in no position to defend himself when attacked; and (2) the offender deliberately adopted the specific manner of the attack.[48]

As established by the prosecution's evidence in this case, Alberto and Josephine were walking uphill totally unaware of the impending attack upon their person. Suddenly, appellant and Pael waylaid them. Appellant thereafter shot Alberto who fell downhill. Appellant then fired a second shot to ensure his death. Certainly, Alberto had no opportunity to defend himself. He was unaware of the attack and was caught off guard when his assailant suddenly approached and shot him with a gun. The stealth by which the attack was carried out gave Alberto

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[44] Exhibits "2" & "3", Folder of Exhibits.

[45] June 3, 2015, pp. 5-7.

[46] *Id*. at 10.

[47] REVISED PENAL CODE, Article 14 (16).

[48] *People v. Pulgo*, G.R. No. 218205, July 5, 2017, 830 SCRA 220, 232-233.

no chance to evade the same. Indeed, the unexpected assault upon the victim and the fact that the assailant did not sustain any injury evinces treachery.[49] Undoubtedly, appellant consciously adopted the mode of attacking Alberto who had no inkling of the forthcoming attack and was completely defenseless. The attack was executed in such a manner as to ensure the killing of Alberto without risk to appellant. The fact that Alberto had a bolo tucked in his waist was of no consequence. What is decisive is that the attack was executed in a manner that the victim was rendered defenseless and unable to retaliate.[50]

In sum, all the elements of the crime of murder were proven: (1) that a person was killed; (2) that the accused killed that person; (3) that the killing was attended by treachery; and (4) that the killing is not parricide or infanticide.[51] We, therefore affirm the conviction of appellant. The trial court, thus, correctly imposed upon appellant, as affirmed by the CA, the penalty of *reclusion perpetua*. As regards the damages imposed, the Court finds the awards of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages, to be in order. However, the award of exemplary damages should be increased to ₱75,000.00 pursuant to prevailing jurisprudence.[52] In addition, the award of ₱33,000.00 as actual damages is deleted; in lieu thereof, temperate damages in the amount of ₱50,000.00 is awarded likewise pursuant to prevailing jurisprudence. Finally, all damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the finality of this Decision until fully paid.[53]

WHEREFORE, the appeal is **DISMISSED**. The assailed August 30, 2016 Decision of the Court of Appeals in CA-G.R.

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[49] *People v. Racal*, G.R. No. 224886, September 4, 2017, 838 SCRA 476, 489.

[50] *People v. Manulit*, 649 Phil. 715, 727-728 (2010).

[51] *People v. Lagman*, 685 Phil. 733, 743 (2012).

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

[53] *Nacar v. Gallery Frames*, 716 Phil. 267, 282 (2013).

CEB-CR-HC No. 02082, finding appellant Roger Acabo **GUILTY** beyond reasonable doubt of the crime of murder, sentencing him to suffer the penalty of *reclusion perpetua*, ordering him to pay the heirs of Alberto Paltingca civil indemnity and moral damages in the amount of ₱75,000.00 each, is **AFFIRMED with MODIFICATIONS** that the amount of exemplary damages is increased to ₱75,000.00; actual damages in the amount of ₱33,000.00 is deleted; and in lieu thereof, temperate damages in the amount of ₱50,000.00 is awarded. Finally, all damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of the Decision until fully paid.

SO ORDERED.

Jardeleza and *Gesmundo, JJ.*, concur.

Bersamin, C.J. and *Carandang*, *J.*, on official leave.

THIRD DIVISION

[G.R. No. 229938. February 27, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSEPH A. AMPO (APPELLANT)and JOHNNY A. CALO (AT- LARGE),** *accused.* **JOSEPH A. AMPO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; MURDER; ELEMENTS; FINDINGS OF TRIAL COURT, RESPECTED. — Murder is defined and penalized under Article 248 of the RPC, as amended by R.A. No. 7659.

To successfully prosecute the crime, the following elements must be established: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide. In the present case, the prosecution was able to establish that (1) Carillero was stabbed and killed; (2) Ampo stabbed and killed him; (3) the killing of Carillero was attended by the qualifying circumstance of treachery; and, (4) the killing of Carillero was neither parricide nor infanticide. We agree with the trial court's finding that the prosecution has proven Ampo's guilt beyond reasonable doubt, as the first element of the offense was verified by Dr. Babanto, while the other elements thereof were substantiated by Jelly. It bears to reiterate that in the review of a criminal case, the Court is guided by the long-standing principle that factual findings of the trial court, especially when affirmed by the CA, deserve great weight and respect. Here, the factual findings should not be disturbed on appeal since there are no facts or circumstances of weight and substance that were overlooked or misinterpreted or misapplied and would materially or substantially affect the disposition, result or outcome of the case.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED. —** For the trial court, the testimony of Jelly deserves full faith and credit as it was given in a straightforward, candid, and convincing manner. The Court defers to the trial court in this respect, especially considering that it was in the best position to assess and determine the credibility of the witnesses presented by both parties. When the issues revolve on matters of credibility of witnesses, the findings of fact of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth. Having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimonies, the trial judge can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimonies.

3. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; ELEMENTS. — Paragraph 16, Article 14 of the RPC defines treachery, as the employment of means, methods, or forms in the execution of the crime against a person which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is the sudden attack by the aggressor without the slightest provocation on the part of the unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring the commission of the crime without risk to the aggressor arising from the defense which the offended party might make. In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself or to retaliate or escape; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him. x x x Even a frontal attack could be treacherous when unexpected and on an unarmed victim who would be in no position to repel the attack or avoid it.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY DELAY IN MAKING CRIMINAL ACCUSATION WHEN THE SAME WAS SUFFICIENTLY EXPLAINED. — [D]elay or vacillation in making a criminal accusation does not necessarily impair the credibility of witnesses if such delay is satisfactorily explained. In this case, Jelly neither shared what he had witnessed to his sibling and mother nor reported the incident to the police or local officials because he wanted to spare his family from being involved in the crime. While this reasoning is considered as purely speculative by Ampo, such way of thinking is not totally baseless; it is a possibility that any eyewitness to a crime is naturally inclined to believe. Indeed, unlike Ampo's contention, Jelly's hesitance and reluctance is not contrary to common experience and observation of mankind.

5. ID.; ID.; ID.; TESTIMONY OF WITNESS AFFIRMED IN THE ABSENCE OF ILL MOTIVE. —One thing that further strengthens the prosecution witnesses' credibility is the fact that they have no motive to lie against Ampo. Jurisprudence tells us that where there is no evidence that the witnesses of

the prosecution were actuated by ill will or improper motive, it is presumed that they were not so actuated and their testimony is entitled to full faith and credit. In the present case, no imputation of improper motive on the part of the prosecution witnesses was ever made by Ampo and there was no shred of evidence to indicate that said witnesses were impelled by improper motives to implicate Ampo in the crime. Denial cannot prevail over the positive testimony of prosecution witnesses who were not shown to have any ill-motive to testify against Ampo. The categorical statements of Jelly and Dr. Babanto must prevail over the bare denial of Ampo. After all, an affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness.

6. **ID.; ID.; ALIBI; TO BE APPRECIATED, PRESENCE AT ANOTHER PLACE AT THE TIME OF THE PERPETRATION OF THE CRIME AND PHYSICAL IMPOSSIBILITY TO BE AT THE CRIME SCENE MUST CONCUR. —** [I]n order for the defense of *alibi* to prosper, it is not enough to prove that the accused-appellant was somewhere else when the offense was committed, but it must likewise be shown that he was so far away that it was not possible for him to have been physically present at the place of the crime or its immediate vicinity at the time of its commission. Presence at another place at the time of the perpetration of the crime and physical impossibility to be at the crime scene must concur. Physical impossibility refers to the distance between the place where the accused-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-appellant to be present at the crime scene, the defense of alibi must fail.

7. **CRIMINAL LAW; MURDER; PENALTY AND DAMAGES. —** The prescribed penalty for Murder under Article 248 of the RPC is *reclusion perpetua* to death. There being no aggravating or mitigating circumstance in the commission of the offense (except for treachery which was used to qualify the killing), the RTC correctly imposed the penalty of *reclusion perpetua*, together with the accessory penalty provided by law. Moreover, consistent with *People v. Jugueta*, Ampo should pay the heirs of Carillero ₱75,000.00 as civil indemnity, ₱75,000.00 as moral

damages, and ₱75,000.00 as exemplary damages. An interest at the rate of six percent (6%) *per annum* shall be imposed on all damages awarded from the date of the finality of this judgment until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

This is an appeal from the October 18, 2016 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 01381-MIN, which affirmed with modification the December 2, 2014 Decision[2] of the Regional Trial Court (*RTC*), Branch 27, Gingoog City, Misamis Oriental, finding accused-appellant Joseph A. Ampo (*Ampo*) guilty of Murder.

On November 11, 2008, Joseph A. Ampo and Johnny A. Calo were charged with the crime of Murder, as defined and penalized under Article 248 of the Revised Penal Code, as amended by Section 6 of Republic Act (*R.A.*) No. 7659. The accusatory portion of the Information reads:

That on June 24, 2008, at more or less 2:00 o'clock in the morning, in Purok 5, National Highway, San Juan, Gingoog City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with deliberate intent and with intent to kill, with treachery and evident [premeditation], armed with a double[-]bladed knife with which the accused were conveniently provided, did then and there [willfully], unlawfully and feloniously assault, attack and stab JERRY

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[1] Penned by Associate Justice Perpetua T. Atal-Paño, with Associate Justices Edgardo A. Camello and Ruben Reynaldo G. Roxas concurring; *rollo*, pp. 3-21; CA *rollo*, pp. 65-83.

[2] CA *rollo*, pp. 36-47; records, pp. 114-125.

L. CARILLERO, who was then unaware, defenseless and unarmed, thereby inflicting fatal wound on the stomach which caused his death.[3]

Upon judicial determination of probable cause, a *prima facie* case was found against Ampo and Calo and, consequently, a Warrant of Arrest[4] was issued against them on November 20, 2008. Since both were still at-large as of January 6, 2011, the case was archived.[5] The case was revived on June 18, 2012 when Ampo was arrested.[6] In his arraignment, he entered a plea of not guilty.[7] Trial ensued while he was detained during the pendency of the case.[8]

The prosecution presented Jelly H. Lagonoy (*Jelly*), Julius Q. Carillero (*Julius*). and Dr. Joel A. Babanto, while Josito L. Socias (Josito) and Ampo testified for the defense.

Version of the Prosecution

On June 23, 2008, Jelly was in the house of his cousin, Doring Gamayon (*Doring*), to celebrate the eve of the fiesta in *Barangay (Brgy.)* San Juan, Gingoog City. Around 2:00 a.m. the next day, he was at the National Highway of San Juan waiting for a bus ride going to his mother's house in Brgy. 20, Gingoog City. While standing near an electric light post located on the opposite side of the road about 10-15 meters away, he saw Ampo and Calo trying to flag down passing vehicles possibly to hitch a ride. Jelly knows them very well because they also lived in Brgy. 20, where he stayed from April to June 24, 2008 for a vacation at his mother's house.[9] Eventually, a motorcycle going to Cagayan de Oro from Gingoog City stopped about 10

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[3] Records, p. 5.

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

[5] *Id*. at 26.

[6] *Id*. at 27, 31.

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

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

[9] TSN, November 6, 2012, pp. 20-21, 33, 39, 44.

meters away from Ampo and Calo. After parking it, the driver got down and walked towards them while asking where they were headed. While Ampo and Calo were also walking towards the driver, one of them replied that they were going a little bit farther. When already very near each other, Ampo took a knife from his right side and immediately stabbed the driver's stomach. Thereafter, Ampo and Calo fled towards Gingoog City. The driver went back to his motorcycle, but it fell. He then went to a nearby videoke bar. There, he was "bent down head down."

Despite witnessing the incident, Jelly still decided to flag down a bus going to Brgy. 20. Upon arrival at the bus terminal around 2:30a.m., he had coffee with his sibling, who was selling thereat. He went to his mother's house by 6:00 a.m. and was back at the bus terminal by 8:00 a.m. for his trip to Davao City, where he resides with his family. Believing that the people at the videoke bar already helped the stabbed motorcycle driver and to spare his family from being involved, Jelly neither shared what he saw to his sibling and mother nor reported the incident to the police or local officials.

It was only later on that Jelly came to know the identity of the motorcycle driver as Jerry L. Carillero (*Carillero*). On October 15, 2008, he went back to his mother's house in Brgy. 20. Five days after, he returned to Doring's house in San Juan. While having breakfast, she told him that her neighbor, Julius, had a problem because his son was stabbed along the National Highway at the time he (Jelly) left for Brgy. 20. Jelly admitted that he saw what transpired. As a result, he was introduced to Julius, who then asked him to be a witness. When he agreed, they went to the police station where he executed an affidavit.

For his part, Dr. Babanto recalled that, around 3:00 a.m.-3:30 a.m. on June 24, 2008, Carillero was referred to him at the Lipunan Hospital. Upon examination of the patient, he saw that there was a stab wound penetrating, perforating the umbilical area and that there was an intestinal prolapse. Unfortunately, Carillero did not survive while waiting for the surgical operation. He died due to hypovolemic shock caused by one stab wound on his navel.

Version of the Defense

Josito, who was a police officer at the time the crime was committed, testified that he had known Ampo for quite a long time because the latter's father is the uncle of his wife. In the evening of June 23, 2008, he was in Brgy. San Juan to monitor notorious individuals and to join friends and relatives in celebrating the vesper day of St. John, the patron of the place. In particular, he was with Ampo and Calo to share a drink in the house of Ampo's cousin. At 10:05 p.m., Ampo, who was a bit drunk like Calo, requested that he be brought to his house in Brgy. 20. Josito acceded. By 10:15 p.m., he flagged down a motorela (motorized tricycle), which Ampo and Calo boarded. Josito has no idea what happened to them after.

Ampo denied that he murdered Carillero. Around 6:00 p.m. on June 23, 2008, he was in the house of Charlie "Popoy" Calo (*Popoy*) in Brgy. San Juan. Together with Calo and Popoy, they butchered a pig from 6:30 p.m. to 8:30 p.m. and ate dinner by 9:00 p.m. After resting for a while, the three shared a pocket-size Tanduay rum. At more or less 10:00 p.m.; Ampo and Calo left Popoy's house. While walking towards the National Highway to wait for a vehicle going to Gingoog City, they met Josito who offered to accompany them and let them ride a vehicle. By 10:15 p.m., Ampo and Calo were able to ride a motorized tricycle that proceeded to Brgy. Cahulogan together with six other passengers. Upon reaching the place around 10:45 p.m., three passengers disembarked. Thereafter, the driver refused to bring Ampo and Calo to Brgy. 20, reasoning that he experienced a stoning incident there the previous night. The two then went to Bobby Ello (*Bobby*), whose wife is the first cousin of Ampo's father. His house was located in the area owned by a corporation known as Project 3, Brgy. 26, Gingoog City Urban Poor Association. Ampo and Calo arrived in Bobby's house by 10:55 p.m. After a short talk, they slept at around 12:15 a.m. and woke up at 8:00 a.m.

The RTC convicted Ampo of the crime charged. The dispositive portion of the December 2, 2014 Decision states:

WHEREFORE, the Court finds accused Joseph Ampo y Amora **GUILTY** beyond reasonable doubt of the crime of murder, as defined and penalized under Article 248 of the Revised Penal Code, and hereby sentences him to suffer the penalty of *reclusion perpetua* without eligibility for parole and to pay the heirs of the victim ₱75,000.00 as civil indemnity, ₱53,118.50 as actual damages, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages. Interest on all damages awarded is imposed at the rate of 6% *per annum* from date of finality of this judgment until fully paid.

In the service of his sentence, the said accused is credited with the full time during which he has undergone preventive imprisonment provided that he agreed voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.[10]

The judgment was elevated to the CA, but the appeal was denied. The *fallo* of the October 18, 2016 Decision reads:

WHEREFORE, the instant appeal is DENIED. The Decision of the Regional Trial Court, Branch 27, Gingoog City, Misamis Oriental dated December 2, 2014 is Affirmed but Modified only as to the award of moral and exemplary damages which are hereby increased to ₱75,000.00 each.

SO ORDERED.[11]

The appeal is without merit. After a careful scrutiny of the records and evaluation of the evidence adduced by the parties, the Court finds no cogent reason to disturb the factual findings and legal conclusions of the RTC as affirmed by the CA.

Murder is defined and penalized under Article 248 of the RPC, as amended by R.A. No. 7659. To successfully prosecute the crime, the following elements must be established: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and

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[10] CA *rollo*, pp. 46-47; records, pp. 124-125.

[11] *Rollo*, p. 20; CA *rollo*, p. 82.

(4) that the killing is not parricide or infanticide.[12] In the present case, the prosecution was able to establish that (1) Carillero was stabbed and killed; (2) Ampo stabbed and killed him; (3) the killing of Carillero was attended by the qualifying circumstance of treachery; and, (4) the killing of Carillero was neither parricide nor infanticide. We agree with the trial court's finding that the prosecution has proven Ampo's guilt beyond reasonable doubt, as the first element of the offense was verified by Dr. Babanto, while the other elements thereof were substantiated by Jelly. It bears to reiterate that in the review of a criminal case, the Court is guided by the long-standing principle that factual findings of the trial court, especially when affirmed by the CA, deserve great weight and respect. Here, the factual findings should not be disturbed on appeal since there are no facts or circumstances of weight and substance that were overlooked or misinterpreted or misapplied and would materially or substantially affect the disposition, result or outcome of the case.[13]

For the trial court, the testimony of Jelly deserves full faith and credit as it was given in a straightforward, candid, and convincing manner. The Court defers to the trial court in this respect, especially considering that it was in the best position to assess and determine the credibility of the witnesses presented by both parties.[14] When the issues revolve on matters of credibility of witnesses, the findings of fact of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth.[15] Having had the

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[12] *Yap v. People*, G.R. No. 234217, November 14, 2018 and *People v. Racal*, G.R. No. 224886, September 4, 2017, 838 SCRA 476, 488-489.

[13] See *People v. Racal*, *supra*, at 487; *People v. Libre*, 792 Phil. 12, 25 (2016); and *People v. Salahuddin, et al.*, 778 Phil. 529, 544-545 (2016).

[14] *People v. Racal*, *supra* note 12, at 488.

[15] *People v. Libre*, *supra* note 13.

opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimonies, the trial judge can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimonies.[16]

Paragraph 16, Article 14 of the RPC defines treachery as the employment of means, methods, or forms in the execution of the crime against a person which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. The essence of treachery is the sudden attack by the aggressor without the slightest provocation on the part of the unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring the commission of the crime without risk to the aggressor arising from the defense which the offended party might make.[17] In order for treachery to be properly appreciated, two elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself or to retaliate or escape; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.[18] These elements are extant from the records. The deceased victim, Carillero, was caught off guard when Ampo stabbed him. He thought all along that Ampo and Calo merely wanted a ride. The stealth and swiftness by which the attack was carried out gave Carillero no opportunity to evade when Ampo suddenly thrust the knife to his abdomen. Likewise, the assault was executed in a methodical manner since Ampo made it certain that Carillero was already very near before he stabbed him.

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[16] *People v. Salahuddin, et al.*, *supra* note 13, at 544.

[17] See *People v. Vibal, Jr.*, G.R. No. 229678, June 20, 2018; *People v. Racal*, *supra* note 12, at 489; *People v. Bugarin*, G.R. No. 224900, March 15, 2017, 820 SCRA 603, 617; *People v. Libre*, *supra* note 13, at 32; *People v. Jugueta*, 783 Phil. 806, 819 (2016); and *People v. Salahuddin, et al.*, *supra* note 13, at 546.

[18] *People v. Racal*, *supra* note 12, at 489; *People v. Salahuddin, et al.*, *supra* note 13, at 546; and *People v. Zabala, et al.*, 773 Phil. 412, 424 (2015).

The fact that Carillero was facing Ampo is of no moment. Even a frontal attack could be treacherous when unexpected and on an unarmed victim who would be in no position to repel the attack or avoid it.[19]

The fact that Jelly failed to immediately come out and help Carillero during the incident does not make his testimony highly suspicious as Ampo would want it to appear. Such reaction was not at all uncommon or unnatural so as to make his testimony incredible. Placed in the same or similar situation, some may choose to intervene, but others may opt to stay away and remain hidden.

> x x x It is settled that there could be no hard and fast gauge for measuring a person's reaction or behavior when confronted with a startling, not to mention horrifying, occurrence, as in this case. Witnesses of startling occurrences react differently depending upon their situation and state of mind, and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience. The workings of the human mind placed under emotional stress are unpredictable, and people react differently to shocking stimulus – some may shout, some may faint, and others may be plunged into insensibility.[20]

Also, delay or vacillation in making a criminal accusation does not necessarily impair the credibility of witnesses if such delay is satisfactorily explained.[21] In this case, Jelly neither shared what he had witnessed to his sibling and mother nor reported the incident to the police or local officials because he wanted to spare his family from being involved in the crime. While this reasoning is considered as purely speculative by Ampo, such way of thinking is not totally baseless; it is a possibility that any eyewitness to a crime is naturally inclined to believe. Indeed, unlike Ampo's contention, Jelly's hesitance and reluctance is not contrary to common experience and observation of mankind.

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[19] *People v. Racal*, *supra* note 12, at 490.

[20] *People v. Bañez, et al*., 770 Phil. 40, 46 (2015).

[21] *People v. Salcedo*, 660 Phil. 545, 562 (2011).

The Court cannot give credence to Ampo's assertion that Jelly was uncertain as to the identity of the person who stabbed Carillero considering that he failed to refer to Ampo by his complete name in the affidavit that he executed before the police investigator. Aside from Jelly's positive identification of Ampo in open court, his proximity to the crime scene and the relative illumination of the surrounding area bolster the credibility of Ampo's identification. Moreover, Ampo and Calo are not total strangers to Jelly because the latter is familiar with them, being residents of Brgy. 20 where he had stayed for a three-month vacation.

One thing that further strengthens the prosecution witnesses' credibility is the fact that they have no motive to lie against Ampo. Jurisprudence tells us that where there is no evidence that the witnesses of the prosecution were actuated by ill will or improper motive, it is presumed that they were not so actuated and their testimony is entitled to full faith and credit.[22] In the present case, no imputation of improper motive on the part of the prosecution witnesses was ever made by Ampo and there was no shred of evidence to indicate that said witnesses were impelled by improper motives to implicate Ampo in the crime. Denial cannot prevail over the positive testimony of prosecution witnesses who were not shown to have any ill- motive to testify against Ampo. The categorical statements of Jelly and Dr. Babanto must prevail over the bare denial of Ampo. After all, an affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness.[23]

Finally, in order for the defense of *alibi* to prosper, it is not enough to prove that the accused-appellant was somewhere else when the offense was committed, but it must likewise be shown that he was so far away that it was not possible for him to have been physically present at the place of the crime or its

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[22] *People v. Libre, supra* note 13, at 29; and *People v. Salcedo*, *supra* note 21, at 564.

[23] *People v. Salahuddin, et al., supra* note 13, at 548.

immediate vicinity at the time of its commission.[24] Presence at another place at the time of the perpetration of the crime and physical impossibility to be at the crime scene must concur. Physical impossibility refers to the distance between the place where the accused-appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places.[25] Where there is the least chance for the accused-appellant to be present at the crime scene, the defense of alibi must fail.[26] Here, Josito's testimony did not corroborate the alibi of Ampo since the former was not with the latter at the time the stabbing incident occurred. He also admitted that it only takes 15 minutes to travel from San Juan to Gingoog City using a motorcycle such that Ampo and Calo would have reached San Juan by 11 p.m. if they went back.[27] Bobby might have made a difference, but he was not presented as a defense witness.

The prescribed penalty for Murder under Article 248 of the RPC is *reclusion perpetua* to death. There being no aggravating or mitigating circumstance in the commission of the offense (except for treachery which was used to qualify the killing), the RTC correctly imposed the penalty of *reclusion perpetua*, together with the accessory penalty provided by law. Moreover, consistent with *People v. Jugueta*,[28] Ampo should pay the heirs of Carillero ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. An interest at the rate of six percent (6%) per annum shall be imposed on all damages awarded from the date of the finality of this judgment until fully paid.[29]

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[24] *Id.*; *People v. Libre, supra* note 13, at 30; and *People v. Salcedo*, *supra* note 21, at 561.

[25] *People v. Salcedo, supra* note 21, at 561.

[26] *Id.*

[27] TSN, May 8, 2014, pp. 8-9.

[28] *Supra* note 17.

[29] *People v. Tica*, G.R. No. 222561, August 30, 2017, 838 SCRA 390, 400.

WHEREFORE, the appeal is **DISMISSED**. The October 18, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01381-MIN, which affirmed with modification the December 2, 2014 Decision of the Regional Trial Court, Branch 27, Gingoog City, Misamis Oriental, is **AFFIRMED**. Accused-appellant Joseph A. Ampo is found guilty beyond reasonable doubt of the crime of murder, and is sentenced to suffer the penalty of *reclusion perpetua*. He is further **ORDERED** to indemnify the heirs of Jerry L. Carillero the amounts of ₱53,118.50 as actual damages, ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. An interest at the rate of six percent (6%) *per annum* shall be imposed on all damages awarded from the date of the finality of this Decision until fully paid.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 237349. February 27, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MANUEL BASA, JR., *a.k.a.* "Jun,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; R.A. 7610 ON CHILD ABUSE, EXPLOITATION AND DISCRIMINATION; SECTION 5 ON

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

CHILD PROSTITUTION AND OTHER SEXUAL ABUSE IS THE APPLICABLE LAW FOR ACTS OF LASCIVIOUSNESS COMMITTED AGAINST A VICTIM BELOW 18 YEARS OLD; ELUCIDATED. — In *Dimakuta v. People,* the Court held that in instances where the lascivious conduct is covered by the definition under R.A. No. 7610, where the penalty is *reclusion temporal* medium, and the act is likewise covered by sexual assault under Article 266-A, paragraph (2) of the RPC, which is punishable by *prisión mayor,* the offender should be liable for violation of Section 5 (b), Article III of R.A. No. 7610, where the law provides for the higher penalty of *reclusion temporal* medium, if the offended party is a child victim. But if the victim is at least eighteen (18) years of age, the offender should be liable under Article 266-A, paragraph (2) of the RPC and not R.A. No. 7610, unless the victim is at least 18 years old and she is unable to fully take care of herself or protect herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, in which case, the offender may still be held liable for sexual abuse under R.A. No. 7610. The reason for the foregoing is that, aside from affording special protection and stronger deterrence against child abuse, R.A. No. 7610 is a special law which should clearly prevail over R.A. No. 8353, which is a mere general law amending the RPC. x x x To achieve uniformity in designating the proper offense, moreover, the Court, in *People v. Caoili,* prescribed guidelines in case lascivious conduct is committed under the section cited above. On the one hand, when the victim is under 12 years of age at the time the offense was committed, the offense is designated as Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5 of R.A. No. 7610. This finds support in the first *proviso* in Section 5 (b) of R.A. No. 7610 which requires 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 [RPC], for rape or lascivious conduct, as the case may be[.]" On the other hand, when the victim, at the time the offense was committed, is aged twelve (12) years or over but under eighteen (18), or is eighteen (18) or older but unable to fully take care of herself/himself or protect himself/herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the nomenclature of the offense should be Lascivious Conduct under Section 5 (b) of R.A. No. 7610, since the law no longer refers

to Article 336 of the RPC, and the perpetrator is prosecuted solely under R.A. No. 7610.

2. **ID.; ID.; ID.; ID.; REQUISITES. —** [B]efore an accused can be held criminally liable for lascivious conduct under Section 5 (b), Article III of R.A. No. 7610, the Court held in *Quimvel v. People* that the requisites for Acts of Lasciviousness, as penalized under Article 336 of the RPC, must be met in addition to the requisites for sexual abuse under Section 5 (b), Article III of R.A. No. 7610, namely: 1. The offender commits any act of lasciviousness or lewdness; 2. That it be done under any of the following circumstances: a. Through force, threat, or intimidation; b. When the offended party is deprived of reason or otherwise unconscious; c. By means of fraudulent machination or grave abuse of authority; or d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present; That said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and 4. That the offended party is a child, whether male or female, below 18 years of age.

3. **ID.; RAPE UNDER ARTICLE 266-A, PARAGRAPH (1) IN RELATION TO RA NO. 7610; ELEMENTS. —** With respect to Criminal Case No. 04-0201, the Court affirms the rulings of the courts below finding that the prosecution was also able to prove, beyond reasonable doubt, all the elements of the crime of rape under Article 266-A, paragraph (1), in relation to R.A. No. 7610. In the instant case, the RTC aptly found that the prosecution sufficiently established the presence of the elements of rape under Article 266-A, paragraph (1) (a) of the RPC which provides that rape is committed: "1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: a) Through force, threat, or intimidation; b) When the offended party is deprived of reason or otherwise unconscious; c) By means of fraudulent machination or grave abuse of authority; and d) When the offended pmiy is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present."

4. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONIES OF YOUNG IMMATURE VICTIMS, UPHELD. —** In a long line of cases, the offended parties of which are young and immature girls, the Court found a considerable

receptivity on the part of the trial courts to lend credence to the testimonies of said victims. This is in consideration of not only the offended parties' relative vulnerability, but also the shame and embarrassment to which such a grueling experience as a court trial, where they are called upon to lay bare what perhaps should be shrouded in secrecy, exposes them to. Indeed, no woman, much less a child, would willingly submit herself to the rigors, the humiliation and the stigma attendant upon the prosecution of rape, if she were not motivated by an earnest desire to put the culprit behind bars. Hence, AAA's testimony is entitled to full faith and credence.

5. **ID.; ID.; ID.; FINDINGS OF TRIAL COURT AFFIRMED BY THE APPELLATE COURT, RESPECTED. —** AAA's failure to shout or immediately report the incident does not necessarily belie her claims because as the appellate court held, a rape victim's actions are oftentimes overwhelmed by extreme psychological terror that numbs her into silence and submissiveness. [T]he fact that the medico-legal report shows no evident sign of injuries is of no moment since laceration of the hymen, even if considered a telling evidence of sexual assault, is not always essential to establish the consummation of the crime of rape. Indeed, when the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon the Court, unless there is a clear showing that they were reached arbitrarily or it appears from the records that certain facts of weight, substance, or value are overlooked, misapprehended or misappreciated by the lower court which, if properly considered, would alter the result of the case.

6. **CRIMINAL LAW; R.A. 7610 ON CHILD ABUSE, EXPLOITATION AND DISCRIMINATION; SECTION 5 ON CHILD PROSTITUTION AND OTHER SEXUAL ABUSE; SECTION 5 (B) ON ACTS OF LASCIVIOUSNESS; PENALTY; CASE AT BAR. —** In Criminal Case No. 04-0200 for Lascivious Conduct under Section 5 (b), Article III of R.A. No. 7610, Section 5, Article III of R.A. No. 7610 provides that the penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse. Here, in the absence of mitigating or aggravating circumstances, the maximum term of the sentence shall be taken from the medium period thereof. Moreover, notwithstanding the fact that R.A. No. 7610 is a

special law, Basa may still enjoy the benefits of the Indeterminate Sentence Law. In applying the provisions thereof, the minimum term shall be taken from within the range of the penalty next lower in degree, which is *prision mayor* in its medium period to *reclusion temporal* in its minimum period. Thus, Basa shall suffer the indeterminate sentence of eight (8) years and one (1) day of *prision mayor,* as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal,* as maximum, for violation of the said provision of R.A. No. 7610. Likewise, and conformably with prevailing jurisprudence, he is directed to pay AAA the amounts of ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, ₱15,000.00 as exemplary damages, and ₱15,000.00 as fine, pursuant to Section 31 (f), Article XII of R.A. No. 7610, all of which shall earn interest at the rate of six percent (6%) per annum from the date of finality of this judgment until full payment.

7. ID.; REVISED PENAL CODE; RAPE; PENALTY. — With respect to Criminal Case No. 04-0201 for rape under Article 266-A, paragraph (1), x x x Basa is sentenced to suffer the penalty of *reclusion perpetua* and is ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, pursuant to *People v. Jugueta,* all of which shall likewise earn interest at the rate of six percent (6%) per annum from the date of finality of this judgment until full payment.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

For consideration of the Court is the appeal of the Decision[1] dated September 28, 2017 of the Court of Appeals *(CA)* in

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[1] *Rollo,* pp. 2-18. Penned by Associate Justice Stephen C. Cruz, with the concurrence of Associate Justices Rosmari D. Carandang and Nina G. Antonio-Valenzuela.

CA-G.R. CR HC No. 08164 which affirmed with modification the Decision[2] dated July 27, 2015 of the Regional Trial Court *(RTC)* of Parañaque City, Branch 194, finding Manuel Basa, Jr., a.k.a. "Jun," guilty beyond reasonable doubt of rape under Article 266-A, paragraphs (1) and (2) of the Revised Penal Code *(RPC),* in relation to Republic Act *(R.A.)* No. 7610.

The antecedent facts are as follows:

In two (2) separate Informations filed on August 19, 2003, Basa was charged with one violation each of Article 266-A, paragraphs (1) and (2) of the RPC, in relation to R.A. No. 7610, the accusatory portions of which read:

Criminal Case No. 04-0200

That on or about a date prior to December 25, 2002 in Parañaque City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust, and by taking advantage of his moral ascendancy, did then and there wilfully, unlawfully and feloniously insert his [finger] into the genitalia of [AAA], a [redacted] minor, by means of force, threat or intimidation, against her will and consent, to the damage and prejudice of the latter.

CONTRARY TO LAW.[3]

Criminal Case No. 04-0201

That on or about a date prior to December 31, 2002 in Parañaque City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, actuated by lust, and by taking advantage of his moral ascendancy, did then and there wilfully, unlawfully and feloniously have carnal knowledge of [AAA], a [redacted] minor, through force, threat or intimidation, against her will and consent, to the damage and prejudice of the latter.

CONTRARY TO LAW.[4]

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[2] CA *rollo,* pp. 107-120. Penned by Judge Marie Grace Javier Ibay.

[3] *Id.* at 107-108.

[4] *Id.* 108.

During arraignment, Basa, assisted by counsel, pleaded not guilty to the charges. Subsequently, trial on the merits ensued. The prosecution presented four (4) witnesses, namely: (1) private complainant AAA;[5] (2) senior medico-legal officer Dr. Alvin David; (3) AAA's teacher at [redacted], Veronica Malapad Francisco; and (4) a representative of the Local Civil Registrar, Josefina Villorant.[6] The defense, thereafter, presented the testimonies of: (1) accused Basa; and (2) a certain Alvin Modina.[7]

AAA testified that Basa raped her on two (2) occasions: the first incident, prior to December 25, 2002; while the second, about a week after the first. Both occasions took place inside the office of "Ka Eddie," an Iglesia Ni Cristo *(INC)* pastor, located at the second floor of the INC church at [redacted], Parañaque City. AAA had been a member of the INC for almost a year prior to the first incident. Basa, also a member of the INC, had been doing the task of cleaning the church.

On the first incident, AAA narrated that she went to the INC church at around 9:00 a.m. at the request of her cousin,

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[5] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to R.A. No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; R.A. No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 5, 2004; *People v. Cabalquinto,*533 Phil. 703, 709 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/ Personal Circumstances

[6] The witnesses' testimony was dispensed with after the submission of the certified true copy of AAA's Certificate of Live Birth.

[7] *Rollo,* p. 4.

BBB,[8] to check if their attendance card or what they refer to as *"tarheta"* had been overturned. Under the INC's practice, this signifies the presence of a person during the worship service. Wearing a skirt and a t-shirt, AAA saw Basa, whom she referred to as "Kuya Jun," cleaning the first floor of the church, near the area where the attendance cards were placed. Basa told AAA that he would show her a small fishpond at the back portion of the church. Trusting her Kuya Jun, AAA went with him. But instead, Basa held her right arm and dragged her to the office of Pastor Eddie at the second floor and locked the door behind them. The office is usually locked, but since Basa was in charge of cleaning the church, he had in his possession the key to the door thereof. There, AAA recounted that Basa began kissing her lips and mashing her breast. He then pulled up her skirt and, through the side of her underwear, inserted his finger into her private part, causing AAA to feel pain. Thereafter, Basa removed her skirt and underwear and started kissing her private part. AAA said that she could not resist because Basa threatened to kill her should she tell anybody of her ordeal.[9]

A week thereafter, the second incident occurred. AAA relayed that between 9:00 and 10:00 a.m., she went to the INC church to check the *"tarheta."* When Basa saw her, he immediately dragged her again and brought her to Pastor Eddie's office. As before, she could not do anything out of fear for her life. AAA recalled that apart from the security guards stationed outside the church, no other persons were inside the place of worship. In the office, Basa kissed her, pulled up her shirt, and mashed her breast. Afterwards, he removed her skirt and underwear and put his penis out of his denim pants. He then told her to lie down on the floor and inserted his penis inside her private part, causing her to feel pain. After the incident, AAA went home and swore never to tell anybody about what

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[8] AAA referred to BBB as her cousin but Basa referred to BBB as AAA's aunt.

[9] *Rollo,* pp. 5-6.

Basa did to her. It was in January 2003, when classes resumed in her school at [redacted], that she found the courage to tell her teacher, Francisco, about the ordeal she went through during the vacation. Upon learning this, Francisco called AAA's grandmother, CCC. Then, when AAA's aunts found out about the incidents, they immediately reported the same to the National Bureau of Investigation where AAA submitted her *Sinumpaang Salaysay* dated January 20, 2003.[10]

AAA's testimony was corroborated by her teacher, Francisco, who stated that AAA was an average student. A week after the 2002 Christmas break, she noticed that AAA was quite withdrawn compared to her usual behavior. Bothered by what she observed, she asked AAA to stay in the classroom after class. Francisco recalled that AAA was first reluctant to confide in her but, after a while, she was able to convince AAA into sharing her harrowing experience. AAA then told her that her Kuya Jun, a caretaker in the INC church, fondled her twice and forced himself on her. Francisco added that as AAA was narrating the incident, she was trembling in fear, terribly shaking, and appeared to have been traumatized. Upon learning of said incident, Francisco immediately relayed the story to AAA's grandmother.[11]

In his defense, Basa denied the accusations against him. He narrated that on December 25, 2002, AAA was not yet a member of the INC and was still under probation or *"sinusubok."* Basa contended that on the alleged first rape incident, he was preparing the stage of the church for its afternoon program, while on the second rape incident, he was with several other persons preparing for the New Year's celebration and afternoon prayer. According to Basa, the only possible reason that could have impelled AAA to file cases against him was because of BBB. He recounted an instance wherein their *"Pangulong Diakono"* or Deputy Head Deacon told him to order those persons not included in the worship service, among them was BBB, to go outside of

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[10] *Id.* at 6.

[11] CA *rollo,* p. 112.

the church. This incident angered BBB. In addition, Basa revealed that BBB once admired him, but he turned her down.[12]

The defense also presented, as its witness, Alvin Modina, a member of the INC. Modina knew Basa as a *"masiglang kaanib"* of their religious segregation, while AAA as one of those being indoctrinated in their barangay. According to Modina, he was at the INC church from 8:00 a.m. to 9:30 a.m. on the alleged first incident when AAA was molested, but he did not notice the presence of AAA or Basa. He stated that AAA arrived only in the evening when the church was opened for the worship service. On the alleged second rape incident, Modina testified that he was at the INC church from 9:00 a.m. until 4:00 p.m. and saw Basa there preparing for the New Year celebration.[13]

On July 27, 2015, the RTC rendered its Decision finding Basa guilty of the crime charged, disposing of the cases as follows:

WHEREFORE, the Court finds accused **MANUEL BASA, a.k.a. "Jun" GUILTY** beyond reasonable doubt of the crime of Rape under the following cases:

1. **GUILTY** beyond reasonable doubt **under Criminal Case No. 04-0200** for the crime of Rape under Article 266-A (2) in relation to Republic Act No. 7610 and is hereby sentenced to suffer the indeterminate penalty ranging from four (4) years of *prision correccional* as minimum, to ten (10) years of *prision mayor* as maximum and to pay private complainant [AAA] the amount of ₱30,000.00 as moral damages and ₱30,000.00 as exemplary damages.

2. **GUILTY** beyond reasonable doubt **under Criminal Case No. 04-0201** for the crime of Rape under Article 266-A (1) in relation to RA 7610 and is hereby sentenced to suffer the penalty of *reclusion perpetua* and to pay private complainant [AAA] the amount of ₱30,000.00 as moral damages and ₱30,000.00 as exemplary damages.

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[12] *Rollo,* pp. 6-7.

[13] CA *rollo,* pp. 114-115.

As the accused is a detention prisoner, the period of his detention shall be credited in the period of his sentence.

SO ORDERED.[14] (Emphases and italics in the original.)

The RTC found that judging on the basis of the testimonies of both the prosecution and the defense in connection with which documentary pieces of evidence were formally offered, the prosecution sufficiently established the existence of the elements of the crime charged against Basa.[15]

In a Decision dated September 28, 2017, the CA affirmed with modification the RTC Decision in the following manner:

Anent the damages awarded by the RTC, We find that modification of the amount of damages awarded is in order. For Criminal Case No. 04-[0200], in addition to the Php30,000.00 award as moral damages and Php30,000.00 as exemplary damages, the amount of Php30,000.00 shall also be awarded as civil indemnity. On the other hand, for Criminal Case No. 04-[0201], in line with recent jurisprudence, the amount of exemplary damages shall be modified and increased to ₱75,000.00. AAA shall likewise be entitled to civil indemnity of ₱75,000.00 and moral damages of ₱75,000.00.

In addition, all the monetary awards shall earn interest at the legal rate of 6% per annum from the date of finality of this decision until fully paid.

WHEREFORE, premises considered, the Decision dated July 27, 2015 of the Regional Trial Court of Parañaque, Branch 194 in Criminal cases No. 04-0200 and [No.] 04-0201, is hereby **AFFIRMED.**

SO ORDERED.[16] (Citations omitted; emphases in the original.)

According to the appellate court, there is no reason to disturb the findings of the RTC, holding that AAA's credibility, by well-established precedents, is given great weight and accorded high respect.[17]

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[14] *Id.* at 119-120.

[15] *Id.* at 116.

[16] *Rollo,* pp. 17-18.

[17] *Id.* at 17.

Now before us, Basa manifested that he is dispensing with the filing of a supplemental brief considering that he had exhaustively discussed the assigned errors in his Appellant's Brief.[18] The Office of the Solicitor General similarly manifested that it had already discussed its arguments in its Appellee's Brief.[19]

According to Basa, AAA's testimony is too incredible and full of inconsistencies to merit faith and credence. If she did go through such ordeal, she should have struggled or, at least, shouted for help considering that there was no mention of any fatal weapon and especially during the time when Basa was allegedly opening the door to Pastor Eddie's office. Moreover, her behavior after the first rape incident contradicts her claim of fear because she simply wore back her dress, fixed herself, and went home. Basa also points out that the report of the medico-legal officer shows "no evident sign of extragenital injuries and the hymen, intact and its orifice small as to preclude complete penetration by an average sized adult Filipino male organ in full erection without producing any genital injury."[20] Thus, physical evidence belies AAA's claims that he inserted his finger and penis inside her vagina.

After a careful review of the records of this case, the Court finds no cogent reason to reverse the rulings of the RTC and the CA finding him guilty of the acts charged against him. In view of the circumstances of the instant case, however, a modification of the penalty imposed, the damages awarded, and the nomenclature of the offense committed is in order.

In Criminal Case No. 04-0200, instead of rape under Article 266-A, paragraph (2) of the RPC, in relation to R.A. No. 7610, Basa should be held liable for Lascivious Conduct under Section 5 (b),[21] Article III of R.A. No. 7610.

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[18] *Id.* at 31.

[19] *Id.* at 26.

[20] CA *rollo,* p. 175.

[21] Section 5 (b), Article III of R.A. No. 7610 provides:

In *Dimakuta v. People,*[22] the Court held that in instances where the lascivious conduct is covered by the definition under R.A. No. 7610, where the penalty is *reclusion temporal* medium, and the act is likewise covered by sexual assault under Article 266-A, paragraph (2) of the RPC, which is punishable by *prisión mayor,* the offender should be liable for violation of Section 5 (b), Article III of R.A. No. 7610, where the law provides for the higher penalty of *reclusion temporal* medium, if the offended party is a child victim. But if the victim is at least eighteen (18) years of age, the offender should be liable under Article 266-A, paragraph (2) of the RPC and not R.A. No. 7610, unless the victim is at least 18 years old and she is unable to fully take care of herself or protect herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, in which case, the offender may still be held liable for sexual abuse under R.A. No. 7610. The reason for the foregoing is that, aside from affording special protection and stronger deterrence against child abuse, R.A. No. 7610 is a special law which should clearly prevail over R.A. No. 8353, which is a mere general law amending the RPC. In *People v. Chingh,*[23] the Court noted that "it was not the intention of the

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Section 5. Child Prostitution and Other Sexual Abuse. — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

x x x x x x x x x

(b) Those who commit the act of sexual intercourse [or] lascivious conduct with a child exploited in prostitution or subject[ed] 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[.]

[22] 771 Phil. 641 (2015).

[23] 661 Phil. 208, 222-223 (2011).

framers of R.A. No. 8353 to have disallowed the applicability of R.A. No. 7610 to sexual abuses committed to children. Despite the passage of R.A. No. 8353, R.A. No. 7610 is still good law, which must be applied when the victims are children or those 'persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.'"

It is undisputed that at the time of the commission of the lascivious act in Criminal Case No. 04-0200, AAA was [redacted] years old. Thus, based on the above discussion, Section 5 (b) of R.A. No. 7610 finds application herein. The provision states:

> SEC. 5. Child Prostitution and Other Sexual Abuse. — Children, whether male or female, who for money, profit, or any other consideration or **due to the coercion or influence of any adult,** syndicate or group, indulge in sexual intercourse or **lascivious conduct,** are deemed to be children exploited in prostitution and other sexual abuse.
>
> The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:
>
> x x x x x x x x x
>
> (b) Those who commit the act of sexual intercourse [or] **lascivious conduct with a child** exploited in prostitution or subject[ed] 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. (Emphases and italics ours.)

To achieve uniformity in designating the proper offense, moreover, the Court, in *People v. Caoili,*[24] prescribed guidelines in case lascivious conduct is committed under the section cited

[24] G.R. Nos. 196342 and 196848, August 8, 2017.

above. On the one hand, when the victim is under 12 years of age at the time the offense was committed, the offense is designated as Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5 of R.A. No. 7610. This finds support in the first *proviso* in Section 5 (b) of R.A. No. 7610 which requires 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 [RPC], for rape or lascivious conduct, as the case may be[.]" On the other hand, when the victim, at the time the offense was committed, is aged twelve (12) years or over but under eighteen (18), or is eighteen (18) or older but unable to fully take care of herself/himself or protect himself/herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the nomenclature of the offense should be Lascivious Conduct under Section 5 (b) of R.A. No. 7610, since the law no longer refers to Article 336 of the RPC, and the perpetrator is prosecuted solely under R.A. No. 7610.[25]

However, before an accused can be held criminally liable for lascivious conduct under Section 5 (b), Article III of R.A. No. 7610, the Court held in *Quimvel v. People*[26] that the requisites for Acts of Lasciviousness, as penalized under Article 336 of the RPC, must be met in addition to the requisites for sexual abuse under Section 5 (b), Article III of R.A. No. 7610, namely:

1. The offender commits any act of lasciviousness or lewdness;
2. That it be done under any of the following circumstances:
    a. Through force, threat, or intimidation;
    b. When the offended party is deprived of reason or otherwise unconscious;

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[25] *People v. Caoili, supra.*

[26] G.R. No. 214497, April 18, 2017, 823 SCRA 192.

c. By means of fraudulent machination or grave abuse of authority; or

d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present;

3. That said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and

4. That the offended party is a child, whether male or female, below 18 years of age.

A review of the evidence presented by the prosecution reveals that the elements enumerated above were sufficiently established. With respect to the first requisite, the prosecution was able to show, through the credible testimony of AAA, that Basa committed lascivious conduct against her when he dragged her to the room of Pastor Eddie, pulled up her skirt and, through the side of her underwear, inserted his finger into her private part, causing her to feel pain. During her direct examination, the trial court was wholly convinced by AAA's narration of her harrowing experience, to *wit:*

Q: Going back to the first rape prior to December 25, 2002 at Iglesia ni Kristo at [redacted][,] Parañaque City when you arrived there at around 9 a.m. coming from your house to check the taheta of your [redacted] whether is it overturned what happen[ed] when you arrived there?

x x x x x x x x x

A: Nandoon po siya.

x x x x x x x x x

Q: Who is this "siya" you are referring to?

x x x x x x x x x

A: Si Ka Jun po.

x x x x x x x x x

Q: Meaning to say the accused in this case?

x x x x x x x x x

A: Opo.

x x x x x x x x x

Q: At that time that you saw him at 9 a.m. prior to December 25, 2002 at the Iglesia ni Kristo, [redacted], Parañaque City what was he doing?

x x x x x x x x x

A: Naglilinis po.

x x x x x x x x x

Q: In what place in the Iglesia ni Kristo at [redacted],Parañaque City did you see him there cleaning?

x x x x x x x x x

A: Malapit po sa taheta.

x x x x x x x x x

Q: And where is that taheta located, first floor or second floor?

x x x x x x x x x

A: First floor.

x x x x x x x x x

Q: And when you saw him there cleaning near the taheta what happen[ed] next?

x x x x x x x x x

A: Sinabi niya po na may ipapakita daw po siya sa akin.

x x x x x x x x x

Q: Did he tell you what that something was?

x x x x x x x x x

A: Opo.

x x x x x x x x x

Q: What was that something that he told you he will show you?

x x x x x x x x x

A: Yung palaisdaan po na maliit sa may kapilya; maliit lang po siya.

x x x x x x x x x

Q: Where was this fishpond or [aquarium?]

x x x x x x x x x

A: Parang fishpond po na maliit.

x x x x x x x x x

Q: According to him, where was this fishpond that he wanted to show you located?

x x x x x x x x x

A: Sa labas po; sa likod po yun ng Iglesia.

x x x x x x x x x

Q: First floor or second floor?

x x x x x x x x x

A: First floor po.

x x x x x x x x x

Q: And what did you say when the accused told you that he wanted to show a fishpond in the first floor of the Iglesia ni Kristo?

x x x x x x x x x

A: Sumama [po] ako.

x x x x x x x x x

Q: Why did you go with him?

x x x x x x x x x

A: Kasi po may tiwala naman po ako.

x x x x x x x x x

Q: How much did you trust him at that time?

x x x x x x x x x

A: Sobra.

x x x x x x x x x

Q: And when you said "yes" to his proposal to show you this fishpond what happen[ed] next?

x x x x x x x x x

A: Hinalikan niya po ako.

x x x x x x x x x

Q: Where did he kiss you?

x x x x x x x x x

A: Sa labi po.

x x x x x x x x x

Q: You said that he drag[ged] you, how forceful was he dragging your right arm?

x x x x x x x x x

A: Hindi ko na maano[,] basta po hinila niya po ako.

x x x x x x x x x

Q: Did it hurt, did your right arm hurt when he drag[ged] you?

x x x x x x x x x

A: Opo.

x x x x x x x x x

Q: How much did [it] hurt?

x x x x x x x x x

A: Masakit po.

x x x x x x x x x

Q: At that time that he was dragging you at the second floor at the office of Pastor Eddie did you resist him?

x x x x x x x x x

A: Hindi po[.]

x x x x x x x x x

Q: Why?

x x x x x x x x x

A: Kasi po natatakot po ako sa kanya.

x x x x x x x x x

Q: Did you ask him why he was dragging you, why are you going to the second floor when you say that the fishpond is at the first floor?

x x x x x x x x x

A: Opo.

x x x x x x x x x

Q: What did he say?

x x x x x x x x x

A: Wala lang po.

x x x x x x x x x

Q: And you said a while ago that at the office he kiss[ed] you [on] your lips several times is that correct at the office of Pastor Eddie?

x x x x x x x x x

A: Opo, tapas pinaghahawakan po ang dito ko, yung dede ko.

x x x x x x x x x

Q: How long did he [kiss] you several times and mashed your breast?

x x x x x x x x x

A: Mga one minute po siguro.

x x x x x x x x x

Q: At the time that he mashed your breast was his hand outside your clothes or inside your clothes?

x x x x x x x x x

A: Nasa loob po.

x x x x x x x x x

Q: At that time were you wearing any bra?

x x x x x x x x x

A: Baby bra po.

x x x x x x x x x

Q: And his hand was it outside your baby bra or inside your baby bra?

x x x x x x x x x

A: Nasa loob po.

x x x x x x x x x

Q: After he kiss[ed] you several times and mashed your breast what happen[ed] next?

x x x x x x x x x

A: Yung daliri niya po pinasok niya sa ari ko.

x x x x x x x x x

Q: What part of his finger entered your vagina?

x x x x x x x x x

A: Hindi ko alam.

x x x x x x x x x

Q: But you are sure that his finger entered your vagina?

x x x x x x x x x

A: Opo.

x x x x x x x x x

Q: By the way at that time were you a virgin?

COURT:

She was [redacted] only years old at that time.

PROS. LEONARDO RODRIGUEZ:

Q: When his finger entered your vagina what did you feel?

x x x x x x x x x

A: Masakit po.

x x x x x x x x x

Q: How much it (sic) did it hurt?

x x x x x x x x x

A: Masakit po.

x x x x x x x x x

Q: After he inserted his finger inside your vagina what happen[ed] next or what else did he do to you?

x x x x x x x x x

A: Hinubaran po yung panty ko.

x x x x x x x x x

Q: He removed your panty downwards?

x x x x x x x x x

A: Opo.

x x x x x x x x x

Q: And after he removed your panty what happen[ed] next?

x x x x x x x x x

A: Hinalikan po yung ari ko.

x x x x x x x x x

Q: How many times did he kiss your vagina?

x x x x x x x x x

A: Dalawa (2) po.

x x x x x x x x x

Q: After he kiss[ed] your vagina what happen[ed] next?

x x x x x x x x x

A: Umuwi na po ako.

x x x x x x x x x

Q: At that time he was kissing your lips several times; he was mashing your breast; he inserted his finger inside your vagina and kiss[ed] your vagina did you resist him, did you resist his advances?

x x x x x x x x x

A: Hindi po kasi natatakot po ako.

x x x x x x x x x

Q: Why were you scared?

x x x x x x x x x

A: Natatakot po ako.

x x x x x x x x x

Q: Was he threatening you?

x x x x x x x x x

A: Opo.

x x x x x x x x x

Q: How did he threaten you?

x x x x x x x x x

A: Huwag daw po akong magsusumbong.

x x x x x x x x x

Q: Or else what will happen?

x x x x x x x x x

A: Papatayin daw po ako.[27]

In view of the foregoing, the prosecution duly established the element of intentional touching, either directly or through clothing, of the genitalia of any person, with intent to abuse or gratify sexual desire. This act constitutes sexual abuse and lascivious conduct under the definition provided by Section 2, paragraphs (g) and (h)[28] of the rules and regulations of R.A. No. 7610, known as the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases.

As regards the second requisite that the lascivious conduct be done under the enumerated circumstances, it has been said that "force and intimidation" are subsumed under "coercion and influence" and such terms are used almost synonymously. This can be gleaned from Black's Law Dictionary's definitions of "coercion" as "compulsion; force; duress," of "influence" as "persuasion carried over to the point of overpowering the will," and of "force" as "constraining power, compulsion; strength

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[27] TSN, June 17, 2009, pp. 23-52.

[28] Section 2. Definition of Terms. — As used in these Rules, unless the context requires otherwise —

x x x x x x x x x

(g) "Sexual abuse" includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children;

h) "Lascivious conduct" means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh. or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person[.]

directed to an end"; as well as from jurisprudence which defines "intimidation" as "unlawful coercion; extortion; duress; putting in fear."[29] As AAA expressly testified, Basa grabbed her right arm and forcefully dragged her to the office of Pastor Eddie and threatened to kill her should she tell anybody of what he did to her.

Anent the third requisite, a child is deemed exploited in prostitution or subjected to other sexual abuse when the child indulges in sexual intercourse or lascivious conduct (a) for money, profit or any other consideration; or (b) under the coercion or any influence of any adult, syndicate or group.[30] In the case of *Olivarez v. Court of Appeals,*[31] the Court explained that the phrase "other sexual abuse," in the above provision. covers not only a child who is abused for profit, but also one who engages in lascivious conduct through the coercion or intimidation by an adult. In the latter case, there must be some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's will.[32] Again, AAA was clearly coerced, in fact dragged, by Basa into going with him to the room of their pastor, where he forcefully inserted his finger into her private part.

Fourth, as previously mentioned, it is undisputed that AAA was only [redacted] years old at the time of the commission of the offense. Under Section 3 (a) of R.A. No. 7610, "'children' refers to person[s] below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition[.]"

In view of the presence of all the elements of the crime, Basa should be convicted of Lascivious Conduct under

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[29] *People v. Macapagal,* G.R. No 218574. November 22, 2017.

[30] *Id.*

[31] 503 Phil. 421 (2005).

[32] *People v. Dagsa,* G.R. No. 219889, January 29, 2018.

Section 5 (b), Article III of R.A. No. 7610. As duly found by the trial court, and affirmed by the appellate court, the prosecution, through the positive and categorical testimony of AAA, duly established that Basa succeeded in forceful inserting his finger into her vagina at a time when she was merely [redacted] years old. He must, therefore, be held liable therefor.

With respect to Criminal Case No. 04-0201, the Court affirms the rulings of the courts below finding that the prosecution was also able to prove, beyond reasonable doubt, all the elements of the crime of rape under Article 266-A, paragraph (1), in relation to R.A. No. 7610. In the instant case, the RTC aptly found that the prosecution sufficiently established the presence of the elements of rape under Article 266-A, paragraph (1) (a) of the RPC which provides that rape is committed: "1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: a) Through force, threat, or intimidation; b) When the offended party is deprived of reason or otherwise unconscious; c) By means of fraudulent machination or grave abuse of authority; and d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present." During the trial, AAA vividly gave a detailed narration of what transpired a week after the occurrence of the first incident of molestation. In a sincere and convincing manner, she painstakingly recalled how she was once again dragged into the room of Pastor Eddie, where Basa kissed her and mashed her breast, and, thereafter, removed her skirt and underwear in order to insert his penis inside her vagina. She testified on the matter as follows:

Q. After he was touching your breast for a long time, what happened next?
A. Hinubad niya iyong palda at panty ko.

Q. Did he remove it one at a time or simultaneously?
A. Sabay po.

Q. After he removed your skirt and panty simultaneously, what did he do?
A. Inilabas niya iyong ari niya.

Q. At that time, what was he wearing when he put out his penis?
A. Nakapantalon po.

Q. Long or short?
A. Long po.

Q. What kind of material, slacks or maong?
A. Maong po.

Q. He put out his penis from his long maong pants, is that correct?
A. Opo.

Q. Did he put it out through the zipper only or did he put down his pants?
A. Zipper lang po.

Q. After he put out his penis, what happened?
A. Inihiga na niya ako.

x x x x x x x x x

Q. After he made you lie down, what did he do?
A. Sinusubukan niya pong ipasok iyong ari niya sa ari ko.

Q. Was he successful?
A. Hindi po masyado. Pinipilit niya po.

Q. Was he able to insert his penis inside your vagina?
A. Opo.

Q. He was able to insert it and how many times did he insert his penis inside your vagina?
A. Isa lang po.

Q. How deep did it penetrate your vagina?
A. Medyo ibabaw lang po.

Q. But you felt his penis inside your vagina?
A. Opo.

Q. What did you feel when his penis was inside your vagina?
A. Masakit po.

Q. How long did he insert his penis in your vagina?
A. Medyo matagal po.[33]

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[33] TSN, September 16, 2009, pp. 23-29.

In a long line of cases, the offended parties of which are young and immature girls, the Court found a considerable receptivity on the part of the trial courts to lend credence to the testimonies of said victims. This is in consideration of not only the offended parties' relative vulnerability, but also the shame and embarrassment to which such a grueling experience as a court trial, where they are called upon to lay bare what perhaps should be shrouded in secrecy, exposes them to. Indeed, no woman, much less a child, would willingly submit herself to the rigors, the humiliation and the stigma attendant upon the prosecution of rape, if she were not motivated by an earnest desire to put the culprit behind bars. Hence, AAA's testimony is entitled to full faith and credence.[34]

It bears stressing that all the arguments raised by Basa in his Appellant's Brief — which the Public Attorney's Office adopted instead of filing a supplemental appeal brief — have been properly addressed in full and in detail in the appealed CA decision. For one, AAA's failure to shout or immediately report the incident does not necessarily belie her claims because as the appellate court held, a rape victim's actions are oftentimes overwhelmed by extreme psychological terror that numbs her into silence and submissiveness. For another, the fact that the medico-legal report shows no evident sign of injuries is of no moment since laceration of the hymen, even if considered a telling evidence of sexual assault, is not always essential to establish the consummation of the crime of rape.[35] Indeed, when the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon the Court, unless there is a clear showing that they were reached arbitrarily or it appears from the records that certain facts of weight, substance, or value are overlooked, misapprehended or misappreciated by the lower court which, if properly considered, would alter the result of the case. After a circumspect study of the records,

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[34] *People v. Macapagal, supra* note 29.

[35] *Rollo,* pp. 14-15.

the Court sees no compelling reason to depart from the foregoing principle.[36]

As for the penalties and damages for the crimes charged herein, the Court rules as follows. In Criminal Case No. 04-0200 for Lascivious Conduct under Section 5 (b), Article III of R.A. No. 7610, the penalty imposed by the courts below must be modified. Section 5, Article III of R.A. No. 7610 provides that the penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse. Here, in the absence of mitigating or aggravating circumstances, the maximum term of the sentence shall be taken from the medium period thereof.[37] Moreover, notwithstanding the fact that R.A. No. 7610 is a special law, Basa may still enjoy the benefits of the Indeterminate Sentence Law. In applying the provisions thereof, the minimum term shall be taken from within the range of the penalty next lower in degree, which is *prision mayor* in its medium period to *reclusion temporal* in its minimum period.[38] Thus, Basa shall suffer the indeterminate sentence of eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal,* as maximum, for violation of the said provision of R.A. No. 7610.[39] Likewise, and conformably with prevailing jurisprudence,[40] he is directed to pay AAA the amounts of ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, ₱15,000.00 as exemplary damages, and ₱15,000.00 as fine, pursuant to Section 31 (f), Article XII of R.A. No. 7610, all of which shall earn interest at the rate of six percent (6%) per annum from the date of finality of this judgment until full payment.

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[36] *People v. Macapagal, supra* note 29.

[37] 17 years, 4 months and 1 day to 20 years.

[38] 8 years and 1 day to 14 years and 8 months.

[39] *People v. Zamora,* G.R. No. 229835, January 31, 2018 (Minute Resolution).

[40] *Orsos v. People,* G.R. No. 214673, November 20, 2017.

With respect to Criminal Case No. 04-0201 for rape under Article 266-A, paragraph (1), the Court affirms the penalty imposed and the amount of damages awarded by the courts *a quo*. Thus, Basa is sentenced to suffer the penalty of *reclusion perpetua* and is ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, pursuant to *People v. Jugueta,*[41] all of which shall likewise earn interest at the rate of six percent (6%) per annum from the date of finality of this judgment until full payment.

WHEREFORE, premises considered, the instant appeal is **DISMISSED** for lack of merit. The assailed Decision dated September 28, 2017 of the Court of Appeals, affirming with modification the Decision dated July 27, 2015 of the Regional Trial Court of Parañaque City, Branch 194, is likewise **AFFIRMED** with **MODIFICATION:**

1. In Criminal Case No. 04-0200, appellant Manuel Basa, Jr. is held guilty of one (1) count of Lascivious Conduct under Section 5 (b), Article III of R.A. No. 7610, and is hereby sentenced to suffer the indeterminate sentence of eight (8) years and one (1) day of *prision mayor,* as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal,* as maximum. Basa is likewise ordered to pay AAA the amounts of ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, ₱15,000.00 as exemplary damages, and a fine of ₱15,000.00.

2. In Criminal Case No. 04-0201, Basa is held guilty of one (1) count of rape under Article 266-A, paragraph (1), and is hereby sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

All damages awarded shall incur legal interest at the rate of six percent (6%) per annum from finality of this Decision until fully paid.

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[41] 783 Phil. 806 (2016).

SO ORDERED.

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

Perlas-Bernabe,[*] *J.,* on official leave.

THIRD DIVISION

[G.R. No. 238104. February 27, 2019]

ODELON ALVAREZ MIRANDA, *petitioner, vs.* **SOCIAL SECURITY COMMISSION and SOCIAL SECURITY SYSTEM, represented by CARINA L. CATAHAN,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ISSUES OF FACT ARE NOT PROPER SUBJECT OF APPEAL. —** [T]he issue of whether or not petitioner indeed received summons and other legal processes is a question of fact and it is settled that the Supreme Court is not a trier of facts. Just as well entrenched is the doctrine that pure issues of fact may not be the proper subject of appeal by *certiorari* under Rule 45 of the Revised Rules of Court as this mode of appeal is generally confined to questions of law. While there are several recognized exceptions to this doctrine, the Court finds that none applies to the instant case.

2. **ID.; EVIDENCE; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES ACCORDED FINALITY WHEN AFFIRMED BY COURT OF APPEALS. —** Settled is the rule that findings of fact of administrative agencies and quasi-judicial bodies, if

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[*] Designated as additional member, in lieu of Justice Rosmari D. Carandang, per Special Order No. 2624-0 dated February 20, 2019.

supported by substantial evidence, are accorded not only respect but finality, especially when affirmed by the Court of Appeals.

3. **ID.; CIVIL PROCEDURE; SERVICE OF PLEADINGS; SERVICE AT THE OLD ADDRESS OF PETITIONER IS VALID IN CASE AT BAR AS HE HAD MOVED THEREFROM WITHOUT INFORMING THE SOCIAL SECURITY COMMISSION OF HIS NEW LOCATION. —** The settled rule is that the requirement of conclusive proof of receipt of a notice presupposes that the notice is sent to the correct address as indicated in the records of the court. In the instant case, copies of Orders and other legal processes, particularly the SSC's Resolution dated April 24, 2013, were sent to petitioner and Onise's given address, but the copies did not reach them because they had moved therefrom without informing the SSC of their new location. x x x [T]he service at the old address of petitioner and Onise should be considered valid. Otherwise, no process can be served on them if they simply disappeared without leaving a forwarding address.

4. **ID.; ID.; LIBERAL APPLICATION OF THE RULES CAN BE INVOKED ONLY IN PROPER CASES AND UNDER JUSTIFIABLE CAUSES AND CIRCUMSTANCES. —** While it is true that this Court has applied a liberal application of the rules of procedure in a number of cases, we have stressed that this can be invoked only in proper cases and under justifiable causes and circumstances. In the instant case, aside from his contention that he should be given his day in court in the interest of substantial justice, petitioner did not give a reasonable cause to justify non-compliance with the rules. Petitioner failed to support, with substantial evidence, his argument as to how and why a normal application of procedural rules would frustrate his quest for justice. The bare invocation of "the interest of substantial justice" line is not some magic wand that will automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled, let alone dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. It cannot be gainsaid that obedience to the requirements of procedural rules is needed if we are to expect fair results therefrom and utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction.

APPEARANCES OF COUNSEL

Florentino & Esmaquel Law Office for petitioner.
SSS NCR-West Legal Department for Social Security System.

D E C I S I O N

PERALTA, *J.*:

Assailed in the present petition for review on *certiorari* under Rule 45 of the Rules of Court are the Decision[1] dated November 20, 2017 and the Resolution[2] dated March 12, 2018 issued by the Court of Appeals (*CA*) in CA-G.R. SP No. 151522.

The factual and procedural antecedents of the case are as follows:

On July 20, 2006, herein respondent Social Security System (*SSS*), through its duly authorized representative, Carina L. Catahan, filed before co-respondent Social Security Commission (*SSC*) a Petition[3] for collection of unpaid SSS contributions and penalties against Onise Marketing (*Onise*) and herein petitioner Odelon Alvarez Miranda (*Miranda*). The Petition was docketed as SSC Case No. 7-16922-06.

In its Petition, SSS alleged that: Onise is an employer which is registered with SSS and that Miranda is the Manager/Owner of Onise; Onise and Miranda are liable for violation of Section 22, paragraphs (a), (c) and (d) of Republic Act (RA) No. 1161, otherwise known as "The Social Security Act of 1954," as amended by RA No. 8282, for having failed to remit the SSS contributions of their employees, as well as penalty liabilities, for the period between February 2002 and March

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[1] *Rollo*, pp. 45-51. Penned by Associate Justice Pablito A. Perez, with the concurrence of Associate Justices Ricardo R. Rosario and Ramon A. Cruz.

[2] *Id*. at 52-54.

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

2006, in the total amount of ₱113,896.26, subject to final computation upon reconciliation of the correct premium contributions paid, if any. SSS prayed that "after due hearing a Warrant be issued to the Sheriff of the Honorable Commission, commanding him to levy upon and sell any real and/or personal property of [Onise and Miranda] wherever said property or properties may be found, and to garnish their bank accounts sufficient to satisfy [their] total amount of Contributions and Penalty liabilities to Social Security System."[4]

In its Order[5] dated February 5, 2007, the SSC declared Onise and Miranda in default for their failure to timely file their answer.

On April 24, 2013, the SSC issued a Resolution[6] with the following dispositive portion:

> WHEREFORE, this Commission finds and so holds respondents Onise Marketing and Odelon A. Miranda, as Owner/Manager, liable for the balance of the unpaid SS contributions for the period February 2002 to March 2006 (not inclusive) in the amount of ₱16,659.00 and the 3% per month penalties thereon computed at ₱44,137.58, or the total amount of ₱60,796.58 as of March 15, 2013, plus the additional penalties accruing after the aforesaid date until fully paid, pursuant to Sections 18, 19 and 22(a) of R.A. 8282 of the SS Act of 1997.
>
> Accordingly, said respondents are ordered to pay the SSS the aforementioned liability within thirty (30) days from receipt hereof.
>
> This is without prejudice to the right of the SSS to file other appropriate actions against the respondents.
>
> SO ORDERED.[7]

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[4] *Id*. at 87.

[5] *Id*. at 81.

[6] *Id* at 81-84.

[7] *Id*. at 83.

The SSC held that:

> After a perusal of the records of the case, this Commission notes that despite the declaration of default against them, x x x Onise Marketing and Odelon A. Miranda made partial payments to cover their obligation to the SSS and receipt of said payments were acknowledged by the [respondent SSS] as ref1ected in its files. Likewise, part of [Onise and Miranda's] penalty liability was condoned in view of payments made, leaving a balance of ₱60,796.58, broken down into the contributions delinquency of ₱16,659.00 and the penalty liability of ₱44,137.58 based on the revised statement of liabilities detailing the same.
>
> There is no question as to [Onise and Miranda's] liability for SS contributions and penalties under the SS Law, the amount of which the latter did not contest. On the other hand, [Onise and Miranda's] act of paying part of their obligation is a tacit admission of their liabilities as employer under the SS Law.[8]

Subsequently, the SSC issued a Writ of Execution[9] on July 15, 2015 and a Notice of Garnishment[10] on February 26, 2016.

On June 21, 2016, Miranda filed an Urgent Motion to Annul the Resolution dated April 24, 2013 and to Quash the Writ of Execution dated July 15, 2015 on the ground that the SSC did not acquire jurisdiction over his person. Miranda alleged that he has not, at any time, received any summons, notices or other legal processes, including the above-mentioned Order, Resolution, Writ of Execution and Notice of Garnishment issued by the SSS.[11]

In its Order[12] of August 10, 2016, the SSC denied Miranda's urgent Motion for lack of merit. The SSC ruled that it properly acquired jurisdiction over the person of Miranda on the ground that the Summons dated August 3, 2006, as well as a copy of

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

[9] *Id*. at 73.

[10] *Id*.

[11] *Id*.

[12] *Id*. at 73-78.

the Petition filed by the SSS, was served upon and personally received by him. The SSC also reiterated its previous finding that, instead of moving for the lifting of the order of default against them, Onise and Miranda made partial payments of their obligation and even availed of the benefits of condonation under the law. Moreover, the SSC held that Onise and Miranda should be faulted for not receiving the subsequent Orders issued by the SSS because they failed to inform the latter of a change in their address on record. Lastly, the SSC ruled that there is no merit in Miranda's insistence that he was erroneously impleaded in the instant case because it is clear from the records of the SSS the he is the owner/manager of Onise.

Miranda filed a Motion for Reconsideration, but the SSC denied it in its Order[13] dated January 25, 2017.

Miranda then filed with the CA a petition[14] for *certiorari* and prohibition, under Rule 65 of the Rules of Court, against herein respondents, seeking to annul and set aside the August 10, 2016 Order, as well as the January 25, 2017 Order and the April 24, 2013 Resolution of the SSC.

On November 20, 2017, the CA promulgated its assailed Decision, disposing as follows:

> WHEREFORE, the Petition is PARTLY GRANTED. The Order dated August 10, 2016 and the Resolution dated January 25, 2017 are ANNULLED and SET ASIDE, but only in so far as these deny the Motion to Quash the Writ of Execution dated July 15, 2016 in SSC Case No. 7-16922-06, which is hereby SET ASIDE.[15]

The CA held that Miranda belatedly filed his Motion for Reconsideration of the August 10, 2016 Order of the SSC. As such, the questioned Order has become final and executory. Nonetheless, the CA held that the April 24, 2013 Resolution of the SSC did not attain finality and its execution was irregular and void on the ground that the SSS and the SSC failed to

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[13] *Id*. at 79-80.

[14] *Id.* at 55-68.

[15] *Id.* at 50.

present evidence to prove that there was valid service of the said Order to Miranda and Onise or to their counsel.

Miranda filed a Motion for Partial Reconsideration, but the CA denied it in its Resolution dated March 12, 2018.

Hence, the present petition for review on *certiorari* based on the following grounds:

A

THE APPELLATE COURT COMMITTED SERIOUS ERROR OF LAW AMOUNTING TO GRAVE ABUSE OF DISCRETION IN PARTLY GRANTING ONLY THE PETITIONER'S PETITION FOR CERTIORARI AND PROHIBITION AND IN DENYING THE MOTION FOR PARTIAL RECONSIDERATION OF THE ASSAILED DECISION DATED NOVEMBER 20, 2017.

B

THE APPELLATE COURT COMMITTED SERIOUS ERROR OF LAW AMOUNTING TO GRAVE ABUSE OF DISCRETION IN FAILING TO APPLY THE RULES ON THE LIBERAL CONSTRUCTION OF THE RULES.[16]

Petitioner Miranda's basic contention is that the questioned rulings of the SSC are not binding upon him because the SSC never acquired jurisdiction over his person. Petitioner alleges that he never received summons and notices in connection with the proceedings in the petition for collection of unpaid contributions and penalties filed by the SSS against him and Onise and that he only came to know of the case when he received a letter from his bank notifying him that his deposit in the said bank is subject to a Notice of Garnishment issued by the SSC.

The petition lacks merit for reasons to be discussed hereunder.

At the outset, the issue of whether or not petitioner indeed received summons and other legal processes is a question of fact and it is settled that the Supreme Court is not a trier of

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

facts.[17] Just as well entrenched is the doctrine that pure issues of fact may not be the proper subject of appeal by *certiorari* under Rule 45 of the Revised Rules of Court as this mode of appeal is generally confined to questions of law.[18] While there are several recognized exceptions to this doctrine,[19] the Court finds that none applies to the instant case.

In addition, respondent SSC, in the exercise of its quasi-judicial functions, found that it had properly acquired jurisdiction over the person of petitioner. In its Order of August 10, 2016, it held, thus:

> It is clear from the records, particularly the Proof of Service and the Sheriff's Return of Service dated August 25, 2006, that the Summons dated August 3, 2006 was served upon and personally received on August 25, 2006 by respondent Odelon Miranda, Owner/Manager of Onise Marketing. Since there was proper service of Summons, the Commission had properly acquired jurisdiction over the person of respondent Odelon Miranda. Likewise, because of the valid service of Summons with a copy of the Petition; suffice it to state that the requirements of due process had been met contrary to the claim of movant [herein petitioner].[20]

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[17] *Co v. Vargas*, 676 Phil. 463, 470 (2011).

[18] *Gatus v. Social Security System*, 655 Phil. 550, 561 (2011).

[19] Recognized exceptions to this rule are: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of fact 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 appellee and the appellant; (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; or (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 (*Rep. of the Phils. v. Asiapro Cooperative*, 563 Phil. 979, 997 [2007]).

[20] *Rollo*, p. 75.

Settled is the rule that findings of fact of administrative agencies and quasi-judicial bodies, if supported by substantial evidence, are accorded not only respect but finality, especially when affirmed by the Court of Appeals.[21] Moreover, aside from their blanket denial that they received summons and other legal processes from the SSC, petitioner and Onise did not present evidence to prove such denial. Thus, the Court finds no cogent reason to depart from the findings of the SSC that it had, indeed, validly acquired jurisdiction over the person of petitioner and Onise.

Moreover, the SSC found that, based on its records, petitioner received the SSC's Order dated February 5, 2007 declaring him and Onise in default for their failure to file their answer within the prescribed period given them.[22] Furthermore, the SSC likewise noted that during the pendency of petitioner's case before it, petitioner and Onise "made partial payments for their obligation and in fact were able to enjoy condonation of penalty pursuant to Republic Act 9903 (Social Security Condonation Law of 2009)[.]"[23] These payments were found by SSC to have been made in August and September 2007.[24] Again, aside from his blanket denial, petitioner never sufficiently refuted these findings. Hence, the Court agrees with the conclusion of respondents that these instances belie petitioner's claim that he only learned of the case against him when he received a letter from his bank which notified him of the garnishment of his deposit with the said bank. On the contrary, the only logical conclusion that can be reached, on the basis of petitioner and Onise's act of making partial payments, is that they are aware of the case filed by the SSS against them.

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[21] *Oasay, Jr. v. Palacio del Gobernador Condominium Corp., et al.*, 681 Phil. 69, 79 (2012); and *Gatus v. Social Security System*, *supra* note 18, at 562.

[22] *Rollo*, p. 75.

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

[24] *Id*. at 76.

The Court, at this stage, takes exception to the ruling of the CA that there was no valid and effective service of the April 24, 2013 Resolution of the SSC which found petitioner and Onise liable. The Court, likewise, does not agree with the CA that the said Resolution may not be the subject of a writ of execution on the ground that it never became final and executory.

The basis of the above ruling of the CA is its finding that "there is nothing in the record[s] to prove that personal service on petitioner was completed, or that the Order dated April 24, 2013 was served by registered mail on petitioner, and that despite notice by the postmaster, petitioner did not claim or receive that Order."[25]

In the present case, there is no dispute that the Resolution and the Orders of the SSC, subsequent to its Order dated February 5, 2007, were returned with the notation "Moved out" and that petitioner and Onise did not inform the SSC of any change in their address on record. In this regard, the CA, citing the case of *Philemploy Services and Resources, Inc. v. Rodriguez*,[26] held that "[a]n order cannot be deemed to have become final and executory in view of the absence of a valid service, whether personally or via registered mail on the respondent's counsel" and that "*[e]nvelopes bearing notations 'return to sender unclaimed*' do not constitute proof that notice was sent to the addressee, much less that there was completeness of service."[27]

The Court does not agree.

The settled rule is that the requirement of conclusive proof of receipt of a notice presupposes that the notice is sent to the correct address as indicated in the records of the court.[28] In the instant case, copies of Orders and other legal processes,

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

[26] 520 Phil. 828 (2006).

[27] *Rollo*, p. 50.

[28] *Vill Transport Service, Inc. v. Court of Appeals*, 271 Phil. 25, 31 (1991).

particularly the SSC's Resolution dated April 24, 2013, were sent to petitioner and Onise's given address, but the copies did not reach them because they had moved therefrom without informing the sse of their new location.

In the case of *Arra Realty Corp., et al. v. Paces Industrial Corp.*,[29] this Court, citing the case of *Philippine Airlines, Inc. v. Heirs of Zamora*,[30] held that the petitioner in the latter case also moved to another address, but failed to file a notice of change of address with the National Labor Relations Commission (*NLRC*). Hence, when a copy of the NLRC decision was sent to said petitioner's address of record *via* registered mail, the same was returned to sender. In said case, the Court ruled, thus:

> The rule on service by registered mail contemplates two situations: (1) actual service, the completeness of which is determined upon receipt by the addressee of the registered mail; and (2) constructive service, the completeness of which is determined upon expiration of five days from the date the addressee received the first notice of the postmaster. A party who relies on constructive service or who contends that his adversary has received a copy of a final order or judgment upon the expiration of five days from the date the addressee received the first notice sent by the postmaster must prove that the first notice was actually received by the addressee. Such proof requires a certified or sworn copy of the notice given by the postmaster to the addressee.
>
> **In the instant case, there is no postmaster's certification to the effect that the registered mail containing the NLRC decision was unclaimed by the addressee and thus returned to sender, after first notice was sent to and received by the addressee on a specified date. All that appears from the records are the envelopes containing the NLRC decision with the stamped markings and notation on the face and dorsal sides thereof showing "RTS" (meaning, "Return To Sender") and "MOVED." Still, we must rule that service upon PAL and the other petitioners was complete.**

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[29] 651 Phil. 57, 64 (2010).

[30] 601 Phil. 655 (2009).

First, the NLRC Deputy Executive Clerk issued a Certification that the envelopes containing the NLRC decision addressed to Mr. Jose Pepiton Garcia and Atty. Bienvenido T. Jamoralin, Jr. were returned to the NLRC with the notation "RTS" and "MOVED." Yet, **they and the other petitioners, including PAL, have not filed any notice of change of address at any time prior to the issuance of the NLRC decision up to the date when the Certification was issued on January 24, 2000.**

Second, **the non-receipt by PAL and the other petitioners of the copies of the NLRC decision was due to their own failure to immediately file a notice of change of address with the NLRC**, which they expressly admitted. It is settled that where a party appears by attorney in an action or proceeding in a court of record, **all notices or orders required to be given therein must be given to the attorney of record. Accordingly, notices to counsel should be properly sent to his address of record, and, unless the counsel files a notice of change of address, his official address remains to be that of his address of record.**

x x x[.] To our mind, **it would have been more prudent had PAL informed the NLRC that it has moved from one floor to another rather than allowed its old address at Allied Bank Center to remain as its official address. To rule in favor of PAL considering the circumstances in the instant case would negate the purpose of the rules on completeness of service and the notice of change of address, which is to place the date of receipt of pleadings, judgments and processes beyond the power of the party being served to determine at his pleasure.**

Resultantly, service of the NLRC decision *via* registered mail was deemed completed as of August 16, 1999, or five days after the first notice on August 11, 1999. As such, PAL only had 10 days from August 16, 1999 to file its motion for reconsideration. Its motion filed on October 29, 1999 was, therefore, late. Hence the NLRC decision became final and executory.[31] (Emphases, underscores and italics in the original; citation omitted.)

Thus, in the present case, the service at the old address of petitioner and Onise should be considered valid. Otherwise, no

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[31] *Arra Realty Corp., et al. v. Paces Industrial Corp.*, *supra* note 29, at 65-66.

process can be served on them if they simply disappeared without leaving a forwarding address.

It is erroneous on the part of the CA to have relied on the ruling in *Philemploy Services and Resources, Inc. v. Rodriguez*[32] because in the said case, the notice to the other party's counsel was sent to the address on record, unlike in the present case, where the notice was sent to the address on record, but petitioner changed his address and did not inform the SSC of the same.

On the basis of the foregoing, the service of the April 24, 2013 Resolution of the SSC at petitioner's address on record should, thus, be considered valid and effective, and the said Resolution became final and executory after the expiration of the period within which to appeal, without any appeal being filed. As a consequence, the July 15, 2015 Writ of Execution issued by the SSC is, likewise, valid. Hence, contrary to the assailed ruling of the CA, the SSC did not commit grave abuse of discretion in denying petitioner's Motion to Quash the said Writ.

Finally, this Court is not persuaded by petitioner's asseveration that he is entitled to a liberal construction of the rules on the ground that a rigid application thereof will deny him substantial justice.

While it is true that this Court has applied a liberal application of the rules of procedure in a number of cases, we have stressed that this can be invoked only in proper cases and under justifiable causes and circumstances.[33] In the instant case, aside from his contention that he should be given his day in court in the interest of substantial justice, petitioner did not give a reasonable cause to justify non-compliance with the rules. Petitioner failed to support, with substantial evidence, his argument as to how and why a normal application of procedural rules would frustrate

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[32] *Supra* note 26.

[33] *Land Bank of the Phils. v. Court of Appeals, et al.*, 789 Phil. 577, 583 (2016).

his quest for justice. The bare invocation of "the interest of substantial justice" line is not some magic wand that will automatically compel this Court to suspend procedural rules.[34] Procedural rules are not to be belittled, let alone dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights.[35] It cannot be gainsaid that obedience to the requirements of procedural rules is needed if we are to expect fair results therefrom and utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction.[36]

WHEREFORE, the instant petition for review on *certiorari* is **DENIED**. The Decision, dated November 20, 2017, and the Resolution, dated March 12, 2018, issued by the Court of Appeals in CA-G.R. SP No. 151522 are **AFFIRMED** with **MODIFICATION** in the sense that the Writ of Execution dated July 15, 2015, the Order dated August 10, 2016, and the Order dated January 25, 2017 of the Social Security Commission in SSC Case No. 7-16922-06 are **AFFIRMED** *in toto*.

SO ORDERED.

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

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[34] *Id.*

[35] *Id.*

[36] *Alamayri v. Pabale, et al.*, 576 Phil. 146, 165 (2008).

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

FIRST DIVISION

[G.R. No. 238516. February 27, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROGER RODRIGUEZ *y* MARTINEZ, *alias* "ROGER,"** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF TRIAL COURT, GENERALLY RESPECTED; EXCEPTIONS; WHEN CERTAIN FACTS OF SUBSTANCE HAVE BEEN OVERLOOKED. —** It is a general principle of law that factual findings of the trial court are not disturbed on appeal unless the court *a quo* is perceived to have overlooked, misunderstood or misinterpreted certain facts or circumstances of weight, which, if properly considered, would have materially affected the outcome of the case. In the case at bench, the Court finds that certain facts of substance have been overlooked, which if only addressed and appreciated, would have altered the outcome of the case.

2. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT (RA 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS. —** In a successful prosecution of illegal sale of dangerous drugs, the following essential elements must concur: (1) that the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified. On the other hand, under Section 11, Article II of R.A. No. 9165, the elements of the offense of illegal possession of dangerous drugs are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.

3. **ID.; ID.; ID.; CHAIN OF CUSTODY RULE; STRICT COMPLIANCE IS REQUIRED; NON-COMPLIANCE IS ALLOWED PROVIDED THERE IS JUSTIFIABLE GROUND AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE CONFISCATED ITEMS ARE PROPERLY PRESERVED. —** For both illegal sale and possession of dangerous drugs, it is

essential that the prosecution establishes the identity of the seized dangerous drugs in a way that its integrity has been well preserved from the time of seizure or confiscation from the accused until the time of presentation as evidence in court. This chain of custody requirement is necessary to ensure that doubts regarding the identity of the evidence are removed through the monitoring and tracking of the movements of the seized drugs from the accused, to the police, to the forensic chemist, and finally to the court. While a perfect chain of custody is almost always impossible to achieve, an unbroken chain becomes indispensable and essential in the prosecution of drug cases owing to its susceptibility to alteration, tampering, contamination and even substitution and exchange. Chain of custody means the duly recorded, authorized movements, and custody of the seized drugs at each state, from the moment of confiscation to the receipt in the forensic laboratory for examination until it is presented to the court. The procedure was encapsulated in Sec. 21(1) of R.A. No. 9165, x x x further expounded in the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 under Sec. 21 (a) x x x From the foregoing, the apprehending team is required to strictly comply with the procedure outlined in Section 21, Article II of the IRR of R.A. No. 9165. Their failure to do so shall not render void and invalid such seizure provided there is justifiable ground for non-compliance, and the integrity and evidentiary value of the confiscated items are properly preserved.

4. ID.; ID.; ID.; ID.; THE INVENTORY AND PHOTOGRAPH OF THE CONFISCATED ITEMS SHOULD BE MADE IN THE PRESENCE OF THE ACCUSED AND THE REQUIRED WITNESSES. — Sec. 21 of R.A. No. 9165 mandates the apprehending team to immediately (1) conduct a physical inventory; and (2) to photograph the seized and confiscated items **in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the DOJ, and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.** x x x The signing of the Receipt/Inventory of the Property Seized by Diang could not be deemed sufficient compliance with the requirements of Sec. 21. The enumeration under the aforestated rule is exclusive. It specifically provides that the inventory and photograph of the confiscated and/or seized items should be

made in the presence of the accused, or the person from whom such items were confiscated and or seized, or his/her representative or counsel, a representative from the media and the DOJ, and any elected public official. The presence of these personalities should not be taken lightly for the law precisely requires such insulating presence as to free the apprehension and incrimination proceedings of any taint of illegitimacy or irregularity, thus, preserve the integrity and credibility of the seizure and confiscation of evidence.

5. ID.; ID.; ID.; ID.; ID.; MERE STATEMENTS OF UNAVAILABILITY ABSENT ACTUAL SERIOUS ATTEMPTS TO CONTACT THE REQUIRED WITNESSES, ARE NOT ACCEPTABLE AS JUSTIFIED GROUNDS FOR NON-COMPLIANCE. — [T]he prosecution bears the burden of proving a valid cause for noncompliance with the procedure laid down in Section 21 of R.A. No. 9165. Mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are not acceptable as justified grounds for noncompliance. In *People v. Umipang*, the Court held that the prosecution must show that earnest efforts were employed by the apprehending officers 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."

APPEARANCES OF COUNSEL

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

D E C I S I O N

GESMUNDO, *J.*:

This is an appeal seeking to reverse and set aside the October 27, 2017 Decision[1] of the Court of Appeals (*CA*) in

[1] *Rollo*, pp. 2-25; penned by Associate Justice Elihu A. Ybañez, with Associate Justice Fernanda Lampas Peralta and Associate Justice Carmelita Salandanan Manahan, concurring.

CA-G.R. CR HC No. 07835. The CA affirmed the August 28, 2015 Decision[2] of the Regional Trial Court of Muntinlupa City, Branch 203 (*RTC*), in Criminal Case Nos. 10-669 and 10-670, finding Roger Rodriguez *y* Martinez alias "Roger" (*appellant*) guilty beyond reasonable doubt of the crime of Violation of Sections 5[3] and 11,[4] Article II of Republic Act (*R.A.*) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

Antecedents

In two Informations, dated October 5, 2010, appellant was charged with illegal sale and illegal possession of dangerous drugs, in violation of Sections 5 and 11, Article II of R.A. No. 9165. The accusatory portions of which state:

Criminal Case No. 10-669 (*Section 11 of R.A. No. 9165*)

That on or about the 4th day of October 2010, in the City of Muntinlupa, Philippines[,] and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully and unlawfully have in his possession, custody and control Methamphetamine Hydrochloride, a dangerous drug, weighing 0.20 gram and 0.220 gram, contained in two (2) heat-sealed transparent plastic sachets, in violation of the above-cited law.

CONTRARY TO LAW.[5]

Criminal Case No. 10-670 (*Section 5 of R.A. No. 9165*)

That on or about the 4th day of October 2010, in the City of Muntinlupa, Philippines[,] and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully and unlawfully sell, trade, deliver and give away to another Methamphetamine Hydrochloride, a dangerous drug, weighing 0.07 gram, contained in one (1) heat-sealed transparent plastic sachet, in violation of the above-cited law.

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[2] CA *rollo*, pp. 39-51; penned by Presiding Judge Myra B. Quiambao.

[3] **Section 5.** *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*.

[4] **Section 11.** *Possession of Dangerous Drugs*.

[5] Records, p. 1.

CONTRARY TO LAW.[6]

On October 19, 2010, Rodriguez was arraigned and he pleaded not guilty.[7] Thereafter, trial ensued.

Version of the Prosecution

The prosecution alleged that on October 3, 2010, an informant told the members of the Station Anti-Illegal Drugs-Special Operations Task Group (*SAID-SOTG*) of the Muntinlupa City Police Station that appellant was engaged in the illegal sale of drugs. Thereafter, Chief Inspector Domingo Diaz ordered that a buy-bust team be formed, with Police Officer 2 Mark Sherwin Forastero (*PO2 Forastero*) as the poseur-buyer and Police Officer 2 Alfredo Andes (*PO2 Andes*) as his backup. After the briefing, the team prepared the pre-operation report and coordination form, and the buy-bust money to be used.[8]

On the early morning of October 4, 2010, the informant called and told the police operatives that appellant was at the Shell Gas Station in Barangay Alabang. Upon arrival at the gas station, the buy-bust team strategically positioned themselves. Shortly, appellant alighted from a tricycle and approached the team. The informant then introduced PO2 Forastero to appellant as the interested buyer of shabu for ₱500.00. After appellant signified his trust, PO2 Forastero gave him the ₱500.00 marked money. Appellant then took out of his pocket a transparent plastic sachet containing several smaller transparent plastic sachets each containing a crystalline substance. He handed one sachet to PO2 Forastero who subsequently touched his left ear to signal that the drug transaction had been consummated.[9]

PO2 Forastero immediately apprehended appellant and seized the transparent plastic sachet containing the small sachets and

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[6] *Id*. at 2.

[7] *Id*. at 22; *rollo*, p. 3.

[8] *Rollo*, pp. 6-7.

[9] *Id*. at 7.

the ₱500.00 bill from appellant. PO2 Andes assisted PO2 Forastero in arresting appellant and apprised the latter of his constitutional rights. PO2 Forastero then placed the marking "RR" on the sachet subject of the sale while the two (2) remaining transparent plastic sachets were marked as "RR-1" and "RR-2"; the open plastic sachet that contained the two sachets was marked as "RR-3."[10]

After marking the items, the buy-bust team brought appellant to the police station because the inventory report form was in their office. PO2 Forastero retained custody of the confiscated items. Upon arrival at the police station, the Receipt/Inventory of Property Seized[11] was prepared and barangay officials were called to witness the inventory of the items. However, only a local government employee named Ely Diang signed as witness on the inventory receipt, with PO2 Forastero and PO2 Andes signing the same. The buy-bust team then took photographs of the appellant and the confiscated items and prepared the Spot Report and Booking and Information Sheet.[12]

PO2 Forastero and PO2 Andes prepared the request for laboratory examination and the specimens, and submitted them to receiving officer Police Officer 3 Mildred Kamir Kayat (*PO3 Kayat*) at the Southern Police District Crime Laboratory. PO3 Kayat then turned over the seized items to Police Senior Inspector Anamelisa Bacani (*PSI Bacani*), who conducted a qualitative examination on the items. After the examination, PSI Bacani prepared Physical Science Report No. D-360-10S[13] stating that the item subject of the illegal sale weighing 0.070 gram, and the items subject of the illegal possession weighing 0.20 gram and 0.220 gram, all tested positive for methamphetamine hydrochloride or *shabu*, a dangerous drug. PSI Bacani then placed a security seal on the tested items, marked them, and

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[10] *Id.* at 7-8.

[11] Records, p. 15.

[12] *Rollo*, p. 8.

[13] Records, p. 9.

turned them over to the crime laboratory's evidence custodian, Police Officer 3 Aires Abian (*PO3 Abian*). PSI Bacani later withdrew the items from PO3 Abian to present them and her findings in court during the trial.[14]

Version of the Defense

Appellant denied the charges against him. He claimed that on October 2, 2010, while riding in a tricycle going home to Ilaya, Muntinlupa City, the tricycle driver told him that they would refuel at the Shell Station in Alabang. On the way, a white van cut their path. PO2 Forastero and two other men alighted from the van. PO2 Forastero pointed a gun at the tricycle driver, while the two men ordered appellant to alight from the tricycle. Appellant was handcuffed and his head was covered with a shirt. Thereafter, he was brought to and detained at the Criminal Investigation Division. It was only on October 4, 2010, that PO2 Forastero took his photograph and made him sign a document which content was unknown to him.[15]

The RTC Ruling

In its decision, the RTC found appellant guilty beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165 and sentenced him to suffer the penalty of life imprisonment and ordered him to pay a fine of ₱500,000.00. It likewise found him guilty of violating Section 11 of the same law, and sentenced him to suffer the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum; and ordered him to pay a fine of ₱300,000.00.[16]

The RTC held that the prosecution sufficiently established all the elements of Illegal Sale of Dangerous Drugs having proved that appellant sold one (1) plastic sachet of *shabu* during

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[14] *Rollo*, pp. 8-9.

[15] *Id*. at 9.

[16] CA *rollo*, p. 51.

the buy-bust operation to PO2 Forastero for ₱500.00. The RTC also ruled that the prosecution satisfactorily proved that appellant had in his possession two (2) plastic sachets of *shabu*. It gave weight to PO2 Forastero's testimony positively identifying appellant as the illegal seller and possessor of the confiscated drugs. The RTC declared that appellant was arrested in a valid buy-bust operation. It ruled that the police officers substantially complied with the rules on the chain of custody under Section 21 of R.A. No. 9165 despite the absence of the necessary witnesses to the inventory. Lastly, the RTC disregarded appellant's weak defense of denial for lack of merit.[17]

Aggrieved, appellant appealed to the CA.

The CA Ruling

In its decision, the CA affirmed appellant's conviction. It, however, modified the penalty for the illegal sale by declaring that appellant was not eligible for parole. The CA ruled that the prosecution established through testimonial, documentary, and object evidence that appellant sold one (1) sachet of shabu to PO2 Forastero during a buy-bust operation. It likewise found that appellant illegally possessed two (2) sachets of drugs.

The CA did not give credence to appellant's self-serving denial of the charges against him because it presumed that the police officers had performed their duty in a regular manner. Moreover, it declared that the police officers' noncompliance with Sec. 21 of R.A. No. 9165 was not fatal despite the absence of the representatives from the media, the Department of Justice (*DOJ*), and an elected public official as witnesses during the inventory. The CA ratiocinated that despite their absence, the integrity and evidentiary value of the seized items were properly preserved by the buy-bust team.[18]

Hence, this appeal.

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[17] *Id*. at 43-47.

[18] *Rollo*, pp. 14-23.

ISSUE

WHETHER THE CA CORRECTLY FOUND APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR THE CRIMES OF ILLEGAL SALE AND ILLEGAL POSSESSION OF PROHIBITED DRUGS UNDER R.A. NO. 9165.

On June 4, 2018, the Court issued a Resolution[19] notifying the parties that they could file their respective supplemental briefs, if they so desired, within thirty (30) days from notice. On August 13, 2018, the Office of the Solicitor General filed its manifestation in lieu of supplemental brief, adopting its arguments in its appellee's brief.[20] On August 3, 2018, appellant filed a manifestation in lieu of supplemental brief, stating that he would adopt his appellant's brief as his supplemental brief, in substantial compliance with the directives of the Court.[21]

THE COURT'S RULING

The Court finds the appeal meritorious.

It is a general principle of law that factual findings of the trial court are not disturbed on appeal unless the court *a quo* is perceived to have overlooked, misunderstood or misinterpreted certain facts or circumstances of weight, which, if properly considered, would have materially affected the outcome of the case.[22] In the case at bench, the Court finds that certain facts of substance have been overlooked, which if only addressed and appreciated, would have altered the outcome of the case.

In a successful prosecution of illegal sale of dangerous drugs, the following essential elements must concur: (1) that the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the

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[19] *Rollo*, pp. 32-33.

[20] *Id*. at 41-43.

[21] *Id*. at 36-38.

[22] *People v. Concepcion*, 691 Phil. 542, 548 (2012).

buyer and seller were identified.[23] On the other hand, under Section 11, Article II of R.A. No. 9165, the elements of the offense of illegal possession of dangerous drugs are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[24]

For both illegal sale and possession of dangerous drugs, it is essential that the prosecution establishes the identity of the seized dangerous drugs in a way that its integrity has been well preserved from the time of seizure or confiscation from the accused until the time of presentation as evidence in court.[25] This chain of custody requirement is necessary to ensure that doubts regarding the identity of the evidence are removed through the monitoring and tracking of the movements of the seized drugs from the accused, to the police, to the forensic chemist, and finally to the court.[26] While a perfect chain of custody is almost always impossible to achieve, an unbroken chain becomes indispensable and essential in the prosecution of drug cases owing to its susceptibility to alteration, tampering, contamination and even substitution and exchange.[27]

Chain of custody means the duly recorded, authorized movements, and custody of the seized drugs at each state, from the moment of confiscation to the receipt in the forensic laboratory for examination until it is presented to the court.[28] The procedure was encapsulated in Sec. 21(1) of R.A. No. 9165, which states:

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[23] *People v. De la Cruz*, 591 Phil. 259, 269 (2008).

[24] *People v. Lagata*, 452 Phil. 846, 853 (2003).

[25] *Reyes v. Court of Appeals*, 686 Phil. 137, 148 (2012).

[26] *People v. Garcia*, 599 Phil. 416, 434 (2009).

[27] *People v. Almorfe, et al.,* 631 Phil. 51, 61 (2010).

[28] Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002.

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

The procedural requirement was further expounded in the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 under Sec. 21 (a) as follows:

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 noncompliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

From the foregoing, the apprehending team is required to strictly comply with the procedure outlined in Section 21, Article II of the IRR of R.A. No. 9165. Their failure to do so shall not render void and invalid such seizure provided there is justifiable ground for non-compliance, and the integrity and evidentiary value of the confiscated items are properly preserved.[29]

In *People v. Dahil, et al.*,[30] the accused were acquitted because the integrity and evidentiary value of the seized drugs

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[29] *People v. Goco*, 797 Phil. 433, 443 (2016).

[30] 750 Phil. 212 (2015).

were compromised due to the lapses committed by the apprehending officers by not complying with the chain of custody rule. They failed to observe the proper conduct in the preservation of the *corpus delicti* from the marking of the drugs recovered until its presentation to the court. They also failed to comply with the procedural requirements set forth in Sec. 21 of R.A. No. 9165 because the physical inventory of the seized specimens was not immediately conducted after seizure and confiscation; the identity of the person who prepared the Inventory of Property Seized could not be ascertained; and the matter of how and where the seized specimens were photographed was questionable.

In the present case, a review of the records would show that the procedures laid down by R.A No. 9165 and its IRR were not followed, thereby putting doubt as to the integrity and evidentiary value of the illicit items allegedly seized from appellant.

The requirements of Sec. 21 of R.A. No. 9165 were not complied with

First, the inventory of the seized shabu was not immediately conducted after the seizure as it was only made in the police station. While it is true that Section 21 (a) allows the inventory to be made at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in this case, however, the arresting officer failed to provide a satisfactory explanation why the inventory was prepared at the police station. PO2 Forastero simply declared that they had to type on the inventory form at their office, thus:

PROS. ROMAQUIN, JR.:
> Now how come you prepared this [inventory in your office and not in the place where you arrested Roger Rodriguez?

PO2 Forastero:
> Because the file is in our computer and we have to type it in our office, sir.[31]

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[31] TSN, February 22, 2013, p. 19.

This flimsy excuse is not acceptable. The apprehending team should be prepared with their inventory forms even before the buy-bust operation took place.[32]

Second, the physical inventory of the seized *shabu* and the subsequent signing of the certificate of inventory, as required, were not attended by any representative of the media and the DOJ, or any elected official.

Appellant's argument that the police officers grossly disregarded the mandates of Sec. 21 of R.A. No. 9165 and committed serious irregularity when the physical inventory was conducted without the presence of the representatives enumerated under Sec. 21, is tenable.

As stated, Sec. 21 of R.A. No. 9165 mandates the apprehending team to immediately (1) conduct a physical inventory; and (2) to photograph the seized and confiscated items **in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the DOJ, and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.**

The records clearly show that the physical inventory of the seized illegal dangerous drugs was not witnessed by any representatives of the media and the DOJ or any elected public official who were supposed to sign the corresponding certificate of inventory. PO2 Forastero admitted on cross-examination that, indeed, there were no representatives from the media and the DOJ and no elected official was present during the seizure and the marking of the sachets of shabu, to wit:

Atty. Moldez:
May inventory, sino'ng gumawa ng inventory?

PO2 Forastero:
Kami po, ma'am.

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[32] *People v. Dahil, et al.*, *supra* note 30, at 229.

Q: Sinong kami?
A: Ako po, ma'am.

Q: May nakapirma, LGE Ely Diang. Isa ba siyang media representative?
A: Siya po ay ... (interrupted)

Q: Yes or no lang.
A: Hindi po.

Q: Isa ba siyang DOJ representative?
A: Hindi po, ma'am.

Q: Isa ba siyang local government elected official?
A: Hindi po, ma'am, representative po ng local government po.

Q: So hindi siya locally elected official, tama ba?
A: Yes, ma'am.[33]

x x x x x x x x x

Atty. Moldez:
So ibig sabihin ang inventory mo na ginawa ay hindi nagco-comply sa Section 21 ng Republic Act [No.] 9165 dahil ang kailangang mag-witness doon ay local government official, DOJ representative at media, tama ba?

PO2 Forastero:
Hindi po sila available nung time na iyun, ma'am, so nagpadala lang po sila ng representative.

Q: Yes or no lang, Mr. Witness.
A: Yes, ma'am.[34]

On direct examination, PO2 Forastero stated that the Receipt/Inventory of the Property Seized[35] was signed by Ely Diang (*Diang*), an employee of the local government unit, thus:

PROS. ROMAQUIN, JR.:
Now there is also a signature here under the heading Witnesses over the name LGE Ely Diang, please go over

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[33] TSN, September 26, 2014, p. 9.

[34] *Id*. at 10.

[35] *Supra* note 11.

the same and tell the Honorable Court whose signature was that?

PO2 Forastero:

It's the signature of an employee of the local government unit who's available and who is the only one who came.[36]

The signing of the Receipt/Inventory of the Property Seized by Diang could not be deemed sufficient compliance with the requirements of Sec. 21. The enumeration under the aforestated rule is exclusive. It specifically provides that the inventory and photograph of the confiscated and/or seized items should be made in the presence of the accused, or the person from whom such items were confiscated and or seized, or his/her representative or counsel, a representative from the media and the DOJ, and any elected public official. The presence of these personalities should not be taken lightly for the law precisely requires such insulating presence as to free the apprehension and incrimination proceedings of any taint of illegitimacy or irregularity, thus, preserve the integrity and credibility of the seizure and confiscation of evidence.[37] As pronounced by the Court in the case of *People v. Mendoza*:[38]

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 had tainted the buy-busts conducted under the regime of R.A. 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 evidenced 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.[39]

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[36] TSN, February 22, 2013, pp. 16-17.

[37] *People v. Mendoza*, 736 Phil. 749, 761-762 (2014).

[38] *Id.*

[39] *Id.* at 764.

The prosecution failed to give a justifiable ground for the noncompliance with Sec. 21 of R.A. No. 9165

To stress, the prosecution bears the burden of proving a valid cause for noncompliance with the procedure laid down in Section 21 of R.A. No. 9165.[40] Mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are not acceptable as justified grounds for noncompliance.[41] In *People v. Umipang*,[42] the Court held that the prosecution must show that earnest efforts were employed by the apprehending officers 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."[43]

In the case of *People v. Lim*,[44] the apprehending officers therein offered the following explanations for their failure to comply with the procedures laid down in Sec. 21: (1) that no members of the media and barangay official arrived at the crime scene because it was late at night and it was raining; (2) that the inventory was made in the PDEA office as it was late in the evening and there were no available media representative and barangay official despite their effort to contact them; and (3) that there were times when they hesitate to inform the barangay officials of their operation as they might leak the confidential information. The Court, however, considered all these justifications unacceptable as there was no genuine and sufficient attempt to comply with the law.

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[40] *People v. Sipin*. G.R. No. 224290, June 11, 2018.

[41] *People v. Ramos*, G.R. No. 233744, February 28, 2018.

[42] 686 Phil. 1024 (2012).

[43] *Id*. at 1053.

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

Similarly, the lone explanation given by PO2 Forastero for the absence of the required witnesses is unacceptable. Other than PO2 Forastero's testimony that the representatives required by law were not available at the time the inventory was conducted, no other detail was offered to clarify their absence. Such flimsy excuse does not suffice as compliance with Sec. 21 of R.A. No. 9165. Not only did the apprehending officers fail to explain why the representative from the media, the DOJ and the elected public official were not available. The prosecution also failed to show that the apprehending officers exerted earnest effort to secure their presence.

In conclusion, the prosecution patently failed to comply with the requirements of Sec. 21, R.A. No. 9165, because of the improper conduct of the physical inventory. Likewise, the saving clause of the said provision could not be applied because the prosecution failed to give a justifiable reason for its noncompliance. Given the procedural lapses, serious uncertainty hangs over the identity of the seized drugs that the prosecution presented as evidence before the court. In effect, the prosecution failed to fully prove the elements of the crimes charged, creating a reasonable doubt on the criminal liability of the accused. In view of all the foregoing, there is no recourse but to acquit appellant.

Finally, the Court reiterates the mandatory policy stated in *People v. Lim*[45] which needs to be enforced in order to weed out early from the courts' already congested docket any orchestrated or poorly built-up drug-related cases, to wit:

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.

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[45] *Id*.

3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.

4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court.[46]

WHEREFORE, the appeal is **GRANTED**. The Decision, dated October 27, 2017, of the Court of Appeals in CA-G.R. CR HC No. 07835 is hereby **REVERSED** and **SET ASIDE**. Accused-appellant **ROGER RODRIGUEZ *y* MARTINEZ alias "ROGER"** is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless there exist other grounds for his continued detention.

SO ORDERED.

Del Castillo[*] and *Jardeleza, JJ.*, concur.

Bersamin, C.J. and *Carandang*, *J.*, on official leave.

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[46] *Id.*

[*] Acting Chairperson per Special Order No. 2638 dated February 26, 2019.

THIRD DIVISION

[G.R. No. 238839. February 27, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANTHONY MABALO *y* BACANI,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; RAPE UNDER R.A. 7610 (ON CHILD PROSTITUTION AND OTHER SEXUAL ABUSE) DISTINGUISHED FROM SIMPLE RAPE UNDER ARTICLE 266-A, PAR. 1(A) OF THE REVISED PENAL CODE; SIMPLE RAPE UPHELD AS THE AGE OF THE VICTIM AT THE TIME OF RAPE WAS NOT ASCERTAINED BEYOND DOUBT. — In this case, the RTC found appellant guilty beyond reasonable doubt of the crime of Rape in relation to R.A. No. 7610. On appeal, the CA found him guilty of Simple Rape under Article 266-A, paragraph 1(a) of the Revised Penal Code, as amended by Republic Act No. 8353. This Court, in *People v. Joel Jaime*, expounded on the difference between simple rape under Art. 266- A, par. 1(a) of the RPC and that of the provisions of R.A. 7610, thus: Under Article 266-A, paragraph 1 of the Revised Penal Code, the crime of rape is committed when a man shall have carnal knowledge of a woman under any of the following circumstances: (a) through force, threat, or intimidation; (b) when the offended party is deprived of reason or otherwise unconscious; (c) by means of fraudulent machination or grave abuse of authority; and (d) when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances previously mentioned are present. It is penalized with *reclusion perpetua* as provided under Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353. x x x On the other hand, Section 5(b), Article III of Republic Act No. 7610 [on child prostitution and other sexual abuse], x x x [T]he essential elements are: (a) the accused commits the act of sexual intercourse or lascivious conduct; (b) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and, (c) the child whether male or female, is below 18 years of age. The imposable penalty is *reclusion temporal* in its medium period

to *reclusion perpetua*, except that the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period. x x x Although the Information alleged that AAA was 14 years old at the time of the incident, no ·proof was presented to attest the truth of such statement. x x x Without the Certificate of Live Birth and other means by which AAA's age as alleged in the Information could have been ascertained beyond doubt, this Court is constrained to agree with the CA and deem the crime committed as Simple Rape.

2. ID.; ID.; GUIDING PRINCIPLES. — In reviewing rape cases, We are guided by the following well-entrenched 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 it; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED. — The determination of the credibility of the offended party's testimony is a most basic consideration in every prosecution for rape, for the lone testimony of the victim, if credible, is sufficient to sustain the verdict of conviction. As in most rape cases, the ultimate issue in this case is credibility. In this regard, when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question as it heard the witnesses themselves and observed their deportment and manner of testifying during trial. The exceptions to the rule are when such evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied some facts or circumstance of weight and substance which could affect the result of the case. Here, AAA related her painful ordeal in a clear and unwavering manner, x x x In addition, such positive identification of the appellant as the one who raped her is corroborated by the result of the medico-legal examination conducted on her.

4. ID.; ID.; DENIAL AND ALIBI; WEAK DEFENSE THAT FAILS AS AGAINST THE POSITIVE IDENTIFICATION OF ACCUSED-APPELLANT AND THE STRAIGHTFORWARD TESTIMONY OF THE VICTIM. — Denial and alibi are viewed by this Court with disfavor, considering these are inherently weak defenses, especially in light of private complainant's positive and straightforward declarations identifying accused-appellant as the one who committed the bastardly act against her, as well as her straightforward and convincing testimony detailing the circumstances and events leading to the rape. Appellant offered nothing but denial and a flimsy excuse that he was at a certain place when the incident happened. x x x Again, it must be remembered that, when a woman says that she has been raped, she says, in effect, all that is necessary to show that she has indeed been raped. A victim of rape would not come out in the open if her motive were anything other than to obtain justice. Her testimony as to who abused her is credible where she has absolutely no motive to incriminate and testify against the accused.

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 Decision[1] dated January 26, 2018 of the Court of Appeals (*CA*) affirming the Judgment[2] dated September 5, 2016 of the Regional Trial Court (*RTC*), [redacted], Branch 9, City of [redacted] in Criminal Case No. 08-262219, which found Anthony Mabalo *y* Bacani guilty beyond reasonable

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[1] Penned by Associate Justice Romeo F. Barza (now Presiding Justice), with the concurrence of Associate Justices Mario V. Lopez and Victoria Isabel A. Paredes; *rollo*, pp. 2-15.

[2] Penned by Presiding Judge Jacqueline S. Martin-Balictar; CA *rollo*, pp. 56-62.

doubt of Simple Rape under Article 266-A, par. l(a) of the Revised Penal Code (*RPC*), as amended by Republic Act (*R.A.*) No. 8353.

The facts follow.

Private complainant, AAA[3] was allegedly 14 years old when the incident happened and lived with her family at a two-storey house located at [redacted], in the City of [redacted]. The house had three (3) rooms on the first floor which were occupied by AAA, her parents, appellant and his wife, and another boarder. AAA stayed in one of the two rooms on the second floor.

Around 12:30 a.m. of June 24, 2008, appellant arrived at the house and went to his room. Meanwhile, AAA was alone in the living room watching television. At that time, appellant's wife left the former two days earlier after they quarreled. At 2:30 a.m., AAA noticed appellant coming out of his room and was surprised when appellant suddenly approached her and held her right thigh with his left hand. Appellant proceeded to push AAA on the floor on a lying position and covered her mouth with his left hand, while using his right hand to pull down his pants and underwear. After appellant was able to expose his penis, he lifted his hips, opened her legs and inserted his manhood into her vagina. AAA felt pain in her abdomen, while appellant made two (2) pumping motions before he ejaculated. AAA attempted to struggle against appellant but her asthma

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[3] Pursuant to R.A. No. 7610, "An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, and for Other Purposes;" R.A. No. 9262, "An Act Defining Violence against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes;" Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence against Women and Their Children," effective November 15, 2004; and *People v. Cabalquinto*, 533 Phil. 703 (2006), the real name of the rape victim is withheld and, instead, fictitious initials are used to represent her. Also, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well as those of her immediate family or household members, is disclosed (*People v. CCC*, G.R. No. 220492, July 11, 2018).

made her weak. Thereafter, appellant explicitly told AAA not to tell anyone about what happened between them.

A few hours after the incident, AAA told her mother while she was visiting the latter's workplace about what happened between her and appellant. Afterwards, AAA and her mother went to the [redacted] Police Station and executed a sworn statement. AAA was then given a general physical examination and an anogenital examination at the Philippine General Hospital. The Final Medico-legal Report yielded the following findings: "*anogenital findings are diagnostic of blunt force or penetrating trauma.*"

On the same date, around 1:00 p.m., appellant was arrested.

Hence, an Information was filed against appellant for the crime of Rape, in relation to R.A. No. 7610 which reads as follows:

> That on or about June 24, 2008, in the City of [redacted], Philippines, the said accused, did then and there[,] willfully, unlawfully, and feloniously, by means of force, violence and intimidation have (sic) carnal knowledge with said AAA, a minor, 14 years old, to wit: by then and there touching her thigh, forcibly holding her hands with his left arm, covering her mouth using his left hand, using his right hand on (sic) removing her short (sic) and pant (sic), kissing her neck, inserting his penis to the vagina of said AAA, succeeding in having carnal knowledge with her, against her will and consent, thereby gravely endangering her normal growth and development and to the damage and prejudice of said AAA.
>
> Contrary to law.[4]

During his arraignment, appellant, without the assistance of a counsel and after manifesting his willingness and readiness to be arraigned, entered a plea of not guilty.

After pre-trial, the trial on the merits ensued.

The prosecution presented the testimonies of AAA, SPO1 Solomon Santos, SPO1 Napoleon Reyes, and Dr. Merle Tan.

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[4] Records, p. 1.

Appellant, on the other hand, denied raping AAA. In his testimony, he claimed that at 3:00 a.m. of June 24, 2008, he was along [redacted] selling breakfast meals, soap, bread, and coffee. According to him, while he was working, he was in the company of his relatives. He was shocked to learn that he was being accused of raping AAA and could not think of any reason why he was implicated in the said crime. He only learned of such accusation when he was invited to the *barangay* hall where he was confronted by AAA's mother.

On September 5, 2016, the RTC rendered its judgment finding appellant guilty beyond reasonable doubt of the crime charged against him. The dispositive portion of the RTC's decision reads, as follows:

> WHEREFORE, accused ANTHONY MABALO y BACANI is hereby found GUILTY beyond reasonable doubt of RAPE under Article 266-A paragraph l(a) of the Revised Penal Code. in relation to Republic Act No. 7610. He is sentenced to suffer the penalty of RECLUSION PERPETUA, and is ORDERED to pay the victim (₱75,000.00) as civil indemnity, (₱75,000.00) as moral damages, and ₱75,000.00 as exemplary damages, plus interest of 6% per annum on the amount of damages, reckoned from the finality of this decision until full payment.
>
> SO ORDERED.[5]

Appellant elevated the case to the CA, and on January 26, 2018, the appellate court dismissed appellant's appeal and found appellant guilty beyond reasonable doubt of the crime of Simple Rape, in a decision which has the following as its dispositive portion:

> WHEREFORE, based on the foregoing, the Judgment dated 5 September 2016 of the Regional Trial Court, [redacted], in Crim. Case No. 08-262219 is hereby AFFIRMED *in toto*.
>
> SO ORDERED.[6]

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

[6] *Id*. at 106.

The CA ruled that, even though the prosecution failed to prove that AAA was a minor at the time the incident took place, appellant may still be convicted of simple rape as all the elements of the said crime have been proven beyond reasonable doubt.

Thus, appellant comes to this Court for the resolution of his appeal.

According to appellant, the trial court erred in relying on AAA's testimony because it is not credible. Appellant also argues that he did not employ force, intimidation or violence upon AAA. Another contention raised by appellant is that the sexual organ of AAA was found negative for spermatozoa. Lastly, appellant claims that the prosecution failed to establish AAA's minority.

The appeal has no merit.

In this case, the RTC found appellant guilty beyond reasonable doubt of the crime of Rape in relation to R.A. No. 7610. On appeal, the CA found him guilty of Simple Rape under Article 266-A, paragraph 1(a) of the Revised Penal Code, as amended by Republic Act No. 8353. This Court, in *People v. Joel Jaime*,[7] expounded on the difference between simple rape under Art. 266- A, par. 1(a) of the RPC and that of the provisions of R.A. 7610, thus:

> Under Article 266-A, paragraph 1 of the Revised Penal Code, the crime of rape is committed when a man shall have carnal knowledge of a woman under any of the following circumstances: (a) through force, threat, or intimidation; (b) when the offended party is deprived of reason or otherwise unconscious; (c) by means of fraudulent machination or grave abuse of authority; and (d) when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances previously mentioned are present. It is penalized with *reclusion perpetua* as provided under Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353.

On the other hand, Section 5(b), Article III of Republic Act No. 7610 provides:

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[7] G.R. No. 225332, July 23, 2018.

> 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.
>
> x x x x x x x x x
>
> (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period; and
>
> x x x x x x x x x

The essential elements of Section 5(b) are: (a) the accused commits the act of sexual intercourse or lascivious conduct; (b) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and, (c) the child whether male or female, is below 18 years of age.[10] The imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*, except that the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period.

In *People v. Abay*,[8] the RTC found the accused "guilty beyond reasonable doubt of committing the crime of rape under Article 335 of the Revised Penal Code in relation to Section 5, Article III of R.A. No. 7610" and imposed upon him the death penalty; although, on appeal, the CA found the accused guilty only of simple rape and reduced the penalty imposed to reclusion perpetua. The Court instructs that if the victim is 12 years or older, the offender should be charged with either sexual abuse under Section 5(b) of R.A. No. 7610, or rape under Article 266-A (except paragraph l(d)) of the Revised Penal Code; but, he cannot be accused of both crimes.

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[8] 599 Phil. 390, 394-396 (2009).

Otherwise, his right against double jeopardy will be prejudiced. Neither can these two (2) crimes be complexed. The Court's disquisition in the Abay case reads:

> Under Section 5(b), Article III of RA 7610 in relation to RA 8353, if the victim of sexual abuse is below 12 years of age, the offender should not be prosecuted for sexual abuse but for statutory rape under Article 266-A(l)(d) of the revised Penal Code and penalized with *reclusion perpetua*. On the other hand, if the victim is 12 years or older, the offender should be charged with either sexual abuse under Section 5(b) of RA 7610 or rape under Article 266-A (except paragraph 1[d]) of the Revised Penal Code. However, the offender cannot be accused of both crimes for the same act because his right against double jeopardy will be prejudiced. A person cannot be subjected twice to criminal liability for a single criminal act. Likewise, rape cannot be complexed with a violation of Section 5(b) of RA 7610. Under Section 48 of the Revised Penal Code (on complex crimes), a felony under the Revised Penal Code (such as rape) cannot be complexed with an offense by a special law.

Although the Information alleged that AAA was 14 years old at the time of the incident, no proof was presented to attest the truth of such statement. In *People v. Pruna*,[9] this Court laid down the guidelines in determining the age of the victim:

> 1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
>
> 2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.
>
> 3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the

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[9] 439 Phil. 440, 470-471 (2002), cited in *People v. Ausa*, 792 Phil. 437, 444-445 (2016).

offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

> a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
>
> b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;
>
> c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

6. The trial court should always make a categorical finding as to the age of the victim.

Without the Certificate of Live Birth and other means by which AAA's age as alleged in the Information could have been ascertained beyond doubt, this Court is constrained to agree with the CA and deem the crime committed as Simple Rape.

In reviewing rape cases, We are guided by the following well-entrenched 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 it; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and

cannot be allowed to draw strength from the weakness of the evidence for the defense.[10]

The determination of the credibility of the offended party's testimony is a most basic consideration in every prosecution for rape, for the lone testimony of the victim, if credible, is sufficient to sustain the verdict of conviction.[11] As in most rape cases, the ultimate issue in this case is credibility. In this regard, when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question as it heard the witnesses themselves and observed their deportment and manner of testifying during trial.[12] The exceptions to the rule are when such evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied some facts or circumstance of weight and substance which could affect the result of the case.[13] Here, AAA related her painful ordeal in a clear and unwavering manner, thus:

FISCAL MAGAYANES
Q You said you were rape[d]. How were you rape[d]?
A He held my right thigh using his left hand and then push[ed] me to [lie] on the floor, he covered my mouth with his left hand, Ma'am.

Q And then when covering your mouth[,] what happened to the other palm of the accused?
A He uses his right hand to pull down my pants, Ma'am.

Q By the way, what [were] you wearing at the time?
A Jogging pants and sleeveless shirt, Ma'am.

Q [Were] you wearing a panty?
A Yes, Ma'am.

x x x x x x x x x

[10] *People v. Padilla*, 617 Phil. 170, 182-183 (2009); *People v. Ramos*, 577 Phil. 297, 304 (2008).

[11] *People v. Peralta*, 619 Phil. 268, 273 (2009).

[12] *Remiendo v. People*, 618 Phil. 273, 287 (2009).

[13] *People v. Panganiban*, 412 Phil. 98, 107 (2001).

Q After pulling down your panty[,] what else happened?
A He unzipped his short pants and brought out his penis, Ma'am.

Q Which part of his arm did he [use] to bring out his penis?
A His right hand, Ma'am.

Q After that[,] when the accused brought out his penis[,] what else happened?
A He lifted his hips, open[ed] my legs and inserted his penis, Ma'am.

Q Where did he [insert] his penis?
A On my private part, Ma'am.

Q How did you know that his penis was already inserted in your private part?
A There was as if something was broken and my abdomen hurts, Ma'am.

Q When he inserted his penis into your private part, did the accused do any motion?
A Yes, Ma'am.

Q How can you [describe] that motion?
A There was a pumping motion, Ma'am.

Q Do you recall how many times did he make the pumping motion?
A Two (2) times, Ma'am.

Q After that pumping motion[,] what else happened?
A I felt something [come] off from him, Ma'am.

Q Was this something that came off from him some sort of a liquid?
A Yes, Ma'am.

x x x x x x x x x

Q After you felt that there [was] liquid coming from the accused, what else happened?
A Before he stood up, he still [covered] my mouth [with] his hand and put back his penis inside [his] short[s], Ma'am.

Q Did he not [utter] any word while raping you?
A No, Ma'am.

Q After he zipped his short pants[,] what happened to you?
A I pulled up my panty and jogging pants and the accused went inside his room.

Q Did he not say anything?
A He told me not to tell anybody, Ma'am.[14]

In addition, such positive identification of the appellant as the one who raped her is corroborated by the result of the medico-legal examination conducted on her. As aptly ruled by the CA:

> Whereas a single and consistent testimony of the victim would suffice to sustain a conviction, it is worthy to note that the prosecution was able to further buttress the testimony of AAA by presenting the testimony of both officers, SPO1 Santos and SPO1 Reyes, who both attested to the arrest of Accused-Appellant. Of similar import is the presentation of Dr. Tan's medico-legal report which appear to affirm AAA's version of the story. Such findings reveal the impression that is "diagnostic of blunt force or penetrating trauma," which, according to Dr. Tan, are bruises that may be caused by hard or blunt objects, such as a penis. While it is a shopworn rule that medical finding is not an element of rape and cannot establish the one responsible for the same, jurisprudence dictates that it is corroborative of the testimony of the rape victim that she has been raped.[15]

Appellant reiterates his defense of denial and alibi. Denial and alibi are viewed by this Court with disfavor,[16] considering these are inherently weak defenses,[17] especially in light of private complainant's positive and straightforward declarations identifying accused-appellant[18] as the one who committed the bastardly act against her, as well as her straightforward and convincing testimony detailing the circumstances and events leading to

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[14] TSN, August 24, 2010, pp. 7-12.

[15] *Rollo*, p. 12. (Citations omitted)

[16] *People v. Malana*, 646 Phil. 290, 308 (2010), citing *People v. Peralta, supra* note 11, at 274.

[17] *People v. Estrada*, 624 Phil. 211, 217 (2010).

[18] *People v. Paculba*, 628 Phil. 662, 672-673 (2010); *People v. Achas*, 612 Phil. 652, 666 (2009).

the rape.[19] Appellant offered nothing but denial and a flimsy excuse that he was at a certain place when the incident happened. As correctly observed by the CA:

> Aside from the fact that he miserably failed to present the testimony of any of his relatives who he claims to be with him at the time of the incident and could attest to his whereabouts, Accused-Appellant was unable to prove that it was physically impossible for him to be at the place of the crime or at its immediate vicinity; militating against his defense. Accused-Appellant himself testified that [redacted], where he claims to have been, and the residence of AAA, is but a mere walking distance away. Consequently, Accused-Appellant cannot insist that his denial should not have been completely disregarded due to the blatant lack of substantiating evidence, other than his own concocted story.[20]

Again, it must be remembered that, when a woman says that she has been raped, she says, in effect, all that is necessary to show that she has indeed been raped.[21] A victim of rape would not come out in the open if her motive were anything other than to obtain justice. Her testimony as to who abused her is credible where she has absolutely no motive to incriminate and testify against the accused.[22]

WHEREFORE, the appeal of Anthony Mabalo y Bacani is **DISMISSED** for lack of merit. Consequently, the Decision dated January 26, 2018 of the Court of Appeals, finding the same appellant guilty beyond reasonable doubt of Simple Rape under Article 266-A, par. l(a) of the Revised Penal Code, as amended by Republic Act No. 8353, is **AFFIRMED**.

SO ORDERED.

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

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[19] *Id.*

[20] *Rollo*, p. 13. (Citation omitted)

[21] *People v. Paculba, supra* note 18, at 676.

[22] *People v. Ugos*, 586 Phil. 765, 774 (2008); *People v. Miñon*, 477 Phil. 790, 804-805 (2004).

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

SECOND DIVISION

[G.R. No. 201021. March 4, 2019]

PILLARS PROPERTY CORPORATION, *petitioner, vs.* **CENTURY COMMUNITIES CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; AN ORDER DISMISSING AN ACTION WITHOUT PREJUDICE IS NOT SUBJECT TO APPEAL BUT IS REVIEWABLE BY A RULE 65 *CERTIORARI* PETITION; CASE AT BAR.— Rule 41 provides the rules regarding appeal from the Regional Trial Courts. Section 1 of Rule 41 provides what judgments or orders are subject of appeal and those where no appeal may be taken from, x x x An order dismissing an action without prejudice is, thus, not subject to appeal but is reviewable by a Rule 65 *certiorari* petition. In *Development Bank of the Philippines v. Carpio*, the Court made these pronouncements on the nature of an order of dismissal based on improper venue and the mode of its review: In this case, there was no trial on the merits as the case was dismissed due to improper venue and respondents could not have appealed the order of dismissal as the same was a dismissal, ***without prejudice***. Section 1(h), Rule 41 of the Rules of Civil Procedure states that no appeal may be taken from an order dismissing an action without prejudice. Indeed, there is no residual jurisdiction to speak of where no appeal has even been filed. x x x In *United Alloy Philippines Corp. v. United Coconut Planters Bank*, the Court emphasized that the dismissal of the complaint based on the grounds of improper venue, forum-shopping and for being a harassment suit, which do not fall under paragraphs (f), (h) or (i) of Section 1, Rule 16, is a dismissal without prejudice; and the remedy available to the plaintiff is a Rule 65 petition inasmuch as only dismissals based on the grounds under paragraphs (f), (h) or (i) of Section 1, Rule 16 are subject to appeal, the re-filing of the same action or claim being barred, pursuant to Section 5, Rule 16. Indeed, appeal is not available

as a remedy to question either the grant or denial of a motion to dismiss based on improper venue. If the motion is denied, the order of denial is interlocutory since it does not completely dispose of the case and is not appealable under Section 1(b), Rule 41 of the Rules. If the motion is granted, the order of dismissal is one without prejudice since the complaint can be re-filed and is not appealable under Section 1(g) of Rule 41. Consequently, PPC availed of the correct remedy of *certiorari* under Rule 65 of the Rules.

2. ID.; VENUE OF PERSONAL ACTIONS; THE GENERAL RULE ON VENUE WHICH IS THE PLACE OF RESIDENCE OF PLAINTIFF OR DEFENDANT AT THE ELECTION OF THE PLAINTIFF; EXCEPTION; APPLICATION IN CASE AT BAR.— Section 2, Rule 4 of the Rules sets forth the general rule regarding the venue of personal actions: x x x The exceptions are provided in Section 4, Rule 4, *viz*.: x x x To recall, the RTC applied Section 4(b) of Rule 4 on exclusive venue since the Contract of PPC and CCC provides "**that in case of litigation, the parties hereby agree that the venue of said action as the Proper Court of Makati to the exclusion of others**," and not the general rule on venue which is the place of residence of plaintiff or defendant at the election of plaintiff under Section 2 of Rule 4. x x x Even on the assumption that the RTC erred in its determination of the proper venue in this case, the Court is not persuaded that the RTC manifestly disregarded the basic rules and procedures or acted with obstinate disregard of basic and established rule of law or procedure. If at all, the error of the RTC, assuming there was any, was a mere error of judgment which did not constitute grave abuse of discretion. Given the stipulation on venue in the Contract, where exclusivity is provided, the RTC had enough legal basis to apply Section 4(b), Rule 4 and not Section 2, Rule 4.

APPEARANCES OF COUNSEL

Gabriel A. Silvera for petitioner.
Eduvane Uy & Cruz Law Offices for respondent.

D E C I S I O N

CAGUIOA, *J.*:

This is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court (Rules) assailing the Resolution[2] dated December 15, 2011 (2011 Resolution) and Resolution[3] dated March 13, 2012 (2012 Resolution) of the Court of Appeals[4] (CA) in CA-G.R. SP No. 122276. The 2011 Resolution dismissed the Rule 65 *certiorari* petition filed by petitioner Pillars Property Corporation (PPC) while the 2012 Resolution denied the motion for reconsideration filed by petitioner PPC.

Facts and Antecedent Proceedings

The Petition alleges that on December 1, 2009, PPC filed a Complaint[5] for sum of money against respondent Century Communities Corporation (CCC) in the amount of ₱6.7 million for unpaid progress billings in connection with a construction contract where PPC agreed to deliver 210 housing units at "Canyon Ranch" in Cavite, among others to CCC at an agreed total consideration of ₱77.5 million.[6] The case was docketed as Civil Case No. 09-0450 and assigned to the Regional Trial Court, Branch 257 of Parañaque City (RTC).[7]

PPC also sued People's General Insurance Corporation (PGIC), which issued the bonds in favor of CCC to guarantee the performance of PPC's obligations, to exculpate PPC from any liability under the bonds since PPC intended to prove that

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[1] *Rollo,* pp. 7-30, excluding Annexes.

[2] *Id.* at 31-32. Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Mario V. Lopez and Socorro B. Inting concurring.

[3] *Id*. at 33.

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

[5] *Rollo,* pp. 67-72.

[6] *Id*. at 9.

[7] *Id*. at 9, 77.

it was not at fault in the performance of its obligations under the construction contract.[8]

CCC filed a Motion to Dismiss[9] dated December 17, 2009, averring that paragraph 6 of the "CONTRACT (Construction of Typical Housing Units)"[10] (Contract) under the title SPECIAL PROVISIONS states:

> **6. Venue of Action**. In case of litigation, the Parties hereby agree that the venue of each action as the Proper Court of Makati to the exclusion of others.[11]

CCC moved for the dismissal of the Complaint on the ground that the venue was improperly laid pursuant to Section 1 (c), Rule 16 of the Rules because the filing of the instant case before the court of Parañaque City was in contravention of the express and exclusive agreement of the parties that in case of litigation, the case should be filed in the court of Makati to the exclusion of other courts.[12]

PPC filed an Opposition to Motion to Dismiss[13] dated March 1, 2010, arguing that the inclusion of PGIC as co-defendant of CCC took away the case from the jurisdiction of Makati courts because the general rule on venue (Section 2, Rule 4 of the Rules) should then apply, PGIC not being a party to the Contract.[14]

PGIC filed its Answer (With Special and Affirmative Defenses And Counter-claim)[15] dated February 8, 2010. PGIC alleged therein that PPC had no cause of action and failed to state a

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[8] *Id*. at 9-10.

[9] *Id*. at 77-81.

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

[11] *Id*. at 76, 77-78.

[12] *Id*. at 79-80.

[13] *Id*. at 82-87.

[14] *Id*. at 83.

[15] *Id*. at 88-96.

cause of action against PGIC.[16] PGIC alleged that PPC would only be released from liability under all the bonds that were issued by PGIC in favor of CCC if PPC could prove that CCC was in default of its obligations under the Contract between PPC and CCC, and that PPC duly performed its terms and conditions.[17] PGIC also alleged that PPC executed in favor of PGIC indemnity agreements to answer whatever liability that PGIC might have under the performance bonds it issued such that if there would be a claim by CCC under the bonds, then PPC would be liable to PGIC under the indemnity agreements for all payments, damages, costs, losses, penalties, charges and expenses which the RTC might adjudge in favor of CCC against PGIC.[18] Further, PGIC alleged that under the principle of subrogation, PPC was obliged to reimburse PGIC whatever amount or liability that might be incurred by the latter or adjudged against it in favor of CCC.[19]

After CCC filed a Comment (To the Opposition to Motion to Dismiss)[20] dated March 4, 2010 and PPC filed a Reply To Century's Comment (On Plaintiffs Opposition to Motion to Dismiss)[21] dated April 1, 2010, the RTC issued its Order[22] dated March 9, 2011, granting the Motion to Dismiss filed by CCC.[23] The RTC reasoned that:

> Since the Contract (Construction of Typical Housing units) of plaintiff [PPC] and defendant [CCC] provides "**that in case of litigation, the parties hereby agree that the venue of said action as the Proper Court of Makati to the exclusion of others**[,"] Sec. 4, Rule 4 on exclusive venue is applicable, not the general rule on venue which is the place

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[16] *Id*. at 89.

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

[18] *Id*. at 90-91.

[19] *Id*. at 91-92.

[20] *Id*. at 293-297.

[21] *Id*. at 298-308.

[22] *Id*. at 309. Penned by Judge Rolando G. How.

[23] *Id*.

of residence of plaintiff or defendant at the election of plaintiff under Sec. 2, Rule 4.[24]

The dispositive portion of the RTC Order states:

WHEREFORE, the Motion to Dismiss filed by defendant [CCC] is her[e]by granted and the instant case is dismissed for improper venue.

IT IS SO ORDERED.[25]

PPC filed a Motion for Reconsideration[26] dated April 29, 2011, which was opposed by CCC in its Comment/Opposition[27] dated June 6, 2011. The RTC denied the Motion for Reconsideration in its Order[28] dated August 22, 2011.

PPC then filed before the CA a Petition for *Certiorari*[29] dated November 29, 2011 under Rule 65 of the Rules seeking the setting aside of the Orders dated March 9, 2011 and August 22, 2011 of the RTC for having been issued with grave abuse of discretion amounting to lack and/or excess of jurisdiction and there being no appeal, or any other plain, speedy and adequate remedy in the ordinary course of law.[30]

The CA in its 2011 Resolution dismissed PPC's petition outright.[31] The CA reasoned that PPC availed of the wrong remedy since it is the settled rule that an order of dismissal, whether correct or not, is a final order and the remedy of the plaintiff is to appeal the order.[32]

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[24] *Id*.

[25] *Id*.

[26] *Id*. at 97-104.

[27] *Id*. at 318-325.

[28] *Id*. at 105. Penned by Judge Rolando G. How.

[29] *Id*. at 34-55.

[30] *Id*. at 34-35.

[31] *Id*. at 32.

[32] *Id*. at 31.

PPC sought the reconsideration of the 2011 Resolution of the CA but its motion was denied in the 2012 Resolution.[33]

Not satisfied, PPC filed the instant Petition. CCC filed an Opposition (To the Petition for Review dated 26 April 2012)[34] dated March 18, 2013. A Reply to Opposition[35] dated August 18, 2014 was then filed by PPC. Subsequently, CCC filed its Memorandum[36] dated September 29, 2016 and PPC filed its Memorandum[37] dated March 23, 2018.

Issue

The Petition raises the sole issue of whether the CA erred in concluding that the remedy availed of by PPC is erroneous.

The Court's Ruling

The Petition is partly meritorious.

The Court agrees with PPC that the CA was not correct when it dismissed outright PPC's Rule 65 *certiorari* petition to question the grant by the RTC of CCC's Motion to Dismiss and its dismissal of PPC's Complaint. PPC availed of the correct remedy.

Rule 41 provides the rules regarding appeal from the Regional Trial Courts. Section 1 of Rule 41 provides what judgments or orders are subject of appeal and those where no appeal may be taken from, *viz*.:

SECTION 1. *Subject of appeal*. – An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

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[33] *Id*. at 33.

[34] *Id*. at 195-216.

[35] *Id*. at 221-228.

[36] *Id*. at 249-271, excluding Annexes.

[37] *Id*. at 455-468.

(a) An order denying a petition for relief or any similar motion seeking relief from judgment;

(b) An interlocutory order;

(c) An order disallowing or dismissing an appeal;

(d) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;

(e) An order of execution;

(f) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and

(g) **An order dismissing an action without prejudice.**

In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65. (*As amended by A.M. No. 07-7-12-SC, December 1, 2007*)[38] (Emphasis supplied)

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[38] The counterpart provision in the 1997 Revised Rules of Court had 8 items in the enumeration of what judgments or orders were unappealable, *viz.*:

SECTION 1. *Subject of appeal*. – An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

(a) **An order denying a motion for new trial or reconsideration**;

(b) An order denying a petition for relief or any similar motion seeking relief from judgment;

(c) An interlocutory order;

(d) An order disallowing or dismissing an appeal;

(e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;

(f) An order of execution;

(g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and

(h) An order dismissing an action without prejudice.

An order dismissing an action without prejudice is, thus, not subject to appeal but is reviewable by a Rule 65 *certiorari* petition.

In *Development Bank of the Philippines v. Carpio*,[39] the Court made these pronouncements on the nature of an order of dismissal based on improper venue and the mode of its review:

> In this case, there was no trial on the merits as the case was dismissed due to improper venue and respondents could not have appealed the order of dismissal as the same was a dismissal, ***without prejudice***. Section 1(h), Rule 41 of the Rules of Civil Procedure states that no appeal may be taken from an order dismissing an action without prejudice. Indeed, there is no residual jurisdiction to speak of where no appeal has even been filed.[40]

In *Strongworld Construction Corporation, et al. v. Hon. Perello, et al.*,[41] the Court elucidated on the difference between a dismissal with prejudice and one without prejudice:

> We distinguish a dismissal *with* prejudice from a dismissal *without* prejudice. The former disallows and bars the refiling of the complaint; whereas, the same cannot be said of a dismissal without prejudice. Likewise, where the law permits, a dismissal with prejudice is subject to the right of appeal.
>
> x x x x x x x x x
>
> Section 1, Rule 16 of the [Rules] enumerates the grounds for which a motion to dismiss may be filed, *viz.*:
>
> Section 1. Grounds. Within the time for but before filling the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:
>
> (a) That the court has no jurisdiction over the person of the defending party;

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65. (n) (Emphasis supplied)

[39] 805 Phil. 99 (2017).

[40] *Id*. at 109, citing *Fernandez v. Court of Appeals*, 497 Phil. 748, 759 (2005).

[41] 528 Phil. 1080 (2006).

(b) That the court has no jurisdiction over the subject matter of the claim;

(c) That venue is improperly laid;

(d) That the plaintiff has no legal capacity to sue;

(e) That there is another action pending between the same parties for the same cause;

(f) That the cause of action is barred by a prior judgment or by the statute of limitations;

(g) That the pleading asserting the claim states no cause of action;

(h) That the claim or demand set forth; in the plaintiff[']s pleading has been paid, waived, abandoned, or otherwise extinguished;

(i) That the claim on which the action is founded is unenforceable under the provisions of the statute of frauds; and

(j) That a condition precedent for filing the claim has not been complied with.

Section 5 of the same Rule, recites the effect of a dismissal under Sections 1(f), (h), and (i), thereof, thus:

SEC. 5. *Effect of dismissal*. Subject to the right of appeal, an order granting a motion to dismiss based on paragraphs (f), (h), and (i) of Section 1 hereof shall bar the refiling of the same action or claim.

Briefly stated, dismissals that are based on the following grounds, to wit: (1) that the cause of action is barred by a prior judgment or by the statute of limitations; (2) that the claim or demand set forth in the plaintiff[']s pleading has been paid, waived, abandoned or otherwise extinguished; and (3) that the claim on which the action is founded is unenforceable under the provisions of the statute of frauds, bar the refiling of the same action or claim. Logically, the nature of the dismissal founded on any of the preceding grounds is with prejudice because the dismissal prevents the refiling of the same action or claim. Ergo, dismissals based on the rest of the grounds

> enumerated are without prejudice because they do not preclude the refiling of the same action.
>
> x x x x x x x x x
>
> As has been earlier quoted, Section 1(h), Rule 41 of the 1997 Revised Rules of Civil Procedure mandates that no appeal may be taken from an order dismissing an action without prejudice. The same section provides that in such an instan[ce] where the final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.[42]

Here, the RTC dismissed the replevin case on the ground of improper venue. Such dismissal is one *without prejudice* and does not bar the refiling of the same action; hence, it is not appealable. Clearly, the RTC did not reach, and could not have reached, the residual jurisdiction stage as the case was dismissed due to improper venue, and such order of dismissal could not be the subject of an appeal. Without the perfection of an appeal, let alone the unavailability of the remedy of appeal, the RTC did not acquire residual jurisdiction. Hence, it is erroneous to conclude that the RTC may rule on DBP's application for damages pursuant to its residual powers.[43]

In *United Alloy Philippines Corp. v. United Coconut Planters Bank*,[44] the Court emphasized that the dismissal of the complaint based on the grounds of improper venue, forum-shopping and for being a harassment suit, which do not fall under paragraphs (f), (h) or (i) of Section 1, Rule 16, is a dismissal without prejudice; and the remedy available to the plaintiff is a Rule 65 petition inasmuch as only dismissals based on the grounds under paragraphs (f), (h) or (i) of Section 1, Rule 16 are subject to appeal, the re-filing of the same action or claim being barred, pursuant to Section 5, Rule 16.

Indeed, appeal is not available as a remedy to question either the grant or denial of a motion to dismiss based on improper

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[42] *Id*. at 109-111, citing *Strongworld Construction Corporation, et al. v. Hon. Perello, et al*., *id*. at 1093 1097.

[43] *Id*. at 111.

[44] 773 Phil. 242, 254-255 (2015).

venue. If the motion is denied, the order of denial is interlocutory since it does not completely dispose of the case and is not appealable under Section 1(b), Rule 41 of the Rules.[45] If the motion is granted, the order of dismissal is one without prejudice since the complaint can be re-filed and is not appealable under Section 1(g) of Rule 41.[46]

Consequently, PPC availed of the correct remedy of *certiorari* under Rule 65 of the Rules.

Nonetheless, PPC's Petition must fail because it has not convinced the Court that the RTC acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing its Complaint for improper venue.

To recall, the grounds relied upon by PPC in its Petition for *Certiorari*[47] dated November 29, 2011 which it filed before the CA were:

I. PUBLIC RESPONDENT GRAVELY ABUSED HIS DISCRETION, AMOUNTING TO LACK OF AND/OR EXCESS IN JURISDICTION, IN FAILING TO CONSIDER THAT THE AGREED VENUE OF ACTION APPLIED ONLY TO [PPC] AND [CCC];

II. PUBLIC RESPONDENT GRAVELY ABUSED HIS DISCRETION, AMOUNTING TO LACK OF AND/OR EXCESS IN JURISDICTION, IN FAILING TO CONSIDER THAT [PGIC] IS AN INDISPENSABLE PARTY IN THE CASE AND THAT [PPC] HAD SEPARATE AND INDEPENDENT CAUSES OF ACTION AGAINST IT; and

III. EVEN ASSUMING THAT VENUE WAS IMPROPERLY LAID AS FAR AS [CCC] IS CONCERNED, THE CASE SHOULD NOT HAVE BEEN DISMISSED AS AGAINST [PGIC].[48]

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[45] Willard B. Riano, *CIVIL PROCEDURE (THE BAR LECTURE SERIES*), Vol. I (2011 ed.), p. 577.

[46] *Id*. at 578.

[47] *Rollo,* pp. 34-55.

[48] *Id*. at 39-40.

In essence, PPC was arguing that the stipulation on venue in case of an action in the Contract did not apply in this case because the inclusion of PGIC, a non-party thereto, made the general rule on venue applicable.[49] Since the RTC applied the exclusive venue rule, PPC took the position that the RTC acted with grave abuse of discretion amounting to lack and/or excess of jurisdiction.

Section 2, Rule 4 of the Rules sets forth the general rule regarding the venue of personal actions:

> SEC. 2. *Venue of personal actions*. — All other actions may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff. (2[b]a)

The exceptions are provided in Section 4, Rule 4, *viz.*:

> SEC. 4. *When Rule not applicable*. – This Rule shall not apply –
>
> (a) In those cases where a specific rule or law provides otherwise; or
>
> (b) Where the parties have validly agreed in writing before the filing of the action on the exclusive venue thereof. (3a, 5a)

To recall, the RTC applied Section 4(b) of Rule 4 on exclusive venue since the Contract of PPC and CCC provides "**that in case of litigation, the parties hereby agree that the venue of said action as the Proper Court of Makati to the exclusion of others**," and not the general rule on venue which is the place of residence of plaintiff or defendant at the election of plaintiff under Section 2 of Rule 4.[50]

In order to determine whether the RTC's application of Section 4(b) instead of Section 2 of Rule 4 constitutes grave abuse of discretion to warrant the availing of a Rule 65 *certiorari* petition

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[49] *Id*. at 41.

[50] *Id*. at 309.

to nullify it, *Sps. Crisologo v. JEWM Agro-Industrial Corporation*[51] is instructive, *viz.*:

> The trial court should have exercised prudence in denying Spouses Crisologo's pleas to be recognized as indispensable parties [in the case for cancellation of lien]. In the words of the Court, "Judge Omelio should be penalized for failing to recognize Sps. Crisologo as indispensable parties and for requiring them to file a motion to intervene, considering that a simple perusal of the certificates of title would show Sps. Crisologo's adverse rights because their liens are annotated at the back of the titles."[52]

This manifest disregard of the basic rules and procedures constitutes a grave abuse of discretion.

In *State Prosecutors II Comilang and Lagman v. Judge Medel Belen*,[53] the Court held as inexcusable abuse of authority the trial judge's "obstinate disregard of basic and established rule of law or procedure." Such level of ignorance is not a mere error of judgment. It amounts to "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,"[54] or in essence, grave abuse of discretion amounting to lack of jurisdiction.

Needless to say, judges are expected to exhibit more than just a cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in good faith as judicial competence requires no less.[55]

Even on the assumption that the RTC erred in its determination of the proper venue in this case, the Court is not persuaded that the RTC manifestly disregarded the basic rules and

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[51] 728 Phil. 315 (2014).

[52] *Id.* at 327-328, citing *Sps. Crisologo v. Omelio*, 696 Phil. 30, 59 (2012).

[53] 689 Phil. 134, 147 (2012).

[54] *Sps. Crisologo v. JEWM Agro-Industrial Corporation*, *supra* note 51, at 328, citing *Nationwide Security and Allied Services, Inc. v. Court of Appeals*, 580 Phil. 135, 140 (2008).

[55] *Id.*

procedures or acted with obstinate disregard of basic and established rule of law or procedure. If at all, the error of the RTC, assuming there was any, was a mere error of judgment which did not constitute grave abuse of discretion.

Given the stipulation on venue in the Contract, where exclusivity is provided, the RTC had enough legal basis to apply Section 4(b), Rule 4 and not Section 2, Rule 4.

WHEREFORE, the Petition is **PARTLY GRANTED**. The Court of Appeals Resolutions dated December 15, 2011 and March 13, 2012 in CA-G.R. SP No. 122276 are **REVERSED AND SET ASIDE**. The Orders dated March 9, 2011 and August 22, 2011 of the Regional Trial Court, Branch 257 of Parañaque City in Civil Case No. 09-0450 are **SUSTAINED**.

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Reyes, J. Jr.,* and *Hernando*,* *JJ.*, concur.

Perlas-Bernabe, J., on wellness leave.

SECOND DIVISION

[G.R. No. 201116. March 4, 2019]

PHILAM INSURANCE CO., INC., now CHARTIS PHILIPPINES INSURANCE, INC., *petitioner, vs.* **PARC CHATEAU CONDOMINIUM UNIT OWNERS ASSOCIATION, INC., and/or EDUARDO B. COLET,** *respondents.*

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* Designated additional Member per Special Order No. 2630 dated December 18, 2018.

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED IN A PETITION FOR REVIEW ON *CERTIORARI*; EXCEPTION, NOT APPLICABLE IN CASE AT BAR.—** Rule 45 of the Rules of Court, as amended, states that only questions of law shall be raised in a petition for review on *certiorari*. While the rule has exceptions, they are irrelevant in this case, as Philam did not properly plead and substantiate the applicability of the exceptions. Thus, the Court applies the general rule.

2. **ID.; ID.; ID.; ID.; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED; EVALUATION OF EVIDENCE IS THE FUNCTION OF THE TRIAL COURT.—** In *Century Iron Works, Inc. v. Biñas* the Court differentiated between question of law and question of fact. x x x Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact. x x x Applying the test to this case, it is without a doubt that the questions/issues presented before the Court are factual in nature, which are not proper subjects of a petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended. It has been repeatedly pronounced that the Court is not a trier of facts. Evaluation of evidence is the function of the trial court.

3. **MERCANTILE LAW; INSURANCE; PAYMENT OF PREMIUM; FAILURE TO PAY IN FULL ANY OF THE SCHEDULED INSTALLMENTS ON OR BEFORE THE DUE DATE SHALL RENDER THE INSURANCE POLICY VOID AND INEFFECTIVE; CASE AT BAR.—** [T]he CA correctly determined that the Jumbo Risk Provision clearly indicates that failure to pay in full any of the scheduled installments on or before the due date shall render the insurance policy void and ineffective as of 4 p.m. of such date. Parc Association's failure to pay on the first due date (November 30, 2003), resulted in a void and ineffective policy as of 4 p.m. of November 30, 2003. Hence, there is no credit extension to consider as the Jumbo Risk Provision itself expressly cuts off the inception of the insurance policy in case of default. The Court resolves to deny the petition

after finding that the CA did not commit any reversible error in the assailed decision and resolution. The CA had exhaustively explained the law and jurisprudence, which are the bases of its decision and resolution. Both trial courts and the appellate court are consistent in its findings of fact that there is no perfected insurance contract, because of the absence of one of the elements, that is, payment of premium. As a consequence, Philam cannot collect ₱363,215.21 unpaid premiums of void insurance policies.

APPEARANCES OF COUNSEL

Astorga and Repol Law Offices for petitioner.
Abesamis Law Offices for respondents.

D E C I S I O N

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

The Facts

On October 7, 2003, petitioner Philam Insurance Co., Inc. (Philam) [now Chartis Philippines Insurance, Inc.] submitted a proposal to respondent Parc Chateau Condominium Unit Owners Association, Inc. (Parc Association) to cover fire and comprehensive general liability insurance of its condominium building, Parc Chateau Condominium.[1]

Respondent Eduardo B. Colet (Colet), as Parc Association's president, informed Philam, through a letter dated November 24, 2003, that Parc Association's board of directors selected it, among various insurance companies, to provide the insurance requirements of the condominium.[2]

After Philam appraised the condominium, it issued Fire and Lightning Insurance Policy No. 0601502995 for ₱900 million and Comprehensive General Liability Insurance Policy No.

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[1] *Rollo*, p. 33.

[2] *Id*. at 33.

0301003155 for ₱1 Million, both covering the period from November 30, 2003 to November 30, 2004. The parties negotiated for a 90-day payment term of the insurance premium, worth ₱791,427.50 including taxes. This payment term was embodied in a Jumbo Risk Provision, which further provided that the premium installment payments were due on November 30, 2003, December 30, 2003, and January 30, 2004. The Jumbo Risk Provision also stated that if any of the scheduled payments are not received in full on or before said dates, the insurance shall be deemed to have ceased at 4 p.m. of such date, and the policy shall automatically become void and ineffective.[3]

Parc Association's board of directors found the terms unacceptable and did not pursue the transaction. Parc Association verbally informed Philam, through its insurance agent, of the board's decision. Since no premiums were paid, Philam made oral and written demands upon Parc Association, who refused to do so alleging that the insurance agent had been informed of its decision not to take up the insurance coverage. Philam sent demand letters with statement of account claiming ₱363,215.21 unpaid premium based on Short Scale Rate Period. Philam also cancelled the policies.[4]

On June 3, 2005, Philam filed a complaint against Parc Association and Colet for recovery of ₱363,215.21 unpaid premium, plus attorney's fees and costs of suit in the Metropolitan Trial Court (MeTC) of Makati, Branch 65.[5]

The Metropolitan Trial Court's Decision

On October 30, 2007, the MeTC dismissed the case. The MeTC determined that since Philam admitted that Parc Association did not pay its premium, one of the elements of an insurance contract was lacking, that is, the insured must pay a premium. The MeTC explained that payment of premium is

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[3] *Id*. at 33-34.

[4] *Id*. at 34-35.

[5] *Id*. at 33.

a condition precedent for the effectivity of an insurance contract. Non-payment of premium prevents an insurance contract from becoming binding even if there was an acceptance of the application or issuance of a policy, unless payment of premium was waived. With one of the elements missing, there is no insurance contract to speak of and Philam has no right to recover from defendant Parc Association.[6]

The Regional Trial Court's Decision

Philam appealed to the Regional Trial Court (RTC) of Makati, Branch 137, which partly affirmed the MeTC decision, except as to attorney's fees, in its June 3, 2008 Decision. The RTC pronounced that there was no valid insurance contract between the parties because of non-payment of premium, and there was no express waiver of full payment of premiums.[7]

The RTC did not accept Philam's argument that the Jumbo Risk Provision is an implied waiver of premium payment. The RTC elucidated that the Jumbo Risk Provision specifically requires full payment of premium within the given period, and in case of default, the policy automatically becomes void and ineffective.[8]

Philam averred that Parc Association's newsletter and treasurer's report confirmed that there was a perfected insurance contract. The RTC held that Parc Association's newsletter and treasurer's report, informing the condominium unit owners that the building was insured, is not proof of a perfected insurance contract. The newsletter stated that negotiations were ongoing to try to lower the insurance premium per square meter, while the treasurer's report did not categorically mention that there was a perfected and effective insurance contract. Hence, the RTC affirmed in part the MeTC decision.[9]

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[6] *Id*. at 35.

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

[8] *Id*. at 36.

[9] *Id*.

Philam moved for reconsideration, which the RTC denied in a Resolution dated September 17, 2009.[10]

The Court of Appeals' Decision

Unconvinced, Philam elevated the case before the Court of Appeals (CA) through a petition for review under Rule 42 of the Rules of Court, as amended.[11]

On July 29, 2011, the CA rendered a Decision[12] denying Philam's petition and affirming the June 3, 2008 RTC Decision and September 17, 2009 Resolution. The CA discussed that based on Section 77 of Presidential Decree 612 or the Insurance Code of the Philippines, the general rule is that no insurance contract issued by an insurance company is valid and binding unless and until the premium has been paid. Although there are exceptions laid down in *UCPB General Insurance Co., Inc. v. Masagana Telamart, Inc.*,[13] the CA determined that none of these exceptions were applicable to the case at hand.[14]

The first exception is in Section 77 of the Insurance Code, that is, "in the case of a life or an industrial life policy whenever the grace period provision applies." This exception does not apply to this case because the policies involved here are fire and comprehensive general liability insurance.[15]

The second exception is in Section 78 of the Insurance Code, which states that "an acknowledgment in a policy or contract of insurance or the receipt of premium is conclusive evidence of its payment, so far as to make the policy binding,

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[10] *Id*.

[11] *Id*. at 32.

[12] Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Romeo F. Barza and Edwin D. Sorongon, concurring; *id*. at 32-44.

[13] 408 Phil. 423, 432 (2001).

[14] *Rollo*, p. 38.

[15] *Id*. at 38, 40.

notwithstanding any stipulation therein that it shall not be binding until the premium is actually paid."[16]

The exception in Section 78 is inapplicable in this case, because there was no acknowledgment of receipt of premium in the policy or insurance contract, and in fact, no premium was ever paid.[17]

The third exception is taken from the case of *Makati Tuscany Condominium Corporation v. Court of Appeals*,[18] wherein the Court ruled that the general rule in Section 77 may not apply if the parties agreed to the payment of premium in installment and partial payment has been made at the time of loss. Here, the parties agreed to a payment by installment, but no actual payment was made. Thus, the third exception has no application in this case.[19]

The Makati Tuscany case also provided the fourth exception, that is, if the insurer has granted the insured a credit term for the payment of the premium, then the general rule may not apply.[20] Philam argues that the 90-day payment term is a credit extension. However, the CA emphasized that the Jumbo Risk Provision is clear that failure to pay each installment on the due date automatically voids the insurance policy. Here, Parc Association did not pay any premium, which resulted in a void insurance policy. Hence, the fourth exception finds no application.[21]

The fifth and last exception, taken from the UCPB case, is estoppel in instances when the insurer had consistently granted a credit term for the payment of premium despite full awareness of Section 77. The insurer cannot deny recovery by the insured

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[16] *Id*. at 38.

[17] *Id*. at 40.

[18] 289 Phil. 942 (1992).

[19] *Rollo*, pp. 38-39.

[20] *Id*. at 39.

[21] *Id*. at 41.

by citing the general rule in Section 77, because the insured had relied in good faith on the credit term granted.[22]

The CA held that the factual circumstances of the UCPB case differ from this case. In the UCPB case, the insurer granted a credit extension for several years and the insured relied in good faith on such practice. Here, the fire and lightning insurance policy and comprehensive general insurance policy were the only policies issued by Philam, and there were no other policy/ies issued to Parc Association in the past granting credit extension. Thus, the last exception is inapplicable.[23]

After establishing that none of the exceptions are applicable, the CA concluded that the general rule applies, that is, no insurance contract or policy is valid and binding unless and until the premium has been paid. Since Parc Association did not pay any premium, then there was no insurance contract to speak of.[24]

Moreover, the CA pointed out that the Jumbo Risk Provision clearly stated that failure to pay in full any of the scheduled installments on or before the due date, shall render the insurance policy void and ineffective as of 4 p.m. of such date. Parc Association's failure to pay on the first due date, November 30, 2003, resulted in a void and ineffective policy as of 4 p.m. of November 30, 2003. As a consequence, Philam cannot collect ₱363,215.21 unpaid premiums of void insurance policies.[25]

Philam moved for reconsideration, which the CA denied in its March 14, 2012 Resolution.[26] Undeterred, Philam filed a Petition for Review on *Certiorari*[27] under Rule 45 of the Rules of Court, as amended, before the Court.

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[22] *Id*. at 40.

[23] *Id*. at 40-41.

[24] *Id*. at 42.

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

[26] *Id*. at 46-47.

[27] *Id*. at 7-26.

The Issues Presented

In its petition, Philam assigned the following errors:

I

THE COURT OF APPEALS GROSSLY ERRED IN NOT FINDING THAT RESPONDENTS' REQUEST FOR TERMS OF PAYMENT OF PREMIUM AFTER THE POLICIES WERE ISSUED AND PETITIONER'S GRANT OF SAID REQUEST CONSTITUTE THE INTENTION OF THE PARTIES TO BE BOUND BY THE INSURANCE CONTRACT.

II.

THE APPELLATE COURT GROSSLY ERRED IN RULING THAT THE FOURTH EXCEPTION PROVIDED FOR UNDER SECTION 77 OF THE INSURANCE CODE OF THE PHILIPPINES DOES NOT APPLY IN THE INSTANT CASE.

III.

THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT FINDING THAT THE NEGOTIATIONS WHICH THE PARTIES HAD WERE WITH RESPECT TO THE TERMS OF PAYMENT OF PREMIUM ALREADY AGREED UPON AND NOT ON THE REDUCTION OF THE AMOUNT THEREOF AS TO NEGATE THE EXISTENCE OF A PERFECTED CONTRACT OF INSURANCE BETWEEN THEM.[28]

In its Comment,[29] Parc Association alleged that Philam did not raise new issues before the Court, and the issues presented had been resolved by the MeTC and RTC.[30] Parc Association averred that Philam's proposal was accepted for consideration of the board of directors, who later disapproved the terms and conditions. As such, there was no meeting of the minds of the parties, and there was no insurance contract initiated.[31]

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[28] *Id*. at 16.

[29] *Id*. at 58-68.

[30] *Id*. at 61.

[31] *Id*.

Parc Association further argued that non-payment of premium means no juridical tie was created between the insured and the insurer, and the insured was not exposed to the insurable risk for lack of consideration. Parc Association asserted that it would be unjust to allow Philam to recover premiums on an insurance contract that was never effective and despite not having been exposed to any risk at all.[32]

In its Reply,[33] Philam insisted that there was a perfected insurance contract, and Parc Association's request for terms of payment indicate its intention to be bound by the insurance contract.[34]

In sum, the sole issue to be resolved is whether or not the CA committed a reversible error in affirming the RTC decision and ruling that Philam has no right to recover the unpaid premium based on void and ineffective insurance policies.

The Court's Ruling

The petition is denied.

Rule 45 of the Rules of Court, as amended, states that only questions of law shall be raised in a petition for review on *certiorari*. While the rule has exceptions, they are irrelevant in this case, as Philam did not properly plead and substantiate the applicability of the exceptions. Thus, the Court applies the general rule.[35]

In resolving whether the CA was correct in affirming the RTC decision, the Court considered the following simplified alleged errors as presented by Philam:

1. Whether or not respondents' request for terms of payment of premium after the policies were issued and the grant of

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[32] *Id*. at 63, 67.

[33] *Id*. at 76-[80].

[34] *Id*. at 76, 78.

[35] *Cancio v. Performance Foreign Exchange Corp.*, G.R. No. 182307, June 6, 2018.

said request by petitioner constitute the parties' intention to be bound by the insurance contract;

2. Whether or not the fourth exception provided for under Section 77 of the Insurance Code of the Philippines applies in the instant case; and

3. Whether or not the negotiations which the parties had were with respect to the terms of payment of premium already agreed upon by the parties and not on the lowering of the amount of premium as to negate the existence of a perfected contract of insurance.[36]

The first and third alleged errors refer to the request for the terms of payment. Does Parc Association's request and Philam's subsequent grant of the request constitute their intention to be bound by the insurance contract? Does the negotiation refer to the terms of payment or to the lowering of the premium?

In arriving at the answers to the questions, the Court has to determine the intention of the parties. In doing so, the Court has to read the transcript of stenographic notes of the witnesses, and review the language or tenor of some of the documentary evidence, such as: Philam's proposal on October 7, 2003, Colet's acceptance letter dated November 24, 2003, the Jumbo Risk Provision, and the written communications between Philam and Parc Association.

In short, the Court has to re-evaluate the evidence on record. Evaluation of evidence is an indication that the question or issue posed before the Court is a question of fact or a factual issue.

In *Century Iron Works, Inc. v. Biñas*[37] the Court differentiated between question of law and question of fact.

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the question must not involve an

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[36] *Rollo*, p. 9.

[37] 711 Phil. 576 (2013).

examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. (Citation omitted)

Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.[38] (Citation omitted)

Applying the test to this case, it is without a doubt that the questions/issues presented before the Court are factual in nature, which are not proper subjects of a petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended. It has been repeatedly pronounced that the Court is not a trier of facts. Evaluation of evidence is the function of the trial court.

As for the second alleged error, Philam avers that this case falls under the fourth exception as explained in the Makati Tuscany case. The Makati Tuscany case provides that if the insurer has granted the insured a credit term for the payment of the premium, it is an exception to the general rule that premium must first be paid before the effectivity of an insurance contract. Philam argues that the 90-day payment term is a credit extension and should be considered as an exception to the general rule.

However, the CA correctly determined that the Jumbo Risk Provision clearly indicates that failure to pay in full any of the scheduled installments on or before the due date shall render the insurance policy void and ineffective as of 4 p.m. of such date. Parc Association's failure to pay on the first due date (November 30, 2003), resulted in a void and ineffective policy as of 4 p.m. of November 30, 2003. Hence, there is no credit extension to consider as the Jumbo Risk Provision itself expressly cuts off the inception of the insurance policy in case of default.

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[38] *Id*. at 585-586.

The Court resolves to deny the petition after finding that the CA did not commit any reversible error in the assailed decision and resolution. The CA had exhaustively explained the law and jurisprudence, which are the bases of its decision and resolution. Both trial courts and the appellate court are consistent in its findings of fact that there is no perfected insurance contract, because of the absence of one of the elements, that is, payment of premium. As a consequence, Philam cannot collect ₱363,215.21 unpaid premiums of void insurance policies.

WHEREFORE, premises considered, the petition is **DENIED**. The Court of Appeals Decision dated July 29, 2011 and Resolution dated March 14, 2012 in CA-G.R. SP No. 110980 are **AFFIRMED**.

SO ORDERED.

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

Perlas-Bernabe, J., on wellness leave.

SECOND DIVISION

[G.R. No. 210191. March 4, 2019]

NATIONAL POWER CORPORATION, *petitioner, vs.* **THE PROVINCE OF PANGASINAN and THE PROVINCIAL ASSESSOR OF PANGASINAN,** *respondents.*

SYLLABUS

1. TAXATION; REPUBLIC ACT NO. 7160, AS AMENDED; LOCAL GOVERNMENT CODE; REAL PROPERTY TAX; THE UNPAID

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

REAL PROPERTY TAX ATTACHES TO THE PROPERTY BUT IS DIRECTLY CHARGEABLE AGAINST A TAXABLE PERSON WHO HAS ACTUAL AND BENEFICIAL USE AND POSSESSION OF THE PROPERTY REGARDLESS OF WHETHER OR NOT THE PERSON IS THE OWNER.— NPC argues that the CTA erred in denying its claim for exemption on the ground that it is not the owner of the subject facilities. NPC insists that, as project owner, it has legal interest over the power plant and as such, it has the legal personality to question the assessment and claim for exemption therefor. NPC argues that legal interest over the properties subject of real property tax is not limited to ownership considering that for such tax purposes, real properties are classified, valued, and assessed on the basis of their actual use, highlighting the phrase "regardless of where located, whoever owns it, and whoever uses it" in Section 217 of R.A. No. 7160. Indeed, real property tax liability rests on the owner of the property or on the person with the beneficial use thereof such as taxes on government property leased to private persons or when tax assessment is made on the basis of the actual use of the property. In either case, the unpaid realty tax attaches to the property but is directly chargeable against the taxable person who has actual and beneficial use and possession of the property regardless of whether or not that person is the owner. NPC was, therefore, correct in arguing that a beneficial user may also be legally burdened with the obligation to pay for the tax imposed on a property and as such, has legal interest therein and the personality to protest an assessment or claim exemption from tax liability. In this case, however, NPC is neither the owner nor the possessor or beneficial user of the subject facilities. Hence, it cannot be considered to have any legal interest in the subject property to clothe it with the personality to question the assessment and claim for exemptions and privileges.

2. ID.; ID.; ID.; EXEMPTIONS FROM REAL PROPERTY TAX; IN A BUILD-OPERATE-TRANSFER (BOT) AGREEMENT BETWEEN A PRIVATE ENTITY AND THE GOVERNMENT (OR GOVERNMENT-OWNED AND CONTROLLED ENTITY); THE LATTER DOES NOT HAVE ANYTHING TO DO WITH THE USE AND OPERATION OF THE SUBJECT PROJECT UNTIL ITS TRANSFER HENCE THE GOVERNMENT (OR GOVERNMENT-OWNED AND CONTROLLED ENTITY) HAS

NO LEGAL PERSONALITY TO QUESTION ON THE ASSESSMENT OR CLAIM FOR EXEMPTION AND PRIVILEGES WITH REGARD TO THE TAX LIABILITY ATTACHED TO THE SUBJECT PROPERTY; CASE AT BAR.— In a BOT arrangement, the private entity constructs and buys the necessary assets to put up the project and thereafter, operates and manages it during an agreed period that would allow it to recover its basic costs and earn profits until the project's transfer to the government or government-owned and controlled entity. In other words, the private sector proponent goes into business for itself, assuming risks and incurring costs for its account. On the other hand, service contracting is nothing more than an undertaking to perform a certain task for which the contractor is paid after its completion. Thus, until the transfer of the project to NPC, it does not have anything to do with the use and operation of the power plant. The direct, actual, exclusive, and beneficial owner and user of the power station, machineries, and equipment certainly pertains to Mirant. NPC, therefore, has no legal personality to question on the assessment or claim for exemption and privileges with regard to the tax liability attached to the subject properties. That NPC assumed the tax liabilities in the agreement is of no moment. Such undertaking does not justify the exemption or entitlement to privileges. The privilege granted to NPC cannot be extended to Mirant. To rule otherwise would be to allow the circumvention of our law on exemptions and grant of privileges.

3. **ID.; ID.; ID.; ID.; REQUIREMENTS IN ORDER TO SUCCESSFULLY CLAIM EXEMPTIONS AND PRIVILEGES UNDER R.A. NO. 7160, ENUMERATED AND EXPLAINED; NOT ESTABLISHED IN CASE AT BAR.—** To successfully claim exemption under Section 234(c) of R.A. No. 7160, the claimant must prove that (a) the machinery and equipment are actually, directly and exclusively used by local water districts and government-owned and controlled corporations; and (b) the local water districts and government-owned and controlled corporations claiming exemption must be engaged in the supply and distribution of Water and/or the generation and transmission of electric power. x x x For the same reason that NPC has no legal personality to question the assessment and claim for exemptions and privileges, there is likewise no basis for NPC

to claim and be granted the depreciation allowance under Section 225 of R.A. No. 7160. Similarly, having no such legal personality, NPC cannot claim the exemption under Section 234(e) of the same Act. While it may be true that ownership of the machinery and equipment used for pollution control and environmental protection, is not relevant to the determination of entitlement to exemption, NPC still has no basis to assert such privilege. The LBAA did not err in ruling that it is Mirant, not NPC, which should claim for such tax exemption, if at all. At any rate, a claim for exemption under Section 234(e) of R.A. No. 7160, should be supported by evidence that the property sought to be exempt is actually, directly, and exclusively used for pollution control and environmental protection during the period covered by the assessment. Verily, the determination of the actual, direct, and exclusive use of the properties subject of the claim for exemption requires the examination of evidence and assessment of the probative value of such evidence, if any - a factual determination therefore, which this Court cannot go into, not only because such endeavor is not allowed under a petition for review on *certiorari* under Rule 45, but more importantly because of the lack of such necessary evidence for this Court to be able to make an accurate, valid, and judicious conclusion.

4. **ID.; ID.; ID.; THE RIGHT OF LOCAL GOVERNMENT UNITS TO COLLECT TAXES DUE MUST ALWAYS BE UPHELD TO AVOID SEVERE TAX EROSION; SUSTAINED.—** The power to tax is the most potent instrument to raise the needed revenues to finance and support myriad activities of local government units for the delivery of basic services essential to the promotion of the general welfare and the enhancement of peace, progress, and prosperity of the people. Thus, the right of local government units to collect taxes due must always be upheld to avoid severe tax erosion. This consideration is consistent with the State policy to guarantee the autonomy of local governments and the objective of the Local Government Code that they enjoy genuine and meaningful local autonomy to empower them to achieve their fullest development as self-reliant communities and make them effective partners in the attainment of national goals.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Provincial Legal Office of Pangasinan for respondents.

D E C I S I O N

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

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, questioning the Decision[2] dated November 11, 2013 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 937, which affirmed the uniform rulings of the Local Board of Assessment Appeals (LBAA) in LBAA Case Nos. P-03-001 and P-06-001 and Central Board of Assessment Appeals (CBAA) in CBAA Case Nos. L-52 and L-81.

Factual Antecedents

Petitioner National Power Corporation (NPC) is a government-owned and controlled corporation, created and existing under Republic Act (R.A.) No. 6395, as amended. NPC is mandated to undertake the production of electricity from nuclear, geothermal, other sources, and the transmission of electric power nationwide.[3]

Pursuant to its mandate, on May 20, 1994, NPC entered into an Energy Conversion Agreement[4] (ECA) with CEPA Pangasinan Electric Limited (CEPA), a private corporation, for the construction, operation, and maintenance of the Sual Coal-Fired Thermal Power Plant, whereby CEPA agreed to supply a coal-fired thermal power station to NPC on a Build-Operate-Transfer (BOT) basis to generate electricity, which electricity will in turn be sold exclusively to NPC. CEPA

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[1] *Rollo*, pp. 27-71.

[2] Penned by Court of Tax Appeals Associate Justice Caesar A. Casanova, with Presiding Justice Roman G. Del Rosario, concurring and dissenting, Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban, concurring; *id*. at 10-22.

[3] *Id*. at 11.

[4] *Id*. at 235-265.

subsequently became Mirant Sual Corporation (Mirant) and now also known as Team Energy Power Holdings Corporation (Team Energy). For purposes of this case, we shall use "Mirant" to refer to CEPA, Mirant, or Team Energy as the company was called "Mirant" when this case started with the LBAA.[5]

Among the obligations undertaken by the NPC under the ECA was the assumption of all real property taxes. Paragraph 11.1, Article 11 of the ECA, *viz.*:

> 11.1 *Tax Responsibilities*. NPC shall be responsible for the payment of x x x (ii) all real estate taxes and assessments, rates and other charges in respect of the Site, the Ash Disposal Sites, the Pipelines, the buildings and improvements thereon, the Infrastructure and the Power Station.[6]

On December 3, 1994, a Memorandum of Agreement[7] (MOA) was entered into by Pangasinan Electric Corporation (PEC) (Mirant's predecessor-in-interest) with NPC, the Province of Pangasinan, the Municipality of Sual, and the Barangay of Pangascasan.[8]

Pertinent provisions of the MOA state:

> A. RESPONSIBILITIES OF NPC, DENR, PEC, PROVINCE/MUNICIPALITY/BARANGAY
>
> NPC
>
> x x x x x x x x x
>
> 6. Conform with the Local Government Code's regulations on the payment of the following taxes:
>
> - Realty tax to be paid upon the project site acquisition by NPC.
>
> x x x x x x x x x

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[5] *Id*. at 30.

[6] *Id*. at 334 of the Agreement.

[7] *Id*. at 196-203.

[8] *Id*. at 196.

PEC started operating the power plant sometime in 1998.[9]

NPC religiously paid real property taxes from 1998 up to the first quarter of 2003 for the land, buildings, machinery, and equipment pertaining to the power plant. Notably, said machinery and equipment were declared in the name of Mirant under Tax Declaration No. 3694. On the second quarter of 2003, NPC stopped paying said taxes, purportedly pursuant to the provisions of R.A. No. 7160, which grants certain exemptions from iteal property tax liabilities.[10]

This prompted the Office of the Municipal Treasurer of Sual, Pangasinan to issue a Notice of Assessment dated September 10, 2003 for the payment of real property taxes thereon.[11]

Invoking its entitlement to an exemption under the provisions of R.A. No. 7160, NPC filed a petition for exemption with the LBAA, docketed as LBAA Case No. P-03-001, praying for an order to be issued: (a) recalling the Notice of Assessment dated September 10, 2003; (b) declaring the machinery and equipment of the power to be exempt from real property tax, arguing that the same are actually, directly, and exclusively used for power generation, and as such are exempted from said taxes under Section 234(c)[12] of R.A. No. 7160; and (c) if not exempt, declaring that the subject properties be classified

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[9] *Id*. at 334.

[10] *Id*. at 335.

[11] *Id*. at 335.

[12] Sec. 234. *Exemptions from Real Property Tax*.– The following are exempted from payment of the real property tax:

x x x x x x x x x

(c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;

x x x x x x x x x

as special under Section 216[13] of the same Act and as such be given a lower assessment level.[14]

LBAA Ruling

In its Resolution[15] dated April 15, 2004, the LBAA dismissed NPC's petition for exemption for lack of merit. The LBAA ruled that NPC and/or Mirant's failure to file any claim for exemption within the 30 days from the date of the declaration of the real property under Section 206[16] of R.A. No. 7160, coupled with the fact that NPC used to pay the real property taxes thereon from 1998 up to the first quarter of 2003, estopped NPC from claiming an exemption. More importantly, the LBAA found Mirant to be the actual, direct, exclusive, and beneficial owner and user of the power, buildings, machinery, and equipment, not NPC. Hence, the subject real properties do not come under the coverage of Section 234(c) of R.A. No. 7160 nor to the special assessment providing for a lower assessment level of ten percent (10%) under Section 216 of the same Act.

Accordingly, the subject real properties are not exempted from payment of real property tax and, likewise, cannot be

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[13] Sec. 216. *Special Classes of Real Property*. – All lands, buildings, and other improvements thereon actually, directly and exclusively used for hospitals, cultural, or scientific purposes, and those owned and used by local water districts, and government-owned or controlled corporations rendering essential public services in the supply and distribution of water and/or generation and transmission of electric power shall be classified as special.

[14] LOCAL GOVERNMENT CODE of 1991, approved on October 10, 1991.

[15] *Rollo*, pp. 333-349.

[16] Sec. 206. *Proof of Exemption of Real Property from Taxation*.– Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, by-laws, contracts, affidavits, certifications and mortgage deeds, and similar documents.

classified as a special class with an assessment level often percent (10%) but should be assigned with the assessment level of eighty percent (80%).

Aggrieved, NPC filed an appeal to the CBAA, docketed as CBAA Case No. L-52.[17]

In the meantime, the Municipal Treasurer of Sual issued a letter with the Updated Notice of Assessment and Tax Bill. Thus, NPC filed another petition before the LBAA, docketed as LBAA Case No. P-06-001, which was likewise dismissed by the LBAA in its Order dated July 18, 2007.[18]

NPC also appealed the said Order to the CBAA, docketed as CBAA Case No. L-81.[19]

CBAA Ruling

On April 2, 2009, the CBAA issued an Order consolidating the two appeals.[20]

After evaluation of the arguments of both parties, the CBAA rendered the assailed Decision[21] dated April 12, 2012, dismissing the appeals for lack of merit. In the main, the CBAA ruled that NPC has no personality to claim real property tax exemption for the subject machinery and equipment considering that said machinery and equipment are actually, directly, and exclusively used by Mirant, not NPC. In fact, Mirant is the owner of said facilities until they were turned over to NPC.

The same reasoning was used in ruling that the subject machinery and equipment cannot be classified as a special class of real property for purposes of being subject to a lower assessment level often percent (10%) under Section 216 of

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[17] *Rollo*, p. 13.

[18] *Id*.

[19] *Id*.

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

[21] *Id*. at 172-192.

the same Act. The subject facilities are owned by Mirant, a private entity, hence, not covered by the special privilege under the said provision.

Likewise, the CBAA ruled that NPC has no legal personality to claim for exemption under Section 234(e)[22] of R.A. No. 7160, as well as the depreciation allowance under Section 225 thereof, as the subject facilities are not owned by NPC but by Mirant.

NPC's motion for reconsideration of the said Decision was also denied by the CBAA in its Order[23] dated July 31, 2012.

CTA Ruling

The CTA scrutinized the agreement between NPC and Mirant under the BOT system and found that the ownership of the subject machinery and equipment is clearly vested with Mirant until the transfer of the project to NPC. Since the ownership and actual use of the subject facilities are with Mirant, a non-exempt entity, the CTA sustained the LBAA and CBAA ruling that NPC may not rightfully claim that it has the requisite legal interest to question the assessment and assert tax exemptions under Sections 234(c) and (e) of R.A. No. 7160, as well as the privilege under Section 225 thereof.

Neither was there basis, according to the CTA, for NPC to claim that respondents are estopped from questioning NPC's legal interest as respondents already acknowledged the same in their MOA. The CTA found that apart from the enumeration of the parties' respective obligations under the MOA, there was nothing therein that says respondents acknowledged NPC as the owner and user of the power plant and the equipment therein.

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[22] Sec. 234. *Exemptions from Real Property Tax*. – The following are exempted from payment of the real property tax:

x x x x x x x x x

e) Machinery and equipment used for pollution control and environmental protection.

[23] *Rollo*, pp. 194-195.

Further, the stipulated undertaking of NPC to pay the real property taxes does not justify the exemption as it has already been previously ruled by the Supreme Court that such undertaking is essentially wrong as to rule otherwise would be tantamount to allowing an exempt entity to use its privilege to favor a non-exempt entity and debase our tax system, citing this Court's ruling in *National Power Corporation v. Province of Quezon and Municipality of Pagbilao*.[24]

Finding that NPC is not the actual owner nor the beneficial owner or possessor of the subject machinery and equipment, the CTA came to the same conclusion as the LBAA and the CBAA, that NPC has no legal personality to claim for exemptions and privileges under Sections 234(c) and (e), as well as Section 225[25] of R.A. No. 7160.

Thus, the CTA sustained the findings and conclusions of the LBAA and the CBAA and dismissed the appeal for lack of merit.

Hence, this petition.

Issue

The issues raised by NPC in this petition – whether the subject machinery and equipment are exempted from real property tax under Section 234(c) or Section 234(e) of R.A. 7160; whether the same can be considered as a special class of real property under Section 216 of the same Act for a lower assessment of real property tax; or whether NPC is entitled to the depreciation allowance under Section 225 thereof – all boil down to the pivotal issue of whether NPC has legal personality and interest to claim for such exemptions and privileges.

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[24] 624 Phil. 738 (2010).

[25] Sec. 225. *Depreciation Allowance for Machinery*. — For purposes of assessment, a depreciation allowance shall be made for machinery at a rate not exceeding five percent (5%) of its original cost or its replacement or reproduction cost, as the case may be, for each year of use: Provided, however, That the remaining value for all kinds of machinery shall be fixed at not less than twenty percent (20%) of such original, replacement, or reproduction cost for so long as the machinery is useful and in operation.

Our Ruling

This case is definitely not of first impression. In NPC's previous cases with this Court, *i.e., FELS Energy, Inc. v. The Province of Batangas*,[26] *National Power Corporation v. Central Board of Assessment Appeals*[27] and *National Power Corporation v. Province of Quezon*,[28] the implications of a contract and/or a BOT agreement between a government-owned and controlled corporation that enjoy tax exemption, and a private corporation with regard to real property tax liabilities, have already been exhaustively explained and discussed by this Court. Specifically, the Court has concluded that the tax exemptions and privileges claimed by NPC cannot be recognized since it is not the actual, direct, and exclusive user of the facilities, machinery and equipment subject of the cases.

The Court emphasized therein its guiding principle in resolving the said cases, *i.e.*, taxation is the rule and exemption is the exception.

Guided by Our pronouncements in the said strikingly similar cases, we find this petition bereft of merit.

NPC argues that the CTA erred in denying its claim for exemption on the ground that it is not the owner of the subject facilities. NPC insists that, as project owner, it has legal interest over the power plant and as such, it has the legal personality to question the assessment and claim for exemption therefor. NPC argues that legal interest over the properties subject of real property tax is not limited to ownership considering that for such tax purposes, real properties are classified, valued, and assessed on the basis of their actual use, highlighting the phrase "regardless of where located, whoever owns it, and whoever uses it" in Section 217 of R.A. No. 7160.

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[26] 545 Phil. 92 (2007).

[27] 597 Phil. 413 (2009).

[28] *Supra* note 24.

Indeed, real property tax liability rests on the owner of the property or on the person with the beneficial use thereof such as taxes on government property leased to private persons or when tax assessment is made on the basis of the actual use of the property.[29] In either case, the unpaid realty tax attaches to the property but is directly chargeable against the taxable person who has actual and beneficial use and possession of the property regardless of whether or not that person is the owner.[30] NPC was, therefore, correct in arguing that a beneficial user may also be legally burdened with the obligation to pay for the tax imposed on a property and as such, has legal interest therein and the personality to protest an assessment or claim exemption from tax liability.[31]

In this case, however, NPC is neither the owner nor the possessor or beneficial user of the subject facilities. Hence, it cannot be considered to have any legal interest in the subject property to clothe it with the personality to question the assessment and claim for exemptions and privileges.

Records clearly show that NPC is yet to be the owner of the subject facilities. Provisions of the ECA unequivocally support this conclusion, *viz.*:

2.10 ***Ownership of Power Station.*** From the date hereof until the Transfer Date, [Mirant] shall directly or indirectly, own the Power Station and all the fixtures, fittings, machinery and equipment on the Site and the Ash Disposal Sites or used in connection with the Power Station which have been supplied by it or at its cost. [Mirant] shall operate and maintain the Power Station for the purpose of converting Fuel of NPC into electricity.

2.11 ***Transfer.*** On the Transfer Date, the Power Station shall be transferred by [Mirant] to NPC without the payment of any compensation and otherwise in accordance with the provisions of Article 8.[32]

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[29] *National Power Corporation v. Province of Quezon*, *supra* note 24.

[30] *Id.*

[31] *Id.*

[32] *Rollo*, p. 240.

Further, as correctly observed by the LBAA, there is nothing in the ECA which expressly grants the NPC the right or authority to use directly or indirectly the power plant and the facilities therein during the cooperation period. Article 5 of the ECA specifically provides that Mirant has the responsibility to manage, operate, and maintain the power plant until the Transfer Date. Such acts of management, operation, maintenance, and repair are inherent in and are necessary and incidental to Mirant's ownership and actual use of the power plant and the facilities therein.

Clearly, as it is, during the subject taxable period, Mirant is still the owner and actual user of the subject facilities.

NPC, however, insists on its ownership and beneficial use of the power plant. NPC posits that Mirant was a mere service contractor that NPC employed to construct and operate the power plant to implement NPC's mandate to generate electricity. This assertion has already been squarely addressed and confuted by this Court in the case of *National Power Corporation v. Central Board of Assessment Appeals (CBAA)*,[33] which we reiterate and adopt in this case, thus:

> As in the fact of ownership, NAPOCOR's assertion is belied by the documented arrangements between the contracting parties, viewed particularly from the prism of the BOT law.
>
> The underlying concept behind a BOT agreement is defined and described in the BOT law as follows:
>
> > *Build-operate-and-transfer.* – A contractual arrange-ment whereby the project proponent undertakes the construction, including financing, of a given infrastructure facility, and the operation and maintenance thereof. The project proponent operates the facility over a fixed term during which it is allowed to charge facility users appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract to enable the project proponent to recover its investment, and operating and maintenance

[33] 597 Phil. 413 (2009).

> expenses in the project. The project proponent transfers the facility to the government agency or local government unit concerned at the end of the fixed term which shall not exceed fifty (50) years x x x.

Under this concept, it is the project proponent who constructs the project at its own cost and subsequently operates and manages it. The proponent secures the return on its investments from those using the project facilities through appropriate tolls, fees, rentals, and charges not exceeding those proposed in its bid or as negotiated. At the end of the fixed term agreed upon, the project proponent transfers the ownership of the facility to the government agency. Thus, the government is able to put up projects and provide immediate services without the burden of the heavy expenditures that a project start up requires.

A reading of the provisions of the parties' BOT Agreement shows that it fully conforms to this concept. By its express terms, BPPC has complete ownership – both legal and beneficial of the project – including the machineries and equipment used, subject only to the transfer of these properties without cost to NAPOCOR after the lapse of the period agreed upon. As agreed upon, BPPC provided the funds for the construction of the power plant, including the machineries and equipment needed for power generation; thereafter, it actually operated and still operates the power plant, uses its machineries and equipment, and receives payment for these activities and the electricity generated under a defined compensation scheme. Notably, BPPC – as owner-user – is responsible for any defect in the machineries and equipment. (Citation omitted)

x x x x x x x x x

Consistent with the BOT concept and as implemented, BPPC – the owner-manager-operator of the project – is the actual user of its machineries and equipment. BPPC's ownership and use of the machineries and equipment are actual, direct, and immediate, while NAPOCOR's is contingent and, at this stage of the BOT Agreement, not sufficient to support its claim for tax exemption. Thus, the CTA committed no reversible error in denying NAPOCOR's claim for tax exemption.[34] (Citation omitted)

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[34] *Id*. at 430-433.

Similar to the above-cited case, the agreement between NPC and Mirant is consistent with the BOT concept. Mirant undertakes to build and operate a power plant, which undertaking expressly includes the responsibility to supply the consumables and spare parts, and maintain the power plant until the transfer thereof to NPC. To be sure, this arrangement goes beyond a mere service contractor agreement. In a BOT arrangement, the private entity constructs and buys the necessary assets to put up the project and thereafter, operates and manages it during an agreed period that would allow it to recover its basic costs and earn profits until the project's transfer to the government or government-owned and controlled entity. In other words, the private sector proponent goes into business for itself, assuming risks and incurring costs for its account.[35] On the other hand, service contracting is nothing more than an undertaking to perform a certain task for which the contractor is paid after its completion.

Thus, until the transfer of the project to NPC, it does not have anything to do with the use and operation of the power plant. The direct, actual, exclusive, and beneficial owner and user of the power station, machineries, and equipment certainly pertains to Mirant. NPC, therefore, has no legal personality to question on the assessment or claim for exemption and privileges with regard to the tax liability attached to the subject properties.

That NPC assumed the tax liabilities in the agreement is of no moment. Such undertaking does not justify the exemption or entitlement to privileges. The privilege granted to NPC cannot be extended to Mirant. To rule otherwise would be to allow the circumvention of our law on exemptions and grant of privileges.

The provisions invoked by NPC for entitlement to exemption and privilege are clear and unambiguous. To successfully claim exemption under Section 234(c) of R.A. No. 7160, the claimant must prove that (a) the machinery and equipment are actually, directly and exclusively used by local water districts and

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

government-owned and controlled corporations; and (b) the local water districts and government-owned and controlled corporations claiming exemption must be engaged in the supply and distribution of water and/or the generation and transmission of electric power.[36]

Likewise, to successfully claim for differential treatment or a lower assessment level under Section 216, in relation to Section 218 of the same Act, the claimant must prove that the subject lands, buildings, and other improvements are (a) actually, directly, and exclusively used for hospitals, cultural, or scientific purposes; or (b) owned and used *by* local water districts and government-owned and controlled corporations rendering essential public services in the supply and distribution of water and/or generation and transmission of electric power.[37]

It is important to emphasize that the government-owned and controlled corporation claiming exemption and entitlement to the privilege must be the entity actually, directly, and exclusively using the real properties, and the use must be devoted to the generation and transmission of electric power. As can be gleaned from the above disquisition, NPC miserably failed to satisfy said requirements. Although the subject machinery and equipment are devoted to generation of electricity, the ownership, use, operation, and maintenance thereof pertain to Mirant.

Neither will NPC find justification in its claim that it is NPC, not Mirant, which utilizes the generated electricity for transmission or distribution to the customers. The clear wordings of the above-cited provisions state that it is the machinery and equipment which are exempted from the payment of real property tax, *not* the water or electricity that such facilities generate for distribution.[38]

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[36] *National Power Corporation v. Province of Quezon*, *supra* note 24, at 743.

[37] *National Power Corporation v. Central Board and Assessment Appeals (CBAA)*, *supra* note 27, at 434.

[38] *National Power Corporation v. Province of Quezon*, *supra* note 24.

For the same reason that NPC has no legal personality to question the assessment and claim for exemptions and privileges, there is likewise no basis for NPC to claim and be granted the depreciation allowance under Section 225 of R.A. No. 7160.

Similarly, having no such legal personality, NPC cannot claim the exemption under Section 234(e) of the same Act. While it may be true that ownership of the machinery and equipment used for pollution control and environmental protection, is not relevant to the determination of entitlement to exemption, NPC still has no basis to assert such privilege. The LBAA did not err in ruling that it is Mirant, not NPC, which should claim for such tax exemption, if at all. At any rate, a claim for exemption under Section 234(e) of R.A. No. 7160, should be supported by evidence that the property sought to be exempt is actually, directly, and exclusively used for pollution control and environmental protection during the period covered by the assessment.[39] Verily, the determination of the actual, direct, and exclusive use of the properties subject of the claim for exemption requires the examination of evidence and assessment of the probative value of such evidence, if any – a factual determination therefore, which this Court cannot go into, not only because such endeavor is not allowed under a petition for review on *certiorari* under Rule 45,[40] but more importantly because of the lack of such necessary evidence for this Court to be able to make an accurate, valid, and judicious conclusion.

In all, the LBAA and the CBAA, as affirmed by the CTA, correctly denied NPC's claim for exemptions and entitlement to privileges under R.A. No. 7160.

In conclusion, we reiterate this Court's observation in NPC's previous cases with this Court above-cited. It must be pointed out that protracted and circuitous litigation has seriously resulted in the local governments' deprivation of revenues. The power

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[39] *Provincial Assessor of Marinduque v. Hon. Court of Appeals*, 605 Phil. 357, 371-372 (2009).

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

to tax is the most potent instrument to raise the needed revenues to finance and support myriad activities of local government units for the delivery of basic services essential to the promotion of the general welfare and the enhancement of peace, progress, and prosperity of the people. Thus, the right of local government units to collect taxes due must always be upheld to avoid severe tax erosion. This consideration is consistent with the State policy to guarantee the autonomy of local governments and the objective of the Local Government Code that they enjoy genuine and meaningful local autonomy to empower them to achieve their fullest development as self-reliant communities and make them effective partners in the attainment of national goals.[41]

WHEREFORE, premises considered, the petition is **DENIED**. The Decision dated November 11, 2013 of the Court of Tax Appeals *En Banc* in CTA EB Case No. 937 is hereby **AFFIRMED**.

SO ORDERED.

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

Perlas-Bernabe, J., on wellness leave.

FIRST DIVISION

[G.R. No. 227187. March 4, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ERIC L. SEVILLA,** *accused-appellant.*

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[41] *FELS Energy, Inc. v. The Province of Batangas*, *supra* note 26, at 114-115.

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

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; THE IDENTITY OF THE DANGEROUS DRUGS MUST BE ESTABLISHED WITH MORAL CERTAINTY.—** For the successful prosecution of the illegal sale of dangerous drugs, the identity of the buyer and the seller, the object of the sale, and the consideration and the delivery of the thing sold as well its payment should be established. For illegal possession of dangerous drugs, it should be established that the accused was in possession of an item or object identified to be a prohibited drug, which possession was not authorized by law and that the accused freely and consciously possessed the drug. Further, apart from showing that the elements of possession or sale were present, the fact that the dangerous drug illegally possessed and sold was the same drug offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict. Hence, the identity of the dangerous drug must be established with moral certainty.

2. **ID.; ID.; ID.; CHAIN OF CUSTODY RULE; THE APPREHENDING OFFICERS, IN CASE AT BAR, WERE ABLE TO PRESERVE THE INTEGRITY OF THE SEIZED DRUGS AFTER COMPLYING WITH THE REQUIREMENTS OF SECTION 21 OF RA 9165 REGARDING THE PROPER CUSTODY OF THE SEIZED DRUGS AND THE CHAIN OF CUSTODY HAD BEEN DULY ESTABLISHED.—** Section 21, Article II of RA 9165 pertinently provides: (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; x x x There is no dispute that IO1 Magdadaro, who acted as poseur-buyer during the buy-bust operation, marked the seized marijuana at the place and time of the arrest. The buy-bust team then proceeded immediately to the Panabo City Police Station where they conducted the inventory of the seized

items and took photographs thereof in the presence of appellant, Leonida Sevilla, appellant's representative, Benigno Gumban, Jr. from the media, elected official Eduardo Alas, and Ian Dionela of the DOJ. Indeed, the police officers complied the requirements of the law contrary to the protestation of appellant. x x x As aptly held by the CA, the apprehending officers were able to preserve the integrity of the seized drugs after complying with the requirements of Section 21of RA 9165 regarding the proper custody of the seized drugs and the chain of custody had been duly established. x x x Thus, we uphold the findings of the CA that the integrity and evidentiary value of the marijuana presented in court was duly preserved and uncompromised. We see no reason to disturb the findings of the CA as to the guilt of appellant.

3. **ID.; ID.; ID.; IMPOSABLE PENALTY.—** Under Section 5, Article II of RA 9165, the penalty for illegal sale of dangerous drugs, such as marijuana, regardless of its quantity and purity, is life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10 million. However, in light of the effectivity of RA 9346, the imposition of the penalty of death has been proscribed. Thus, the penalty of life imprisonment and a fine of ₱500,000.00 imposed on appellant by the RTC as affirmed by the CA for the illegal sale of marijuana was in order.

4. **ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; IMPOSABLE PENALTY.—** For the crime of illegal possession of dangerous drugs, Section 11, Article II of RA 9165 provides the penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from ₱300,000.00 to ₱400,000.00 for less than 300 grams of marijuana. In this case, appellant was found in possession of marijuana with an aggregate weight of more or less 55.8873 grams, which is less than 300 grams. Thus, the penalty of twelve (12) years and one (1) day as minimum to thirteen (13) years as maximum, and a fine of ₱300,000.00 imposed on appellant by the RTC and affirmed by the CA, was also in order.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

This resolves the appeal filed by appellant Eric L. Sevilla (appellant) assailing the July 29, 2016 Decision[1] of the Court of Appeals (CA) in CA- G.R. CR HC No. 01396-MIN, which affirmed the December 1, 2014 Decision[2] of the Regional Trial Court (RTC), Branch 34, Panabo City in Criminal Case Nos. CrC 211-2010 and CrC 212-2010, finding appellant guilty beyond reasonable doubt of violation of Section 5 (illegal sale of dangerous drugs) and Section 11 (illegal possession of dangerous drugs), Article II of Republic Act (RA) No. 9165,[3] otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Appellant was charged with violation of Sections 5 and 11, Article II of RA 9165 in two separate Informations:

Criminal Case No. Crc 211-2010

That on or about May 26, 2010, in the City of Panabo, Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, willfully, unlawfully and knowingly traded, sold and delivered two (2) packs of dried marijuana leaves wrapped with a newspaper, a dangerous drug, to IO1 Julius A. Magdadaro, who was acting as a poseur-buyer in a legitimate buy bust operation, taking and receiving one (1) marked money of One Hundred [P]eso (₱100.00) bill with [S]erial number D627328.

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[1] *Rollo*, pp. 3-15; penned by Associate Justice Rafael Antonio M. Santos and concurred in by Associate Justices Edgardo T. Lloren and Ruben Reynaldo G. Roxas.

[2] CA *rollo*, pp. 24-33; penned by Presiding Judge Dax Gonzaga Xenos.

[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. Approved: June 7, 2002.

CONTRARY TO LAW.[4]

Criminal Case No. Crc 212-2010

That on or about May 26, 2010, in the City of Panabo, Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, willfully, unlawfully and knowingly had in his possession, control and custody Ten (10) packs of dried marijuana leaves wrapped in a newspaper, a dangerous drug, with a total weight of more or less 55.8873 grams.

CONTRARY TO LAW.[5]

When arraigned on July 30, 2010, appellant pleaded not guilty to the crimes charged against him. The two criminal cases were then tried jointly by the trial court.

Version of the Prosecution

The prosecution presented the following witnesses: SPO2 Romeo Obero (SPO2 Obero), IO1 Julius A. Magdadaro (IO1 Magdadaro), SO2 Bryan P. Ponferrada (SO2 Ponferrada), PO3 Norkaya G. Dica (PO3 Dica), and P/Supt. Julieta G. Razonable (P/S Razonable). Based on their testimonies, the following facts emerged:

In the morning of May 26, 2010, Agent Caludito Cañada (Agent Cañada) received information from a confidential informant that a certain alias Eric was selling marijuana at *Purok* 6, *Barangay* Quezon, Panabo. Agent Cañada instructed the confidential informant to arrange a transaction with the suspect. Accordingly, agent Cañada organized a buy-bust team, with IO1 Magdadaro as the poseur-buyer and SO2 Ponferrada as the back-up arresting officer. Agent Cañada also prepared the Php100.00 bill marked money with initials "JAM". It was also agreed that the lighting of a cigarette by IO1 Magdadaro would signal the consummation of the transaction.

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[4] Records, Folder, p. 1.

[5] *Id*.

The team proceeded to the Panabo City Police Station where they conducted a final briefing. At around 5:15 p.m., IO1 Magdadaro and SO2 Ponferrada, together with the confidential informant, proceeded to the target area on board a motorcycle.

Upon arrival at the target area, the confidential informant pointed to a man sitting at a nipa hut, who was later established as appellant. The confidential informant introduced IO1 Magdadaro to appellant as his friend who wanted to buy marijuana. Appellant asked IO1 Magdadaro how much marijuana he would like to buy, to which IO1 Magdadaro answered "Php100.00 worth." Appellant then retrieved a bag from a wooden cage and took out two packets which he gave to IO1 Magdadaro. Upon confirming that the packets contained marijuana leaves, IO1 Magdadaro handed the Php100.00 marked money to appellant who placed it inside his right pocket. IO1 Magdadaro then lit a cigarette to signal the consummation of the transaction prompting SO2 Ponferrada to approach them.

SO2 Ponferrada introduced himself as a PDEA agent, handcuffed appellant and informed him of his rights. He frisked appellant and recovered from appellant's right pocket the Php100.00 marked money and from appellant's bag 10 packets of suspected marijuana. In the presence of appellant, IO1 Magdadaro marked the two packets he bought from appellant while SO2 Ponferrada marked the 10 packets and the bag. Thereafter, the police officers placed the seized items inside the evidence pouch.

They then went back to the Panabo Police Station and conducted an inventory and took photographs of appellant and the seized items in the presence of witnesses Benigno Gumban, Jr. of the media, elected official Eduardo Alas, Ian Dionela of the Department of Justice (DOJ), and appellant's representative, Leonida Sevilla. IO1 Magdadaro took custody of the two packets while the 10 packets were with SO2 Ponferrada.

After preparing the request for laboratory examination, IO1 Magdadaro and SO2 Ponferrada delivered the seized items to the PNP Crime Laboratory in Tagum City, which were received and weighed by SPO2 Obrero. SPO2 Obrero then turned over

the seized items to the evidence custodian who, in turn, handed it to P/S Razonable, the forensic chemist, for examination. P/S Razonable examined the seized items and found them positive for marijuana.

Version of the Defense

The defense presented appellant as its sole witness. According to appellant, on May 26, 2010, while entering the gate of his house after arriving from work, around 10 persons followed him and one of them held both his hands. When appellant asked what his violation was, the person holding his hands accused him of selling marijuana. Appellant reacted to such false imputation by saying that he had a job. Subsequently, several persons entered his house. After about five to eight minutes, they emerged from his house and asked him if he owned the packet one of them was holding, to which he replied in the negative. He was then boarded on a Toyota Revo and was brought to the police station where pictures were taken of him together with some packets laid in front of him.

Ruling of the Regional Trial Court

On December 1, 2014, the RTC rendered judgment finding appellant guilty beyond reasonable doubt of selling and possessing prohibited dangerous drugs. It found appellant's defenses of denial and alibi as inherently weak and not worthy of consideration. The dispositive portion of the decision reads:

> WHEREFORE, judgment is hereby rendered as follows:
>
> a. Finding accused *Eric L. Sevilla* guilty beyond reasonable doubt in Criminal Case No. CrC No. 211-2010 of selling marijuana defined and penalized under Section 5 of Republic Act No. 9165. Accordingly, he is sentenced to suffer in this case the penalty of *life imprisonment* and to pay fine in the amount of Php500,000.00;
>
> b. Finding accused *Eric L. Sevilla* guilty beyond reasonable doubt in Criminal Case No. CrC No. 212-2010 of illegal possession of marijuana defined and penalized under Section 11 of Republic Act No. 9165. Accordingly, he is

> sentenced to suffer in this case the indeterminate penalty of *twelve (12) years and one (1) day* as minimum period to *thirteen (13) years* as maximum period and to pay fine in the amount of Php300,000.00.
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> x x x x x x x x x
>
> SO ORDERED.[6]

Ruling of the Court of Appeals

Appellant assailed his conviction before the CA, claiming that the prosecution failed to comply with the requirements of Section 21 of RA 9165 which creates serious doubts on the integrity and evidentiary value of the seized drugs.

On July 29, 2016, the CA affirmed the RTC's Decision. The CA found that the prosecution was able to establish a clear and unbroken chain of custody of the seized illegal drugs, and upheld the presumption of regularity in the performance of the duties of the apprehending officers. Thus, it found no reason to reverse the ruling of the RTC finding appellant guilty beyond reasonable doubt. The CA ruled:

> WHEREFORE, the assailed Decision dated 1 December 2014 rendered by the Regional Trial Court, 11th Judicial Region, Branch 34 of Panabo City in Criminal Case Nos. CrC 211-2010 and CrC 212-2010 is hereby AFFIRMED.
>
> SO ORDERED.[7]

Our Ruling

The Court finds the appeal unmeritorious.

For the successful prosecution of the illegal sale of dangerous drugs, the identity of the buyer and the seller, the object of the sale, and the consideration and the delivery of the thing sold as well its payment should be established.[8] For illegal possession

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[6] CA *rollo*, p. 33.

[7] *Rollo*, p. 14.

[8] *People v. SPO3 Ara*, 623 Phil. 939, 955 (2009).

of dangerous drugs, it should be established that the accused was in possession of an item or object identified to be a prohibited drug, which possession was not authorized by law and that the accused freely and consciously possessed the drug.[9] Further, apart from showing that the elements of possession or sale were present, the fact that the dangerous drug illegally possessed and sold was the same drug offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict. Hence, the identity of the dangerous drug must be established with moral certainty.[10]

In this case, appellant doubts the integrity of the marijuana because of non-compliance by the apprehending police officers with Section 21 of RA 9165 resulting in a broken chain of custody over the confiscated drugs. He submits that the failure of the arresting officers to photograph the drugs immediately after its seizure and confiscation and the absence of witnesses from the media, the DOJ, and an elected public official at the time of arrest, as well as their failure to properly seal the seized drugs upon confiscation, were fatal to the prosecution's cause.

This contention is untenable.

Section 21, Article II of RA 9165 pertinently provides:

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

The Implementing Rules and Regulations (IRR) of Section 21 of RA 9165 also provide that:

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[9] *People v. Manalao*, 703 Phil. 101, 114 (2013).

[10] *People v. Del Mundo*, G.R. No. 208095, September 20, 2017, 840 SCRA 327, 338.

(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;

There is no dispute that IO1 Magdadaro, who acted as poseur-buyer during the buy-bust operation, marked the seized marijuana at the place and time of the arrest. The buy-bust team then proceeded immediately to the Panabo City Police Station where they conducted the inventory of the seized items and took photographs thereof in the presence of appellant, Leonida Sevilla, appellant's representative, Benigno Gumban, Jr. from the media, elected official Eduardo Alas, and Ian Dionela of the DOJ. Indeed, the police officers complied the requirements of the law contrary to the protestation of appellant.

Appellant's claim that there was no assurance that the marijuana seized at the crime scene and those presented/brought to the Police Station were the same due to the fact that said items were only sealed at the Police Station, and not at the time of confiscation, is untenable. As aptly held by the CA, the apprehending officers were able to preserve the integrity of the seized drugs after complying with the requirements of Section 21of RA 9165 regarding the proper custody of the seized drugs and the chain of custody had been duly established. We agree on the CA's discussion on this matter, to wit:

During trial, the prosecution was able to establish that after arresting accused-appellant, IO1 Julius A. Magdadaro marked the two packs of marijuana subject of the buy-bust transaction with his signature and his initials, "JAM." On the other hand, the ten packs of marijuana seized from accused-appellant were marked by SO2 Bryan P. Ponferrada with his signature and his initials, "BPP." The said items were marked at the scene of the crime in the presence of accused-appellant. Thereafter, IO1 Magdadaro and SO2 Ponferrada brought the seized illegal drugs, along with accused-appellant, to the Panabo City Police Station where they conducted the physical inventory and took photographs of the accused-appellant and the seized items. During this time, the two packs of marijuana subject of the buy-bust transaction remained in the possession of IO1 Magdadaro while the ten packs of marijuana seized from accused-appellant remained in the possession of SO2 Ponferrada.

Then, IO1 Magdadaro and SO2 Ponferrada brought the seized illegal drugs to the Provincial Crime Laboratory in Tagum City for laboratory examination as evidenced by the Letter Request dated 26 May 2010. The seized items were then duly received by SPO2 Romeo Obrero of the Provincial Crime Laboratory. Upon receiving the seized illegal drugs, SPO2 Obrero then weighed the said items and thereafter placed his signature and final weight of the specimens on each pack. After weighing the specimens, SPO2 Obrero turned the same over to PO1 Jeffrey Cambalon, the Evidence Custodian of the Provincial Crime Laboratory. The seized illegal drugs were then turned over by PO1 Jeffrey Cambalon to P/Supt. Julieta G. Razonable, the Forensic Chemist of the Provincial Crime Laboratory, who conducted the chemical examination on the seized items. After the examination conducted by P/Supt. Razonable, all the seized items were found positive for the presence of marijuana as evidenced by Chemistry Report No. D-040DN-2010 dated 26 May 2010. P/Supt. Razonable then placed the markings "A1" and "A2", as well as her signature and the case control number, on the two packs of marijuana subject of the buy-bust transaction. P/Supt. Razonable also placed the markings "B1" to "B10", as well as her signature and the case control number, on each of the ten packs of marijuana seized from accused-appellant. The twelve individually marked packs of marijuana were then turned over to the evidence custodian of the Provincial Crime Laboratory, PO1 Calambon. The same marked packs of marijuana were duly identified by the prosecution witnesses during the trial.

Based on the foregoing, there can be no doubt that the prosecution was able to sufficiently establish a clear and unbroken chain of custody of the seized illegal drugs in the case at bar.[11]

Thus, we uphold the findings of the CA that the integrity and evidentiary value of the marijuana presented in court was duly preserved and uncompromised. We see no reason to disturb the findings of the CA as to the guilt of appellant.

Under Section 5, Article II of RA 9165, the penalty for illegal sale of dangerous drugs, such as marijuana, regardless of its quantity and purity, is life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10 million. However, in light of the effectivity of RA 9346,[12] the imposition of the penalty of death has been proscribed. Thus, the penalty of life imprisonment and a fine of ₱500,000.00 imposed on appellant by the RTC as affirmed by the CA for the illegal sale of marijuana was in order.

For the crime of illegal possession of dangerous drugs, Section 11, Article II of RA 9165 provides the penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from ₱300,000.00 to ₱400,000.00 for less than 300 grams of marijuana. In this case, appellant was found in possession of marijuana with an aggregate weight of more or less 55.8873 grams, which is less than 300 grams. Thus, the penalty of twelve (12) years and one (1) day as minimum to thirteen (13) years as maximum, and a fine of ₱300,000.00 imposed on appellant by the RTC and affirmed by the CA, was also in order.

WHEREFORE, the appeal is **DISMISSED**. The July 29, 2016 Decision of the Court of Appeals in CA-G.R. CR HC No. 01396-MIN affirming the December 1, 2014 Decision of the Regional Trial Court, Branch 34, Panabo City in Criminal Case Nos. CrC 211-2010 and CrC 212-2010 finding appellant

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[11] *Rollo*, pp. 12-14.

[12] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES. Approved: June 24, 2006.

Eric L. Sevilla **GUILTY** beyond reasonable doubt of violation of Sections 5 and 11, respectively, Article II of Republic Act No. 9165, is **AFFIRMED**.

SO ORDERED.

Bersamin, C.J., Jardeleza, Gesmundo, and *Carandang, JJ.*, concur.

FIRST DIVISION

[G.R. No. 230615. March 4, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **HERMOGENES MANAGAT, JR.** ***y*** **DE LEON and DINDO CARACUEL** ***y*** **SULIT,** *accused-appellants.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** For the conviction of illegal sale of drugs, the prosecution must prove: (1) identity of the buyer, and seller, of the subject drug; (2) the object and the consideration of the sale; and, (3) the delivery of the item sold, and its payment. Further, it is crucial that the integrity of the seized drug be preserved; in this regard, the prosecution must prove an unbroken chain of custody over the subject illegal drug. This means that every link in the chain of custody, from the time of its confiscation until its presentation in court, must be established.

2. **ID.; ID.; ID.; CHAIN OF CUSTODY RULE; FOUR LINKS THAT MUST BE ESTABLISHED IN THE CHAIN OF CUSTODY RULE; ENUMERATED.—** There are four links that must be established in the chain of custody, to wit: "1) the seizure and marking, if practicable, of the illegal drug confiscated from the accused by the apprehending officer; 2) the turnover of the seized drug

by the apprehending officer to the investigating officer; 3) the turnover by the investigating officer of said item to the forensic chemist for examination; and, 4) the turnover and submission thereof from the forensic chemist to the court." The prosecution has the burden to show "every link in the chain, from the moment the dangerous drug was seized from the accused until the time it is offered in court as evidence."

3. ID.; ID.; ID.; ID.; FAILURE TO COMPLY WITH THE RULE DOES NOT *IPSO FACTO* INVALIDATE OR RENDER VOID THE SEIZURE AND CUSTODY OVER THE ITEMS AS LONG AS THE PROSECUTION IS ABLE TO SHOW THAT THERE IS JUSTIFIABLE GROUND FOR NON-COMPLIANCE, AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED; NOT ESTABLISHED IN CASE AT BAR.— Failure to strictly comply with the rule, however, does not *ipso facto* invalidate or render void the seizure and custody over the items as long as the prosecution is able to show that "(a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved." x x x In *People v. Hementiza*, the Court stressed that every person who touched the item must describe his or her receipt thereof, what transpired while the same was in one's possession, and its condition when delivered to the next link. Unfortunately, in this case, this requirement was not complied with. While PO2 Ortega testified that he turned over the seized item to PO3 Gibe and PO1 Tamayo, neither of these investigators were presented in court to testify to the circumstances surrounding their receipt of the seized drug. Since they did not testify to confirm the receipt and turnover of the seized item, a gap in the chain of custody is thereby created. Not only this, the Court observes that the person who received the items at the crime laboratory was not identified by both PO1 Villamayor and PO2 Ortega in their respective testimonies. Notably, the testimony of the forensic chemist was dispensed with by the prosecution. While there was a stipulation on the testimony of P/I Plantilla, it merely covers the result of the examination conducted on the specimen submitted to the forensic chemist. Evidently, the prosecution's non-presentation of the necessary witnesses constituted gaps in the chain of custody of the seized prohibited drug. Plainly the seized drug was not properly handled, from the time of its confiscation to its turnover in the police station, including its transfer to the

crime laboratory. Indeed, every person who takes possession of seized drugs must show how it was handled and preserved while in his or her custody to prevent any switching or replacement. Aside from the gaps in the chain of custody of the seized specimen, the Court observes that no photograph and inventory of the seized item were made in the presence of an elected public official, a representative of the Department of Justice (DOJ) and of the media. Section 21 of Article II of RA 9165 clearly requires the apprehending team to mark, conduct a physical inventory, and to photograph the seized item in the presence of the accused or his representative or counsel, and witnessed by an elected public official and representatives of DOJ and the media. The law mandates that the insulating witnesses be present during the marking, the actual inventory, and the taking of photographs of the seized items to deter the common practice of planting evidence. While strict compliance may not always be possible, the prosecution has the burden to prove justifiable reasons for non-compliance. No explanation was, however, offered for non-compliance with Section 21 of RA 9165.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

This is an appeal filed by appellants Hermogenes Managat, Jr. *y* De Leon and Dindo Caracuel *y* Sulit (appellants) from the August 31, 2016 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07340, affirming with modification the May 26, 2014 Judgment[2] of the Regional Trial Court (RTC),

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[1] CA *rollo*, pp. 113-126; penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Romeo F. Barza and Leoncia R. Dimagiba.

[2] Records, pp. 239-244; penned by Judge Gregorio M. Velasquez.

Branch 35 of Calamba City, in Criminal Case No. 14729-07-C, finding appellants guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (RA) No. 9165,[3] otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Factual Antecedents

Appellants were charged with the crime of illegal sale of prohibited drugs under Section 5, Article II of RA 9165 in an Information which reads:

> That on or about February 1, 2007 at Brgy. San Antonio, Municipality of Los Baños, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another without any authority of law did, then and there, willfully, unlawfully and feloniously sell one (1) tape-sealed folded newspaper containing Dried Marijuana leaves and fruiting tops weighing 3.92 grams, a dangerous drug, in violation of [Section 5, Art. II of RA 9165].
>
> CONTRARY TO LAW.[4]

When arraigned, both appellants pleaded not guilty to the charge.[5]

Version of the Prosecution

During the trial, the prosecution presented Police Officer 2 Joseph Ortega (PO2 Ortega), PO1 Hilarion Villamayor (PO1 Villamayor), and the forensic chemist, Police Inspector Grace Plantilla (P/I Plantilla). However, the latter's testimony was dispensed with after the parties entered into stipulations.

PO2 Ortega and PO1 Villamayor narrated on the following facts:

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[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. Approved: June 7, 2002.

[4] Records, p. 1.

[5] *Id*. at 29.

Before noon of February 1, 2007, PO2 Ortega, who was on duty as Chief Intelligence Operative at the PNP Los Baños Police Station, received information from a civilian asset that appellants were engaging in illegal sale of marijuana in a place known as Ramos Compound at Los Baños, Laguna.[6] PO2 Ortega relayed the information to his commanding officer, Police Senior Inspector Aldrin Abila (PSI Abila), who directed him to conduct and lead a buy-bust operation, with PO1 Villamayor, PO2 Alberto Belarmino (PO2 Belarmino), and PO1 Johny Gonzales (PO1 Gonzales) as his team members.[7] For the purpose, PSI Abila provided the buy-bust team with the marked money.[8]

On the same day, PO1 Villamayor conducted a surveillance operation at Ramos Compound from 1:00 p.m. to 5:00 p.m.[9] Another surveillance was conducted at 6:00 p.m., wherein the civilian asset confirmed that several people were buying marijuana from appellants.[10] At around 8:30 p.m., the buy-bust team, together with the civilian asset, proceeded to the target area. Upon arrival, the police officers positioned and hid themselves around the area, specifically near the house of appellant Managat.[11] The civilian asset then approached Managat's house and while on his way, he met, talked with and handed over the marked money to appellant Caracuel.[12] Appellant Caracuel then gave the marked money to appellant Managat, who, in turn, handed to the former a folded newspaper, which item was then passed on to the civilian asset.[13] After the exchange, the civilian

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[6] TSN, November 14, 2007, pp. 3-4; TSN, September 3, 2008, pp. 3-4; TSN, July 30, 2010, p. 4.

[7] TSN, November 14, 2007, p. 4; TSN, July 30, 2010, p. 4.

[8] *Id*.

[9] TSN, July 30, 2010, p. 5.

[10] *Id*.

[11] TSN, November 14, 2007, p. 5; TSN, July 30, 2010, pp. 6-7.

[12] TSN, September 3, 2008, p. 8; TSN, July 30, 2010, p. 7.

[13] *Id*.

asset went to PO2 Ortega's location and turned over the folded newspaper to PO2 Ortega. Upon inspection, PO2 Ortega found that the folded newspaper contained dried marijuana leaves.[14] At this juncture, PO2 Ortega gave the pre-arranged signal. The team then proceeded to the house of appellant Managat. PO2 Ortega arrested appellant Managat while PO2 Belarmino apprehended appellant Caracuel.[15] PO1 Villamayor frisked appellant Managat and recovered the marked money from him.[16] PO2 Ortega marked the seized newspaper containing the marijuana with "HDLM" and "DSC".[17] The seized item was then turned over to investigators PO3 Elmer Gibe[18] (PO3 Gibe) and PO1 Reynaldo Tamayo (PO1 Tamayo) at the police station[19] and was thereafter brought to the Crime Laboratory by PO1 Villamayor and PO2 Ortega for forensic examination.[20]

The testimony of P/I Plantilla was dispensed with after the parties stipulated on the genuineness and authenticity of the Chemistry Report No. D-070-07,[21] which contained the results of P/I Plantilla's forensic examination on the submitted specimen with markings "HDLM" and "DSC," which was found positive for the presence of marijuana.[22]

Version of the Defense

The defense presented appellants who both denied the charge.

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[14] TSN, November 14, 2007, p. 7; TSN, July 30, 2010, pp. 7-8.

[15] TSN, July 30, 2010, p. 8.

[16] TSN, November 14, 2007, p. 7.

[17] TSN, September 3, 2008, p. 10; TSN, July 30, 2010, p. 9.

[18] In some parts of the record, PO3 Gibe was referred as SPO1 Hibe.

[19] *Id.*

[20] *Id.*

[21] Records, p. 44.

[22] TSN, November 14, 2007, p. 2.

According to appellant Managat, sometime between 8:00 and 9:00 in the evening of February 1, 2007, he was with his wife at their residence at *Barangay* Bangkal, San Antonio, Los Baños, Laguna, taking care of his child and grandchildren, when PO2 Ortega and a certain Lito came knocking at the door, searched the entire house and looked for his child, Gerven Managat, who was allegedly involved in illegal drugs.[23] After the search, he was brought to the police station on board a van.[24] Appellant Managat likewise testified that his co-accused, appellant Caracuel, was also inside the van.[25]

For his part, appellant Caracuel testified that on February 1, 2007, at around 7:00 p.m., he was at the Ramos Compound collecting payments for his "longganisa" when he was suddenly blocked and frisked by PO2 Ortega and PO1 Villamayor, and another person whom he failed to identify.[26] He was forcibly handcuffed and brought to the police station on board an ambulance van.[27] At the police station, he was forced to admit his involvement in the illegal sale of marijuana under threat of death.[28] Appellant Caracuel also testified that he saw his co-accused, appellant Managat, being arrested at his house at around 7:00 p.m. of the same day.[29]

Ruling of the Regional Trial Court

On May 26, 2014, the RTC of Calamba City, Branch 35, rendered its Judgment[30] finding appellants guilty beyond reasonable doubt of violation of Section 5, Article II of RA 9165

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[23] TSN, May 14, 2012, pp. 3-5.

[24] *Id*. at 6.

[25] *Id*.

[26] TSN, February 17, 2014, p. 3.

[27] *Id*. at 4.

[28] *Id*.

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

[30] Records, pp. 239-244.

and sentenced them to a penalty of imprisonment of fourteen (14) years, eight (8) months and one (1) day as minimum, to life imprisonment as maximum, and to pay a fine of ₱500,000.00.

The RTC ruled that all the elements of the crime charged were proven. In particular, the prosecution was able to establish that appellants have acted in conspiracy in selling the illegal drug to the civilian asset for ₱50.00. The RTC did not give credence to the defense of appellants which were self-serving denials. The RTC further ruled that the identity of the *corpus delicti* was preserved and established by the prosecution.

Ruling of the Court of Appeals

On appeal, appellants sought their acquittal, arguing that the testimonial evidence presented by the prosecution was incredulous and doubtful to prove their guilt beyond reasonable doubt. They claimed that the prosecution failed to prove that there was conspiracy. They also argued that the apprehending officers failed to preserve the integrity of the seized items and to establish an unbroken chain of custody.

On August 31, 2016, the CA sustained the conviction of appellants. Like the RTC, the CA held that all the elements of the crime charged were established. It ruled that the testimonies of the prosecution witnesses deserved full credence because as police officers, they are presumed to have regularly performed their duties in a legitimate buy-bust operation.

The CA likewise ruled that the chain of custody of the seized marijuana was unbroken. It explained that the prosecution was able to establish that the seized item was marked by PO2 Ortega at the place of arrest; and the same was personally delivered by PO1 Villamayor to the Regional Crime Laboratory Office for examination; likewise, forensic chemist, P/I Plantilla, examined the seized item and confirmed that it was indeed marijuana; and that during trial, PO2 Ortega positively identified the newspaper and dried marijuana leaves as the items he received from the civilian asset during the buy-bust operation. The CA held that although there was no strict compliance with the chain of custody requirements, the identity of the seized

drug was duly proven and each link in the chain of custody was accounted for.

Hence, appellants instituted this present appeal. They argued in their Appellants' Brief[31] that their guilt was not proven beyond reasonable doubt because of the incredulous nature of the prosecution witnesses' testimonies. They maintained likewise that the prosecution failed to preserve the chain of custody.

Our Ruling

The appeal is meritorious.

For the conviction of illegal sale of drugs, the prosecution must prove: (1) identity of the buyer, and seller, of the subject drug; (2) the object and the consideration of the sale; and, (3) the delivery of the item sold, and its payment. Further, it is crucial that the integrity of the seized drug be preserved; in this regard, the prosecution must prove an unbroken chain of custody over the subject illegal drug. This means that every link in the chain of custody, from the time of its confiscation until its presentation in court, must be established.[32]

After a careful examination of the records of the case, we find that the prosecution failed to establish an unbroken chain of custody of the seized drug.

There are four links that must be established in the chain of custody, to wit: "1) the seizure and marking, if practicable, of the illegal drug confiscated from the accused by the apprehending officer; 2) the turnover of the seized drug by the apprehending officer to the investigating officer; 3) the turnover by the investigating officer of said item to the forensic chemist for examination; and, 4) the turnover and submission thereof from the forensic chemist to the court."[33] The prosecution has the burden to show "every link in the chain, from the moment the

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[31] CA *rollo*, pp. 55-75.

[32] *People v. Bugtong*, G.R. No. 220451, February 26, 2018.

[33] *People v. Gajo*, G.R. No. 217026, January 22, 2018.

dangerous drug was seized from the accused until the time it is offered in court as evidence."[34] Failure to strictly comply with the rule, however, does not *ipso facto* invalidate or render void the seizure and custody over the items as long as the prosecution is able to show that "(a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved."[35]

In this case, the records showed that PO2 Ortega marked the seized newspaper containing the marijuana at the place of arrest and in the presence of appellants;[36] that the seized item was turned over by PO2 Ortega to investigators PO3 Gibe and PO1 Tamayo at the police station[37] and was thereafter brought to the Crime Laboratory by PO1 Villamayor and PO2 Ortega for forensic examination;[38] and that P/I Plantilla conducted a laboratory examination and issued Chemistry Report No. D-070-07,[39] indicating that the specimen was positive for the presence of marijuana, a dangerous drug.

In *People v. Hementiza*,[40] the Court stressed that every person who touched the item must describe his or her receipt thereof, what transpired while the same was in one's possession, and its condition when delivered to the next link. Unfortunately, in this case, this requirement was not complied with. While PO2 Ortega testified that he turned over the seized item to PO3 Gibe and PO1 Tamayo, neither of these investigators were presented in court to testify to the circumstances surrounding their receipt of the seized drug. Since they did not testify to confirm the receipt and turnover of the seized item, a gap in

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[34] *People v. Bartolini*, 791 Phil. 626, 634 (2016).

[35] *People v. Geronimo*, G.R. No. 225500, September 11, 2017, 839 SCRA 336, 349.

[36] TSN, September 3, 2008, p. 10; TSN, July 30, 2010, p. 9.

[37] *Id.*

[38] *Id.*

[39] Records, p. 44.

[40] G.R. No. 227398, March 22, 2017, 821 SCRA 470, 482.

the chain of custody is thereby created. Not only this, the Court observes that the person who received the items at the crime laboratory was not identified by both PO1 Villamayor and PO2 Ortega in their respective testimonies. Notably, the testimony of the forensic chemist was dispensed with by the prosecution. While there was a stipulation on the testimony of P/I Plantilla, it merely covers the result of the examination conducted on the specimen submitted to the forensic chemist. Evidently, the prosecution's non-presentation of the necessary witnesses constituted gaps in the chain of custody of the seized prohibited drug. Plainly, the seized drug was not properly handled, from the time of its confiscation to its turnover in the police station, including its transfer to the crime laboratory. Indeed, every person who takes possession of seized drugs must show how it was handled and preserved while in his or her custody to prevent any switching or replacement.[41]

Aside from the gaps in the chain of custody of the seized specimen, the Court observes that no photograph and inventory of the seized item were made in the presence of an elected public official, a representative of the Department of Justice (DOJ) and of the media. Section 21 of Article II of RA 9165 clearly requires the apprehending team to mark, conduct a physical inventory, and to photograph the seized item in the presence of the accused or his representative or counsel, and witnessed by an elected public official and representatives of DOJ and the media. The law mandates that the insulating witnesses be present during the marking, the actual inventory, and the taking of photographs of the seized items to deter the common practice of planting evidence.[42] While strict compliance may not always be possible, the prosecution has the burden to prove justifiable reasons for non-compliance. No explanation was, however, offered for non-compliance with Section 21 of RA 9165.

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[41] *People v. Ismael*, G.R. No. 208093, February 20, 2017, 818 SCRA 122, 139.

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

Clearly, with the foregoing lapses and gaps in the chain of custody, the evidentiary value and integrity of the illegal drug have been compromised. Indeed, the Court cannot determine with certainty whether the supposed marijuana seized from appellants were the same ones submitted to the crime laboratory, and eventually, presented in court. Consequently, appellants' guilt for illegal sale of drugs has not been proved beyond reasonable doubt.

The Court, therefore, finds appellants' acquittal in order. As such, it is unnecessary to delve into the other issues raised in this case.

WHEREFORE, the appeal is **GRANTED**. The August 31, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 07340 is **REVERSED AND SET ASIDE**. Appellants Hermogenes Managat, Jr. *y* De Leon and Dindo Caracuel *y* Sulit are **ACQUITTED** of the charge as their guilt had not been established beyond reasonable doubt. Their immediate release from detention is ordered, unless other lawful and valid ground for their detention exists.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation, and who, in turn, is directed to report to this Court the action he has taken, within five (5) days from his receipt of this Decision.

SO ORDERED.

Bersamin, C.J., Jardeleza, Gesmundo, and *Carandang, JJ.*, concur.

THIRD DIVISION

[G.R. No. 231838. March 4, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FRANKIE MAGALONG *y* MARAMBA[*] @ ANGKIE,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; ESTABLISHED IN CASE AT BAR.— For a successful prosecution of illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165, the following elements must be satisfied: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor. In the crime of illegal sale of dangerous drugs, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money consummate the illegal transaction. What matters is the proof that the sale actually took place, coupled with the presentation in court of the prohibited drug, the *corpus delicti*, as evidence. In this case, the Court finds that all the requisites for the sale of an illegal drug were met. Based on the testimonies of IO1 Tabuyo and Inocencio, which were supported by the documentary evidence offered by the prosecution and admitted by the trial court, the identities of IO1 Tabuyo as the buyer, Magalong as the seller, the *shabu* as the dangerous drug, and the ₱500.00 bill as the marked money, as well as the fact that the sale actually took place, have all been proven beyond reasonable doubt.

2. ID.; ID.; ID.; ID.; BUY-BUST OPERATION; WHERE THE SALE IS ACTUALLY WITNESSED AND ADEQUATELY PROVED BY PROSECUTION WITNESSES, THE NON-PRESENTATION OF THE CONFIDENTIAL INFORMANT IS NOT FATAL SINCE

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[*] Also spelled "Magamba" in some parts of the *rollos* and records.

THE LATTER'S TESTIMONY WILL MERELY BE CORROBORATIVE OF THE APPREHENDING OFFICERS' EYEWITNESS TESTIMONIES; CASE AT BAR.— Confidential informants are usually not presented in court because of the need to hide their identity and preserve their invaluable service to the police. Where the sale was actually witnessed and adequately proved by prosecution witnesses, like in this case, the non-presentation of the confidential informant is not fatal since the latter's testimony will merely be corroborative of the apprehending officers' eyewitness testimonies. Presentation of confidential informant is necessary, if not indispensable, when the accused vehemently denies selling prohibited drugs and there are material inconsistencies in the testimonies of the arresting officers, or there are reasons to believe that the arresting officers had motives to testify falsely against the accused, or when the informant was the poseur-buyer and the only one who actually witnessed the entire transaction. These exceptional circumstances are not present here.

3. **ID.; ID.; ID.; ID.; CHAIN OF CUSTODY RULE; THE LINKS THAT MUST BE ESTABLISHED IN THE CHAIN OF CUSTODY, ENUMERATED.—** The chain of custody rule is but a variation of the principle that real evidence must be authenticated prior to its admission into evidence. To establish a chain of custody sufficient to make evidence admissible, the proponent needs only to prove a rational basis from which to conclude that the evidence is what the party claims it to be. x x x Thus, the links in the chain of custody that must be established are: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the seized illegal drug by the apprehending officer to the investigating officer; (3) the turnover of the illegal drug by the investigating officer to the forensic chemist for laboratory examination; and (4) the turnover and submission of the illegal drug from the forensic chemist to the court.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

On appeal is the October 21, 2016 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 07499, which sustained the February 11, 2015 Decision[2] of the Regional Trial Court (*RTC*), Branch 41, Dagupan City, Pangasinan, convicting appellant Frankie Magalong *y* Maramba @ Angkie (*Magalong*) of illegal sale of Methamphetamine Hydrochloride (*Shabu*), in violation of Section 5, Article II of Republic Act (*R.A.*) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*.

On July 11, 2013, an Information was filed against Magalong, which alleged:

> That on or about the 10th day of July 2013, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused **FRANKIE MAGALONG Y MARAMBA @ ANGKIE**, did then and there, willfully, unlawfully and [feloniously], sell and deliver to a poseur-buyer Methamphetamine Hydrochloride (Shabu), contained in one (1) heat-sealed plastic sachet, weighing more or less 4.031 grams, in exchange of ₱20,000.00, without authority to do so.[3]

In his arraignment, Magalong pleaded "not guilty."[4] Trial ensued while he was detained in the city jail.[5]

Version of the Prosecution:

On or about 2:00 p.m. of July 10, 2013, Intelligence Officer 1 (*IO1*) Raymund Tabuyo and Agent Jerico Jorge Inocencio of

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[1] Penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justices Remedios A. Salazar-Fernando and Socorro B. Inting concurring; *rollo*, pp. 2-13; CA *rollo*, pp. 137-148.

[2] Penned by Presiding Judge Emma M. Torio; records, pp. 113-125; CA *rollo*, pp. 76-88.

[3] Records, p. 1.

[4] *Id.* at 25-28.

[5] *Id.* at 21.

the Philippine Drug Enforcement Agency (*PDEA*) Regional Office 1, Pangasinan Sector Special Enforcement Team (*PSSET*) were told by a confidential informant (*CI*) that Magalong was selling illegal drugs in Sitio Tondaligan, Bonuan Gueset, Dagupan, Pangasinan. The report was relayed to their team leader, Agent Rogelito Daculla. Upon verification, it was found that Magalong was in their target list, *i.e.*, listed in the order of battle, for his involvement in illegal drugs in Pangasinan. A buy-bust operation was planned. The CI was instructed to call Magalong via cellphone and relay to him that he had a potential buyer. Magalong agreed to sell five (5) grams of *shabu* worth ₱20,000.00 and to meet in front of the Japanese Garden in Sitio Tondaligan by 6:00 p.m.

At 4:00 p.m., the PDEA operatives conducted a briefing. IO1 Tabuyo and Inocencio were designated as the poseur-buyer and back-up/arresting officer, respectively. IO1 Tabuyo prepared a genuine ₱500.00 bill as buy-bust money and boodle money consisting of newspaper cutouts, with his markings placed thereon. It was also agreed that the pre-arranged signal would be the lighting of a cigarette after the sale. By 5:00 p.m., the PDEA team, composed of more or less 10 members including the CI, proceeded to the meeting place with the use of their service vehicle and another car.

When they were already near the transaction area, IO1 Tabuyo and the CI alighted from the PDEA service vehicle and boarded a jeepney going to the Tondaligan beach cottages. The other group members followed and strategically positioned themselves within the vicinity. Upon reaching the agreed place, IO1 Tabuyo and the CI stood by in a *sari-sari* store located beside the PJ cottage and right across the Japanese Garden. A few minutes later, a man that fit the description of Magalong arrived and went near them. The CI introduced IO1 Tabuyo as the friend interested to buy the merchandise. Magalong invited them to rent a room in PJ cottage to taste the illegal drugs, but IO1 Tabuyo declined reasoning that they have to leave the area at once as they have to attend a birthday party. Eventually, Magalong handed a plastic sachet containing what appeared to be a *shabu* and, in return, IO1 Tabuyo gave the payment. When Magalong

noticed the boodle money, IO1 Tabuyo grabbed him and introduced himself as a PDEA agent. Inocencio and the other team members immediately rushed to the area. Magalong was frisked and apprised of his constitutional rights.

IO1 Tabuyo seized and marked the illegal drug, buy-bust money, and boodle money. In the presence of Magalong, he also conducted an inventory of confiscated items at the place of arrest and, thereafter, prepared the Certificate of Inventory of Drug Evidence.[6] Ricardo C. Mejia (Barangay Chairman of Bonuan Gueset), Robert R. Ramirez (representative of the Department of Justice), and John Germano and Charisse Victoria (representatives of the media), affixed their signatures on the certificate. The representatives of the DOJ and media signed the certificate at the PDEA office in Astrodome, Tapuac District, while the *barangay* chairman did the same at the *barangay* hall of Bonuan Gueset.[7]

IO1 Tabuyo was in possession of the plastic sachet of *shabu*, buy-bust money, and boodle money as the team proceeded to the PDEA office. There he prepared the requests for laboratory examination of the drug evidence and medical examination of Magalong.[8] During the preparation of the letter requests, the plastic sachet of *shabu* was in his custody as it was placed in the buy-bust kit he was holding.[9] Together with Magalong and Inocencio, he delivered the request for laboratory examination and the specimen to the Pangasinan Provincial Crime Laboratory Office.[10] In the PDEA office, the Booking Sheet and Arrest Report[11] of Magalong was prepared by Inocencio and the Joint

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[6] Records, p. 14.

[7] TSN, November 27, 2013, pp. 14-15; TSN, April 14, 2014, pp. 14, 17-18; May 19, 2014, pp. 4-5.

[8] TSN, November 27, 2013, pp. 15-16; TSN, April 14, 2014, p. 14.

[9] TSN, February 12, 2014, pp. 4-5.

[10] TSN, November 27, 2013, p. 16; TSN, February 12, 2014, pp. 5-6; TSN, April 14, 2014, pp. 14-15.

[11] Records, p. 9.

Affidavit of Arrest[12] was executed by him and IO1 Tabuyo. Pictures of the proceedings made after the arrest of Magalong were also taken.[13]

On July 11, 2013, Police Senior Inspector (*PSI*) Myrna Malojo-Todeño, who was a Forensic Chemical Officer of the crime laboratory, and a certain SPO1 Verceles personally received the request for laboratory examination[14] of the seized evidence, particularly described as: "One (1) small heat-sealed transparent plastic sachet containing white crystalline substance suspected to be *shabu* with an approximate weight of 5 grams with markings Exh. A, 07-10-13, RAT and signature."[15] Upon receiving the specimen, PSI Todeño conducted a qualitative examination, which, as evidenced by the initial and final laboratory reports (Chemistry Report No. D-129-2013L),[16] gave positive result to the test for the presence of Methamphetamine Hydrochloride.[17] Based on the logbook of incoming and outgoing specimen,[18] the plastic sachet of *shabu* was turned over by PSI Todeño to Police Officer 3 (*PO3*) Elmer Manuel, who was the Evidence Custodian, but was later on retrieved from the latter by the former pursuant to a subpoena issued by the trial court.[19]

Version of the Defense:

Only Magalong testified for the defense. He denied that he was one of the drug personalities in Pangasinan being monitored by the police. He recalled that on July 1, 2013 he was in the Town Proper of Dagupan waiting for a jeep bound for Bonuan Boquig (as he was from Bonuan Boquig-Longos) when two

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[12] *Id.* at 7-8.

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

[14] *Id.* at 12.

[15] *Id.* at 12.

[16] Records (Evidence for the Prosecution), pp. 8-9.

[17] TSN, September 11, 2013, pp. 6-8.

[18] Records (Evidence for the Prosecution), pp. 18, 20.

[19] TSN, September 11, 2013, pp. 8-9; TSN, March 19, 2014, pp. 4-10.

men approached and talked to him. They tapped his left shoulder and said, "*kumusta pare, balato*." Surprised as they were unknown to him, he replied that he does not have money. The men retorted that they do not believe him as he earns so much because he is one of the targets in their office. When he asked what office they belong, the men claimed that they were from PDEA. He then told them to go back to their office since they were just extorting money. In response, the unidentified men looked daggers at him and uttered something which he could not understand. So he went away from them. He neither went to the PDEA office to complain about his alleged listing nor reported to the police what happened.

On July 10, 2013, Magalong was at the Japanese Garden in Bonuan Tondaligan. He was with his cousin, Ferdinand Reyes, drinking liquor at the seashore. As he was going out of the Japanese Garden, somebody asked him if he is Frankie Magalong. When he replied in the affirmative, he was instantly grasped and boarded in a red car. He was brought to the Dagupan City Astrodome and to another place unknown to him since it was already late at night and he was a little bit drunk.

After trial, the RTC convicted Magalong of the crime charged. The dispositive portion of the February 11, 2015 Decision states:

> WHEREFORE, premises considered, judgment is hereby rendered finding the accused Frankie Magalong y Maramba @ Angkie ***GUILTY*** beyond reasonable doubt of the crime of violation of Section 5, Article II of Republic Act 9165, and pursuant thereto, he is sentenced to suffer the penalty of life imprisonment and fine in the amount of Five Hundred Thousand Pesos (Php500,000.00).
>
> The shabu subject of this case weighing 4.031 grams and the buy[-]bust money of ₱20,000.00 as well as the boodle money are hereby forfeited in favor of the government and to be disposed in accordance with the law.
>
> The period during which the accused has undergone preventive imprisonment shall be credited to him in full in the service of his sentence if he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted persons.

SO ORDERED.[20]

Magalong moved for a reconsideration of the Decision, but it was denied.[21] Subsequently, the case was elevated to the CA *via* notice of appeal.[22] However, the appellate court affirmed the RTC Decision.

Now before Us, both Magalong and the People manifested that they would no longer file a Supplemental Brief, taking into account the exhaustive arguments and discussions in their respective Briefs before the CA.[23]

The appeal is unmeritorious.

For a successful prosecution of illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165, the following elements must be satisfied: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor.[24] In the crime of illegal sale of dangerous drugs, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money consummate the illegal transaction.[25] What matters is the proof that the sale actually took place, coupled with the presentation in court of the prohibited drug, the *corpus delicti*, as evidence.[26] In this case, the Court finds that all the requisites for the sale of an illegal drug were met. Based on the testimonies of IO1 Tabuyo and Inocencio, which were

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[20] Records, p. 125; CA *rollo*, p. 88.

[21] *Id.* at 148.

[22] *Id.* at 151.

[23] *Rollo*, pp. 21-23 and 26-28.

[24] *People v. Sic-Open*, 795 Phil. 859, 869-870 (2016); *People v. Eda*, 793 Phil. 885, 896 (2016); *People v. Amaro*, 786 Phil. 139, 146-147 (2016); and *People v. Ros, et al.*, 758 Phil. 142, 159 (2015).

[25] *People v. Sic-Open, supra*, at 870; *People v. Eda, supra*, at 896-897; and *People v. Amaro, supra*, at 147.

[26] *People v. Eda, supra* note 24, at 897; *People v. Amaro, supra* note 24, at 147; and *People v. Ros, et al.*, *supra* note 24.

supported by the documentary evidence offered by the prosecution and admitted by the trial court, the identities of IO1 Tabuyo as the buyer,[27] Magalong as the seller, the *shabu* as the dangerous drug, and the ₱500.00 bill as the marked money, as well as the fact that the sale actually took place, have all been proven beyond reasonable doubt.

Contrary to the position of Magalong, the confidential informant need not be presented in order to successfully hold him criminally liable. Confidential informants are usually not presented in court because of the need to hide their identity and preserve their invaluable service to the police.[28] Where the sale was actually witnessed and adequately proved by prosecution witnesses, like in this case, the non-presentation of the confidential informant is not fatal since the latter's testimony will merely be corroborative of the apprehending officers' eyewitness testimonies.[29] Presentation of confidential informant is necessary, if not indispensable, when the accused vehemently denies selling prohibited drugs and there are material inconsistencies in the testimonies of the arresting officers, or there are reasons to believe that the arresting officers had motives to testify falsely against the accused, or when the informant was the poseur-buyer and the only one who actually witnessed the entire transaction.[30] These exceptional circumstances are not present here.

Further, the chain of custody does not suffer from any fatal flaw. At the time of the commission of the crime on July 10, 2013, the applicable law was R.A. No. 9165.[31] Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, has defined chain of custody as –

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[27] TSN, November 27, 2013, p. 15; TSN, April 14, 2014, p. 7.

[28] *People v. Otico*, G.R. No. 231133, June 6, 2018 and *People v. Amin*, 803 Phil. 557, 565 (2017).

[29] *People v. Otico, supra*.

[30] *Id.*

[31] R.A. No. 9165 took effect on July 7, 2002 (See *People v. De la Cruz*, 591 Phil. 259, 272 [2008]).

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 for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.[32]

The chain of custody rule is but a variation of the principle that real evidence must be authenticated prior to its admission into evidence.[33] To establish a chain of custody sufficient to make evidence admissible, the proponent needs only to prove a rational basis from which to conclude that the evidence is what the party claims it to be.[34] In other words, the prosecution must offer sufficient evidence from which the trier of fact could reasonably believe that an item is still what the government claims it to be.[35] In the prosecution of illegal drugs, the well-established federal evidentiary rule in the United States is that when the evidence is not readily identifiable and is susceptible to alteration by tampering or contamination, courts require a more stringent foundation entailing a chain of custody of the item with sufficient completeness to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.[36] The Court has adopted

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[32] See *People v. Badilla*, 794 Phil. 263, 278 (2016); *People v. Arenas*, 791 Phil. 601, 610 (2016); *Saraum v. People*, 779 Phil. 122, 132 (2016).

[33] *United States v. Rawlins*, 606 F.3d 73 (2010).

[34] *Id.*, as cited in *United States v. Mehmood*, 2018 U.S. App. LEXIS 19232 (2018); *United States v. De Jesus-Concepcion*, 652 Fed. Appx. 134 (2016); *United States v. Rodriguez*, 2015 U.S. Dist. LEXIS 35215 (2015); and *United States v. Mark*, 2012 U.S. Dist. LEXIS 95130 (2012).

[35] See *United States v. Rawlins, supra* note 33, as cited in *United States v. Mark, supra*.

[36] See *United States v. Cardenas*, 864 F.2d 1528 (1989), as cited in *United States v. Yeley-Davis*, 632 F.3d 673 (2011); *United States v. Solis*, 55 F. Supp. 2d 1182 (1999); *United States v. Anderson*, 1994 U.S. App. LEXIS 9193 (1994); *United States v. Hogg*, 1993 U.S. App. LEXIS 13732

this rule in *Mallillin v. People*,[37] where it was discussed how, ideally, the chain of custody should be established:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[38]

Thus, the links in the chain of custody that must be established are: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the seized illegal drug by the apprehending officer to the investigating officer; (3) the turnover of the illegal drug by the investigating officer to the forensic chemist for laboratory examination; and (4) the turnover and submission of the illegal drug from the forensic chemist to the court.[39]

(1993); *United States v. Rodriguez-Garcia*, 983 F.2d 1563 (1993); *United States v. Johnson*, 977 F.2d 1360 (1992); and *United States v. Clonts*, 966 F.2d 1366 (1992).

[37] 576 Phil. 576 (2008)

[38] *Id*. at 587, as cited in *People v. Tamaño*, 801 Phil. 981, 1001 (2016); *People v. Badilla, supra* note 32, at 280; *Saraum v. People, supra* note 32, at 132-133; *People v. Dalawis*, 772 Phil. 406, 417-418 (2015); and *People v. Flores*, 765 Phil. 535, 541-542 (2015). It appears that *Mallillin* was erroneously cited as "*Lopez v. People*" in *People v. Dela Cruz*, 589 Phil. 259 (2008), *People v. Sanchez*, 590 Phil. 214 (2008), *People v. Garcia*, 599 Phil. 416 (2009), *People v. Denoman*, 612 Phil. 1165 (2009), and *People v. Abelarde*, G.R. No. 215713, January 22, 2018.

[39] *People v. Sipin*, G.R. No. 224290, June 11, 2018; *People v. Amaro, supra* note 24, at 148; and *People v. Enad*, 780 Phil. 346, 358 (2016).

In this case, Magalong did not present any evidence to substantiate his allegation that the integrity and evidentiary value of the *shabu* presented as evidence at the trial have been compromised at some point. Instead, the body of evidence adduced by the prosecution supports the conclusion that the integrity and evidentiary value of the seized illegal drug were preserved and safeguarded through an unbroken chain of custody – from the arresting officers, to the investigating officer, then to the forensic chemist, and until the dangerous drug was presented in court. Certainly, the evidence submitted by the prosecution proved beyond reasonable doubt the crucial links in the chain, starting from its seizure and confiscation from Magalong until its presentation as proof of the *corpus delicti* before the RTC.

Seizure and marking of the illegal drug recovered from the accused by the apprehending officer

Here, IO1 Tabuyo marked the plastic sachet containing shabu, the buy-bust money, and the boodle money immediately upon their confiscation. In the presence of Magalong and the rest of the PDEA team members, he also conducted an inventory of confiscated items at the place of arrest and, thereafter, prepared the Certificate of Inventory of Drug Evidence that was signed by the barangay chairman at the barangay hall of Bonuan Gueset, as well as by the representatives of the DOJ and the media, at the PDEA office in Astrodome, Tapuac District.[40] All these are in substantial compliance of the requirements of Section 21(1) Article II of R.A. No. 9165, which states:

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

[40] TSN, February 12, 2014, pp. 4, 9.

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[.]

and the mandate of Section 21(a) of the Implementing Rules and Regulations (*IRR*), which supplements the above-quoted provision:

(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.

In this case, there appears to be a doubt on where the marking and physically inventory of the seized items actually happened. In his direct examination, IO1 Tabuyo declared that these were done at the place of arrest.[41] In his cross-examination, however, he stated that after the apprehension of Magalong, the arresting team immediately proceeded to the PDEA office where he prepared the inventory receipt.[42] Despite this seeming

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[41] TSN, November 27, 2013, pp. 11-12.

[42] TSN, February 12, 2014, p. 3.

inconsistency, the prosecution was able to prove that the arresting team made an initial inventory at the place of arrest. IO1 Tabuyo clarified, thus:

ATTY. TIONG:

In your direct examination, you stated that the inventory receipt was prepared on July 10, 2013 in the area of transaction contrary to your statement that you prepared the inventory receipt in your office?
A: We had initial inventory in the place of transaction, sir.

Q: What made you have an initial inventory there?
A: For marking on the items confiscated and I put in the inventory, sir.

Q: I again invite your attention to your Affidavit, paragraph 8, you stated that "to avoid commotion and for the security of the team[,] we immediately withdrew from the vicinity and proceeded to our office to conduct an inventory of the confiscated pieces of evidence," what can you say to this?
A: (No answer)

COURT:

The court will just make the proper evaluation of the testimony of this witness.[43]

The foregoing testimony was corroborated by Inocencio. In his direct examination, he maintained that IO1 Tabuyo marked the confiscated shabu at the transaction area, but they conducted the inventory at the PDEA office because the crowd was already building up and for security reason.[44] His cross-examination disclosed the following details:

Q: Where was the inventory of the items confiscated done?
A: The inventory of the items was partially done inside the vehicle, sir.

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[43] *Id.* at 9.

[44] TSN, April 14, 2014, pp. 7-8.

Q: What do you mean by partially?
A: After the [marking], Agent Tabuyo also prepared the inventory but because the people [were] already crowded and building up the area, so to avoid commotion and for the security of the team, we immediately proceeded to our office to continue with the conduct of inventory of the confiscated items.

Q: What do you mean by crowded?
A: There [were] many persons who [were] looking on what [was] happening in the area.

Q: How far have you conducted inventory when you said partial of the extent of the inventory conducted?
A: As far as I remember (*sic*) I saw Agent Tabuyo put a marking on the confiscated items and wrote in the inventory.

Q: When you said that place [was] crowded you mean to say you [feared] that something [would] happen?
A: Yes sir because the area [was] just a few meters away from [the] Muslim area, so for security reason, our team leader instructed us to move out from the place and [proceed] [to] our office.

Q: If I tell you that there is a Police Precinct at the western part of the Japanese Garden, do you agree with me?
A: Yes, sir.

Q: [Had] it been better if you conducted the inventory at the Police Station [substation] rather than conducting partial inventory and going to your office?

PROS. NACHOR:
Objection, your Honor. Argumentative.

COURT:
[Sustained].

ATTY. TIONG:

Q: Are you aware of the provisions of conducting the chain custody (*sic*)?
A: Yes, sir.

Q: So that you know that under that law the inventory must be conducted at the place where the incident happened or to the nearest Police Station?
A: Yes, sir.

Q: Why then you do not have the inventory conducted (*sic*) here in the Police Station or nearest to the scene of the incident?
A: The provision is written also instead of the Police Station or at the nearest office of the arresting officer, that's why we brought the suspect at our nearest office which [was] in Tapuac District, Dagupan City.[45]

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ATTY. TIONG:

Q: So after the arrest of the accused and the partial inventory, you proceeded to the Police Station directly?
A: Yes, sir.[46]

In *People v. Sic-Open*,[47] the Court sustained the conviction of the accused-appellant despite the fact that the physical inventory and photograph of the illegal drug were not immediately done at the place where it was confiscated. In that case, the apprehending team similarly justified that they conducted a preliminary inventory of the seized items inside the car because it was too dark at the time and they were being cautious of their own safety as they were not sure if there were other persons within the vicinity aside from the accused-appellant.

As regards the requirement of the law that three witnesses[48] should be present during the physical inventory and photograph

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[45] *Id.* at 10-12.

[46] *Id.* at 13.

[47] *Supra* note 24, at 873, citing *People v. Asislo* (778 Phil. 509 [2016]); *People v. Mammad, et al.* (769 Phil. 782 [2015]); *Miclat, Jr. v. People* (672 Phil. 191 [2011]); and *People v. Felipe*, (663 Phil. 132 [2011]).

[48] Under Section 21(l) of R.A. No. 9165, after seizure and confiscation of the drugs, the apprehending team was required to immediately conduct a physical inventory and to photograph the same in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media **and** (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. This provision was amended by R.A. No. 10640, which was approved on July 15, 2014. It is now mandated that the conduct of physical inventory

of the confiscated items, this Court has recently held in *People v. Lim*:[49]

It must be **alleged and proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:

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

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

> It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In

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and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) a representative of the National Prosecution Service **or** the media who shall sign the copies of the inventory and be given a copy thereof (See *People v. Lim*, G.R. No. 231989, September 4, 2018, citing *People v. Ocampo*, G.R. No. 232300, August 1, 2018; *People v. Allingag*, G.R. No. 233477, July 30, 2018; *People v. Sipin, supra* note 39; *People v. Reyes*, G.R. No. 219953, April 23, 2018; and *People v. Mola*, G.R. No. 226481, April 18, 2018).

[49] *Supra.*

> *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.[50]

Here, We are convinced that the arresting team exerted earnest efforts to comply with the mandated procedure, and that under the circumstances present in this particular case, the actions of the PDEA operatives were reasonable. Based on the testimonies of IO1 Tabuyo, Inocencio, and Ramirez, the arresting team had tried to secure the attendance of the necessary witnesses during the conduct of the buy-bust operation, but only the representatives of the media and the DOJ responded, albeit belatedly, and the members of the arresting team had to make a judgment call of immediately leaving the place of arrest in order to avoid commotion and ensure their own safety.[51]

Indeed, as long as the integrity and evidentiary value of an illegal drug were not compromised, non-compliance with R.A.

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[50] *People v. Lim, supra* note 48. (Emphasis ours; citations omitted)

[51] See TSN, November 27, 2013, p. 14; TSN, April 14, 2014, pp. 17-18; and TSN, June 11, 2014, pp. 4-5.

No. 9165 and its IRR may be excused. We have stressed this in *People v. Eda*:[52]

> Notably, Section 21 of R.A. No. 9165 serves as a protection for the accused from malicious imputations of guilt by abusive police officers. The illegal drugs being the *corpus delicti*, it is essential for the prosecution to prove and show to the court beyond reasonable doubt that the illegal drugs presented to the trial court as evidence of the crime are indeed the illegal drugs seized from the accused. In particular, Section 21, paragraph no. 1, Article II of the law prescribes the *method* by which law enforcement agents/personnel are to go about in handling the *corpus delicti* at the time of seizure and confiscation of dangerous drugs in order to ensure full protection to the accused. x x x
>
> Section 21, however, was not meant to thwart the legitimate efforts of law enforcement agents. The Implementing Rules and Regulations of the law clearly expresses that "non-compliance with [the] requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items."
>
> We likewise recognize that while the chain of custody should ideally be perfect and unbroken, it is not in reality "as it is almost always impossible to obtain an unbroken chain." Thus, non-compliance with Section 21 does not automatically render illegal the arrest of an accused or inadmissible the items seized/confiscated. As the law mandates, what is vital is the preservation of the integrity and the evidentiary value of the seized/confiscated illegal drugs since they will be used to determine the guilt or innocence of the accused.[53]

Turnover of the illegal drug by the apprehending officer to the investigating officer

In this case, it appears that IOI Tabuyo acted as the apprehending officer and the investigating officer. He was in possession of the plastic sachet of *shabu*, buy-bust money,

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[52] *Supra* note 24.

[53] *People v. Eda, supra* note 24, at 901, citing *People v. Ros, et al., supra* note 24, at 160-161.

and boodle money when the arresting team proceeded to the PDEA office. There, he prepared the requests for laboratory examination of the drug evidence and medical examination of Magalong. All the while, the plastic sachet of *shabu* was in his custody as it was placed in the buy-bust kit he was holding.

Turnover of the illegal drug by the investigating officer to the forensic chemist for laboratory examination

Together with Magalong and Inocencio, IO1 Tabuyo delivered the request for laboratory examination and the suspected illegal drug to the Pangasinan Provincial Crime Laboratory Office on July 11, 2013. PSI Todeño and a certain SPO1 Verceles personally received the letter-request and the specimen. PSI Todeño immediately conducted a qualitative examination, which gave positive result to the test for the presence of Methamphetamine Hydrochloride.[54] Thereafter, she turned over the plastic sachet of shabu to PO3 Manuel, who immediately proceeded to the evidence room for its safekeeping.[55] Aside from PO3 Manuel, the Provincial Chief and the Forensic Chemist have access to the evidence room.[56] Nonetheless, it was impossible for anyone to take out evidence without the knowledge of the others.[57] This is so because the room had five padlocks: two padlocks were in the possession of the Provincial Chief and the Forensic Chemist while the three padlocks were in the possession of the Evidence Custodian.[58]

Turnover and submission of the illegal drug from the forensic chemist to the court

The plastic sachet of shabu was later on retrieved by PSI Todeño from PO3 Manuel pursuant to a subpoena issued by

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[54] TSN, September 11, 2013, pp. 6-8.

[55] TSN, March 19, 2014, p. 6.

[56] *Id.*

[57] *Id.*

[58] *Id.* at 9.

the trial court. When PO3 Manuel delivered the specimen to PSI Todeño, it was the first time that it was taken out from the evidence room.[59] In open court, PSI Todeño presented an improvised sealed envelope, with her signature as tamper seal, holding the subject sachet of shabu.[60] As proven by the marking she personally placed, she identified the transparent plastic sachet containing white crystalline substance as the same item that was submitted to their office and attested that it was in the same condition as of the time she turned it over to PO3 Manuel.[61]

Verily, the prosecution was able to establish with moral certainty and prove to the Court beyond reasonable doubt that there is an unbroken chain of custody over the confiscated illegal drug, from the time it was lawfully seized and came into the possession of the apprehending officers up to the time it was presented and offered in evidence before the trial court. The prosecution presented every person who touched the exhibit. They described how and from whom the seized *shabu* was received, where it was and what happened to it while in their possession, the condition in which it was received, the condition it was delivered to the next link in the chain, and 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.[62]

Against the overwhelming evidence for the prosecution, Magalong merely denied the accusations against him. We have invariably viewed with disfavor the defense of denial and frame-up because it can easily be concocted and it is a common and standard defense ploy in prosecutions for violation of R.A. No. 9165.[63] In order to prosper, the defense of denial

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[59] *Id.* at 10.

[60] TSN, September 11, 2013, p. 9.

[61] *Id.* at 9-11.

[62] *People v. Sic-Open, supra* note 24, at 876-877, and *People v. Eda, supra* note 24, at 903.

[63] *Id.* at 871; *Id.* at 899.

and frame-up must be proved with strong and convincing evidence.[64] The burden of proof is on Magalong to defeat the presumption that the police officers properly performed their official duties.[65] He failed. No bad faith was actually shown. He did not substantiate any illicit motive on the part of the police officers as to why they would choose to falsely implicate him in a very serious crime that would cause his imprisonment for life. For this failure, the testimonies of the prosecution witnesses deserve full faith and credit.

WHEREFORE, premises considered, the instant appeal is **DISMISSED**. The October 21, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 07499, which sustained the February 11, 2015 Decision of the Regional Trial Court, Branch 41, Dagupan City, Pangasinan, convicting appellant Frankie Magalong *y* Maramba @ Angkie of illegal sale of Methamphetamine Hydrochloride (*Shabu*), in violation of Section 5, Article II of Republic Act No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*, is **AFFIRMED**.

SO ORDERED.

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

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[64] *Id.*

[65] *Id.*

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

EN BANC

[A.C. No. 12415. March 5, 2019]

JUSTICE FERNANDA LAMPAS-PERALTA, JUSTICE STEPHEN C. CRUZ, and JUSTICE RAMON PAUL L. HERNANDO, *complainants, vs.* **ATTY. MARIE FRANCES E. RAMON,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; DISCIPLINE OF ATTORNEYS; IN CONSIDERATION OF THE GRAVITY OF THE CONSEQUENCES OF THE DISBARMENT OR SUSPENSION OF A MEMBER OF THE BAR, THE COURT HAS CONSISTENTLY HELD THAT A LAWYER ENJOYS THE PRESUMPTION OF INNOCENCE, AND THE BURDEN OF PROOF RESTS UPON THE COMPLAINANT TO SATISFACTORILY PROVE THE ALLEGATIONS IN HIS COMPLAINT THROUGH SUBSTANTIAL EVIDENCE.— Those in the legal profession must always conduct themselves with honesty and integrity in all their dealings. Members of the bar took their oath to conduct themselves according to the best of their knowledge and discretion with all good fidelity as well to the courts as to their clients and to delay no man for money or malice. These mandates apply especially to dealings of lawyers with their clients considering the highly fiduciary nature of their relationship. It bears stressing that membership in the bar is a privilege burdened with conditions. A lawyer has the privilege and right to practice law during good behavior and can only be deprived of it for misconduct ascertained and declared by judgment of the court after opportunity to be heard has afforded him. Without invading any constitutional privilege or right, and attorney's right to practice law may be resolved by a proceeding to suspend or disbar him, based on conduct rendering him unfit to hold a license or to exercise the duties and responsibilities of an attorney. However, in consideration of the gravity of the consequences of the disbarment or suspension of a member of the bar, the Court have consistently held that a lawyer enjoys the presumption of innocence, and the burden of proof rests upon the complainant to satisfactorily

prove the allegations in his complaint through substantial evidence. The Lawyer's Oath requires every lawyer to "support the Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein" and to "do no falsehood, nor consent to the doing of any in court." To the best of his ability, every lawyer is expected to respect and abide by the law, and to avoid any act or omission that is contrary thereto. A lawyer's personal deference to the law not only speaks of his character but it also inspires respect and obedience to the law on the part of the public.

2. **ID.; ID.; A LAWYER IS GUILTY OF GRAVE MISCONDUCT WHEN HE/SHE DRAFTED A FAKE DECISION OF THE COURT OF APPEALS, INCLUDING THEREIN THE NAMES OF THE COMPLAINANTS, AND PRESENTING IT TO HIS/HER CLIENTS FOR MONETARY CONSIDERATION; CASE AT BAR.—** The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence. As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in a charge of grave misconduct. Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others. Doubtless, respondent had a clear intent to violate the law when she fraudulently drafted a fake decision of the CA, falsely including therein the names of complainants, and presenting it to her clients for monetary consideration. These acts show respondent's wanton disregard of the law and a patent propensity to trample upon the canons of the Code. Hence, respondent should also be held administratively guilty for grave misconduct.

3. **ID.; ID.; DISBARMENT AND SUSPENSION; A MEMBER OF THE BAR MAY BE PENALIZED FROM HIS OFFICE AS AN ATTORNEY FOR VIOLATION OF THE LAWYER'S OATH AND/OR FOR BREACH OF ETHICS OF THE LEGAL PROFESSION AS EMBODIED IN THE CODE; ESTABLISHED IN CASE AT BAR.—** A member of the Bar may be penalized, even disbarred or suspended from his office as an attorney,

> for violation of the Lawyer's Oath and/or for breach of the ethics of the legal profession as embodied in the Code. For the practice of law is a profession, a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character. The appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts. x x x In fine, respondent's acts should not just be deemed as unacceptable practices that are both disgraceful and dishonorable; these reveal a moral flaw that makes her unfit to practice law. She has tarnished the image of the legal profession and has lessened the public faith in the Judiciary. Instead of being an advocate of justice, she became a perpetrator of injustice. The ultimate penalty of disbarment must be imposed upon respondent. Her name should be stricken off immediately and without reservation in the Roll of Attorneys.

D E C I S I O N

***PER CURIAM*:**

This is a Joint Complaint-Affidavit[1] for disbarment filed by Court of Appeals (*CA*) Associate Justices Fernanda Lampas-Peralta, Chairperson of the Sixth Division, Stephen C. Cruz, Senior Member of the Fifth Division, and Ramon Paul L. Hernando, then Junior Member of the Fifth Division, now a member of this Court (*complainants*), against Atty. Marie Frances E. Ramon (*respondent*), a member of the bar, before the Integrated Bar of the Philippines (*IBP*) Commission on Bar Discipline (*Commission*).

The Antecedents

On March 4, 2016, it came to the knowledge of complainants that a certain Maria Rossan De Jesus (*De Jesus*) went to the Office of the Division Clerk of Court of the CA Fifth Division to ascertain the veracity and authenticity of a Decision[2] purportedly

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[1] *Rollo*, pp. 2-9.

[2] *Id*. at 10-28.

written by complainants in a criminal case entitled, "*People of the Philippines v. Tirso Fajardo y Delos Trino*," and docketed as CA-G.R. CR No. 08005.

In the said decision, complainants allegedly ordered the acquittal of Tirso Fajardo (*Fajardo*), cousin of De Jesus, for the crime of violation of Sections 5 and 7 of Republic Act (R.A.) No. 9165.[3] The said decision was given to De Jesus by respondent, who was their counsel, to serve as proof that Fajardo had been acquitted. Respondent is a law practitioner, who was admitted to the bar on May 4, 2004 with Roll No. 49050. However, respondent informed De Jesus that the promulgation of the said decision would supposedly depend on the payment of a large sum of money to respondent.

Complainants checked the cases assigned to them and discovered that the said criminal case of Fajardo was still in the completion stage and was assigned to former CA Associate Justice Noel G. Tijam,[4] who was then a member of the CA Fourth Division.[5] This was affirmed by the CA Clerk of Court's Certification.[6]

On March 9, 2016, complainants learned through a newspaper item and television news program that on March 8, 2016, an entrapment operation was conducted by the members of the National Bureau of Investigation (*NBI*) against respondent, where she was caught red-handed receiving marked money from Carlos Aquino (*Aquino*), a friend of Fajardo, for the issuance of the aforementioned fake decision. Complainants also learned that the NBI filed a Criminal Complaint[7] against respondent and a certain Alex Rowales before the Office of the City Prosecutor of Manila for the crimes of estafa under Article 315,

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[3] Also known as the Comprehensive Dangerous Drugs Act of 2002.

[4] He is also a retired Associate Justice of the Supreme Court.

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

[6] *Id*. at 31.

[7] *Id*. at 32-34.

paragraph 2, and falsification under Article 172 of the Revised Penal Code (*RPC*). The complaint stated that:

> Complainants alleged that on December 16, 2015[,] [respondent] was engaged by MS. RAYMUNDA FAJARDO to appeal the decision of the Makati RTC convicting her son TIRSO DELOS TRINO FAJARDO for violation of R.A. [No.] 9165. From said date until March 2, 2016[,] [respondent] allegedly repeatedly asked for money which eventually reached the total amount of about one million pesos purportedly for legal fees and representation expenses. On March 2, 2016[,] Complainants, who are the cousin and best friend, respectively, of TIRSO FAJARDO, met with [respondent] and one ALEX ROWALES whom [respondent] introduced as a Sheriff of the Court of Appeals and who showed to them a purported DECISION of the Court of Appeals dated February 19, 2016[,] acquitting TIRSO FAJARDO and they asked for [₱]150,000.00 to hasten the release of the purported decision and the eventual release of TIRSO FAJARDO. Complainants first paid half of the demanded amount and verified the purported decision[,] which they discovered to be fake. They then reported the matter to the NBI Anti-Fraud Division[,] which then planned an entrapment operation.
>
> On March 8, 2016 at about 12:15 o'clock in the afternoon, the undersigned Agents, together with the Complainants, conducted an entrapment operation and proceeded to Jollibee Restaurant, Kalaw Ave., Ermita, Manila[,] where Complainants and Subjects agreed to meet[,] where Complainants are to deliver the balance of [₱]75,000.00
>
> As instructed, complainant DE JESUS occupied a table nearest the corner of Kalaw and Orosa by the glass walls x x x. At about 12:30 pm[,] [respondent] arrived at the table with some food and proceeded to eat while conversing with DE JESUS. After a few minutes, Complainant AQUINO arrived and after conversing with [respondent], he handed the marked money contained in a brown envelope to [respondent][,] who then received the envelope and placed it [in front of her]. After conversing some more, Complainants and [respondent] stood up holding the brown envelope with the marked money.
>
> At this juncture, Subject was immediately arrested and the marked money was recovered. x x x[8]

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[8] *Id*. at 33.

Thus, complainants filed the present administrative complaint alleging that respondent should be disbarred due to the following reasons: for representing herself as a lawyer who can influence Justices of the Court of Appeals to secure the acquittal of an accused; for defrauding the relatives of accused Fajardo to amass a large amount of money in the total amount of ₱1,000,000.00; for utter show of disrespect to complainants, the Court, and the Judiciary as a whole; and for committing the crimes of estafa and falsification.

Respondent did not submit any answer in spite of receipt of the order from the IBP Commission. She also failed to appear at the mandatory conference despite due notice.[9] Only complainants submitted their Joint Position Paper[10] dated July 27, 2016, to the IBP Commission.

IBP Report and Recommendation

In its Report and Recommendation[11] dated September 26, 2016, the IBP Commission recommended that respondent be disbarred as a lawyer for committing acts that were in violation of her sworn duties as a lawyer and the Code of Professional Responsibility (*Code*), and for unreasonably involving the Justices in the incident to their damage and prejudice.

In its Resolution[12] dated November 28, 2017, the IBP Board of Governors (*IBP Board*) adopted the findings of fact and recommendation of the IBP Commission imposing a penalty of disbarment against respondent.

The Court's Ruling

The Court adopts the findings of the IBP Commission and the recommendation of the IBP Board.

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[9] *Id.* at 161.

[10] *Id.* at 92-100.

[11] *Id.* at 161-163.

[12] *Id.* at 159-160.

Those in the legal profession must always conduct themselves with honesty and integrity in all their dealings. Members of the bar took their oath to conduct themselves according to the best of their knowledge and discretion with all good fidelity as well to the courts as to their clients and to delay no man for money or malice. These mandates apply especially to dealings of lawyers with their clients considering the highly fiduciary nature of their relationship.[13]

It bears stressing that membership in the bar is a privilege burdened with conditions. A lawyer has the privilege and right to practice law during good behavior and can only be deprived of it for misconduct ascertained and declared by judgment of the court after opportunity to be heard has afforded him. Without invading any constitutional privilege or right, and attorney's right to practice law may be resolved by a proceeding to suspend or disbar him, based on conduct rendering him unfit to hold a license or to exercise the duties and responsibilities of an attorney.[14] However, in consideration of the gravity of the consequences of the disbarment or suspension of a member of the bar, the Court have consistently held that a lawyer enjoys the presumption of innocence, and the burden of proof rests upon the complainant to satisfactorily prove the allegations in his complaint through substantial evidence.[15]

The Lawyer's Oath requires every lawyer to "support the Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein" and to "do no falsehood, nor consent to the doing of any in court."[16] To the best of his ability, every lawyer is expected to respect and abide by the law, and to avoid any act or omission that is contrary thereto. A lawyer's personal deference to the law not only speaks of his character but it also inspires respect and obedience to the

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[13] *Luna v. Atty. Galarrita*, 763 Phil. 175, 184 (2015).

[14] *Velasco v. Atty. Doroin, et al.*, 582 Phil. 1, 9 (2008).

[15] *Goopio v. Maglalang*, A.C. No. 10555, July 31, 2018.

[16] See Lawyer's Oath.

law on the part of the public.[17] Canon 1, Rules 1.01 and 1.02 of the Code states:

CANON 1 — A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes.

RULE 1.01 A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

RULE 1.02 A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

On the other hand, Canon 7 and Rule 7.03 obliges every lawyer to uphold the integrity and dignity of the legal profession, to wit:

CANON 7 — A lawyer shall at all times uphold the integrity and dignity of the legal profession, and support the activities of the integrated bar.

RULE 7.03 A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

Further, Canon 10, Rules 10.01, 10.02, and 10.03 mandates every lawyer to observe candor, fairness, and good faith, *viz.*:

CANON 10 — A lawyer owes candor, fairness and good faith to the court.

RULE 10.01 A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead or allow the Court to be misled by any artifice.

RULE 10.02 A lawyer shall not knowingly misquote or misrepresent the contents of a paper, the language or the argument of opposing counsel, or the text of a decision or authority, or knowingly cite as law a provision already rendered inoperative by repeal or amendment or assert as a fact that which has not been proved.

RULE 10.03 A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

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[17] *Jimenez v. Atty. Francisco*, 749 Phil. 551, 565 (2014).

Respondent violated the Lawyer's Oath and the Code; Grave misconduct

The Court finds that respondent violated the Lawyer's Oath and several canons and rules of the Code. She represented to De Jesus and Aquino that she could secure the acquittal of Fajardo and even used the names of the Associate Justices to accomplish her ill motives.

Respondent also defrauded her clients by drafting a fake, spurious, and sham decision regarding the purported acquittal of Fajardo. She placed the names of complainants in the fake decision even though the criminal case of Fajardo was raffled in a different division and assigned to a different Associate Justice. Glaringly, she discredited and disrespected members of the judiciary by wrongfully involving complainants' names in her fraudulent scheme. She also maliciously represented to her clients that she can influence Associate Justices of the CA to ensure the acquittal of an accused.

Further, respondent exacted exorbitant fees from her clients, in the amount of ₱1,000,000.00 more or less, as evidenced by receipts she signed.[18] In her ultimate desire to extort more money from Fajardo's relatives, she presented the fake decision of acquittal and asserted that the promulgation of the said decision would allegedly depend on the payment of a large sum of money to respondent.

Through the operation of the NBI, respondent was arrested in an entrapment operation when she received the marked money from Aquino for the purported decision of acquittal. Respondent's arrest and *modus operandi* were even broadcasted in television and published in the newspaper, causing further shame, disrepute, and disgrace to the legal profession.

Respondent was given an opportunity to controvert the allegations against her, however, she neither filed her answer nor attended the mandatory conference in the IBP Commission.

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[18] *Rollo*, pp. 135-140.

Verily, the acts exhibited by respondent violated the Lawyer's Oath. Her acts are also contrary to Canons 1, 7, and 10, and Rules 1.01, 1.02, 7.03, 10.01, 10.02, and 10.03 because respondent violated the laws, particularly Articles 172 and 315, par. 2 of the RPC, tarnished the integrity and dignity of the legal profession, and committed falsehood and deceit against her clients and the courts.

Respondent's acts also constitute grave misconduct. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence. As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in a charge of grave misconduct.[19] Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.[20]

Doubtless, respondent had a clear intent to violate the law when she fraudulently drafted a fake decision of the CA, falsely including therein the names of complainants, and presenting it to her clients for monetary consideration. These acts show respondent's wanton disregard of the law and a patent propensity to trample upon the canons of the Code. Hence, respondent should also be held administratively guilty for grave misconduct.

Proper penalty

The Court finds that complainants have established by substantial evidence that respondent: (1) drafted a fake decision of the CA acquitting Fajardo; (2) falsely and shamelessly included the names of complainants in the fake decision even though the criminal case was raffled to another division and handled

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[19] *Office of the Court Administrator v. Judge Indar*, 685 Phil. 272, 286-287 (2012).

[20] *Office of the Court Administrator v. Lopez*, 654 Phil. 602, 608 (2011).

by a different Justice; (3) maliciously represented that she can influence Associate Justices of the CA to acquit an accused; (4) fraudulently presented this fake decision to her clients in exchange for a hefty monetary consideration; (5) exacted exorbitant fees from her clients in the amount of ₱1,000,000.00; and (6) was caught red-handed by the NBI operatives when she received the marked money from her client for the fake decision of the CA. As discussed above, these acts constitute violations of the Lawyer's Oath, and Canons 1, 7, and 10, and Rules 1.01, 1.02, 7.03, 10.01, 10.02, and 10.03 of the Code. Respondent is guilty of grave misconduct because her transgression showed her clear intent to violate the law and disregard the Code.

A member of the Bar may be penalized, even disbarred or suspended from his office as an attorney, for violation of the Lawyer's Oath and/or for breach of the ethics of the legal profession as embodied in the Code. For the practice of law is a profession, a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character. The appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.[21] Section 27, Rule 138 of the Rules of Court states:

> Sec. 27. Attorneys removed or suspended by Supreme Court on what grounds. – **A member of the bar may be removed or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office**, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a wilfull disobedience of any lawful order of a superior court, or for corruptly or wilfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (emphasis supplied)

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[21] *Sison, Jr. v. Atty. Camacho*, 777 Phil. 1, 14 (2016).

In *Taday v. Atty. Apoya, Jr.*,[22] the Court disbarred a lawyer for authoring a fake court decision, which was considered a violation of Rule 1.01, Canon 1 of the Code. The lawyer therein even delivered and misrepresented the fake decision to his client. The Court held that the lawyer "committed unlawful, dishonest, immoral[,] and deceitful conduct, and lessened the confidence of the public in the legal system."[23]

In *Billanes v. Atty. Latido*,[24] the Court also disbarred a lawyer for manufacturing a fake decision in an annulment case. The lawyer therein violated Rule 1.01, Canon 1 of the Code because there existed substantial evidence that he procured the spurious decision, which caused great prejudice to his client.

In fine, respondent's acts should not just be deemed as unacceptable practices that are both disgraceful and dishonorable; these reveal a moral flaw that makes her unfit to practice law. She has tarnished the image of the legal profession and has lessened the public faith in the Judiciary. Instead of being an advocate of justice, she became a perpetrator of injustice. The ultimate penalty of disbarment must be imposed upon respondent. Her name should be stricken off immediately and without reservation in the Roll of Attorneys.

WHEREFORE, Atty. Marie Frances E. Ramon is **GUILTY** of violating the Lawyer's Oath, Canons 1, 7, and 10, and Rules 1.01, 1.02, 7.03, 10.01, 10.02, and 10.03 of the Code of Professional Responsibility, and Grave Misconduct. For reasons above stated, she is **DISBARRED** from the practice of law and her name stricken off the Roll of Attorneys, effective immediately, without prejudice to the civil or criminal cases pending and/or to be filed against her.

Let a copy of this Decision be furnished to the Office of the Bar Confidant to be entered into Atty. Marie Frances E. Ramon's

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[22] A.C. No. 11981, July 3, 2018.

[23] *Id*.

[24] A.C. No. 12066, August 28, 2018.

records. Copies shall likewise be furnished the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts concerned.

SO ORDERED.

Bersamin, C.J., Carpio, Castillo, Leonen, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., and *Carandang, JJ.*, concur.

Peralta, J., no part, spouse is a complainant.

Hernando, J., no part.

Perlas-Bernabe, J., on official leave.

EN BANC

[A.C. No. 12426. March 5, 2019]

IN RE: G.R. NO. 185806 GENEROSO ABELLANOSA, *ET AL.*, *versus* COMMISSION ON AUDIT and NATIONAL HOUSING AUTHORITY, *complainant, vs.* **ATTY. CIPRIANO P. LUPEBA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; DISCIPLINE OF ATTORNEYS; GROUND FOR DISBARMENT; LAWYERS ARE CALLED UPON TO OBEY COURT ORDERS AND PROCESSES AND THEIR DEFERENCE IS UNDERSCORED BY THE FACT THAT WILLFUL DISREGARD THEREOF WILL SUBJECT THE LAWYER NOT ONLY TO PUNISHMENT FOR CONTEMPT BUT TO DISCIPLINARY SANCTIONS AS WELL; CASE AT BAR.— It must be remembered that the practice of law is not a right but a mere privilege and, as such, must bow to the inherent regulatory power of the Supreme Court to exact compliance with the lawyers public responsibilities. Lawyers are called upon to obey court orders and processes and their deference is underscored by the fact that willful disregard thereof will subject

the lawyer not only to punishment for contempt but to disciplinary sanctions as well. In fact, a lawyer is imposed graver responsibility than any other to uphold the integrity of the courts and to show respect to their processes. From the facts, Atty. Lupeba failed to comply with the Court's lawful orders. He did not give any justifiable reason why he disobeyed the directives of this Court. x x x Atty. Lupeba's actions not only stand his disrespect to the Court, but also constitute gross misconduct and willful disobedience of the lawful orders of this Court, which under Section 27, Rule 138 of the Rules of Court is a sufficient cause for suspension or disbarment.

2. ID.; ID.; PENALTY OF SUSPENSION OR DISBARMENT; THE LAWYER'S ACTS IN WANTONLY DISOBEYING HIS DUTIES AS AN OFFICER OF THE COURT SHOW UTTER DISRESPECT FOR THE COURT WHERE SUSPENSION FROM THE PRACTICE OF LAW FOR A PERIOD OF FIVE (5) YEARS IS WARRANTED; CASE AT BAR.— The penalty of suspension or disbarment is meted out in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court. Atty. Lupeba's acts in want only disobeying his duties as an officer of the court show utter disrespect for the Court and a complete disregard of his duties as a member of the legal profession. Therefore, his suspension for five years is warranted. Records also show that Atty. Lupeba did not settle the ₱5,000.00 fine imposed by this Court in the Resolution dated October 14, 2014. In view of his inordinate delay to settle said amount, the imposition of twice the value of the initial fine is proper to sanction Atty. Lupeba and to make an example of his case in order to deter others from the same conduct. This Court affirms the payment of the fine of ₱10,000.00.

R E S O L U T I O N

***PER CURIAM*:**

This administrative complaint arose from the Petition for *Certiorari* filed with the Court by Generoso Abellanosa, *et al.* (Abellanosa, *et al.*) against the Commission on Audit (COA) and National Housing Authority (NHA) docketed as G.R. No. 185806.

Facts of the Case

Attorney Cipriano P. Lupeba (Atty. Lupeba) is the counsel on record of Abellanosa, *et al.*

In a Resolution[1] dated January 27, 2009, the Court ordered COA and NHA to file its Comment to the Petition. Said Resolution also directed Abellanosa, *et al.* to indicate their contact details or their counsel in all papers and pleadings filed with the Court; to show proof of service of the Petition with a full statement of the actual date, place and matter of service; and to indicate Atty. Lupeba's current Professional Tax Receipt Number and Integrated Bar of the Philippines (IBP) Official Receipt Number or Life Membership Number.

Lupeba, as counsel on record of Abellanosa, *et al.*, failed to comply with the directive of this Court. In a Resolution[2] dated June 9, 2009, this Court directed Atty. Lupeba to "Show Cause why he should not be disciplinarily dealt with or held in contempt" for his failure to comply with the Resolution dated January 27, 2009. He was likewise ordered to comply with said Resolution within ten (10) days from notice.

Meanwhile, COA and NHA filed their Comment on the Petition through the Office of the Solicitor General. Abellanosa, *et al.* were required to file a Reply to the Comment within ten (10) days from notice.[3] However, no Reply was filed and Atty. Lupeba still failed to comply with the previous directives of this Court in the Resolutions dated January 27, 2009 and June 9, 2009. As a result, this Court imposed a fine of ₱1,000.00 against Atty. Lupeba and required the latter to comply with the Resolution dated June 9, 2009 by providing an explanation why he should not be sanctioned[4] for failure to follow the Court order.

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[1] *Rollo*, p. 3.

[2] *Id.* at 7.

[3] *Id.* at 9, Resolution dated June 23, 2009.

[4] *Id.* at 10, Resolution dated November 24, 2009.

On March 23, 2010, this Court resolved to dismiss[5] the Petition for failure of Atty. Lupeba to obey the lawful order of the Court pursuant to Rule 56, Section 5(e)[6] of the Rules of Civil Procedure. This Court also reiterated the imposition of the ₱1,000.00 fine against Atty. Lupeba and the directive to Show Cause why he should not be disciplinarily dealt with or held in contempt. Atty. Lupeba then filed Compliance paying the ₱1,000.00 fine. He, likewise, moved to reconsider the dismissal of the Petition. On June 22, 2010, this Court granted the motion for reconsideration; reinstated the petition and directed Atty. Lupeba to submit his contact details within five (5) days from notice.[7] Again, Atty. Lupeba failed to follow the order of this Court and was issued a Show Cause Resolution.[8]

On July 24, 2012, this Court promulgated a Decision on the merits dismissing the Petition. Abellanosa, *et al*., Atty. Lupeba as counsel, filed a Motion for Reconsideration. COA and NHA filed their Comment to the Motion for Reconsideration. On June 10, 2013, Abellanosa, *et al*. were respectively required by this Court to file their Consolidated Reply.[9] For failure to file the Consolidated Reply, this Court issued a Show Cause Resolution dated June 25, 2014. Atty. Lupeba failed to comply with said Show Cause Resolution, thus he was ordered to pay a fine of ₱5,000.00 for his failure to file the Reply. This Court also resolved to consider Abellanosa, *et al*. to have waived their right to file said Reply.[10]

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[5] *Id*. at 11.

[6] Sec. 5. Grounds for dismissal of appeal.

The appeal may be dismissed *motu proprio* or on motion of the respondent on the following grounds:

x x x x x x x x x

e) Failure to comply with any circular, directive or order of the Supreme Court without justifiable cause; x x x

[7] *Rollo*, p. 13.

[8] *Id*. at 16.

[9] *Id*. at 22.

[10] *Id*. at 25, Resolution dated October 14, 2014.

In a letter dated February 2, 2015, the Supreme Court Chief Judicial Staff Officer of the Cash Collection and Disbursement Department of the Fiscal Management and Budget Office stated that there was no record of payment by Atty. Lupeba in the amount of ₱5,000.00. This Court noted said letter and directed the Executive Judge of Cagayan De Oro City to issue a warrant of arrest against Atty. Lupeba. Further, Atty. Lupeba's repeated and unjustified failure to obey the lawful orders of the Court was referred to the IBP for disciplinary investigation and recommendation.[11]

Atty. Lupeba failed to participate at the proceedings with the IBP. Hence, the case was submitted for resolution. In the Report and Recommendation dated March 3, 2016, Investigating Commissioner Rebecca Villanueva-Maala recommended that Atty. Lupeba be suspended from the practice of law and as a member of the Bar for five (5) years. The Investigating Commissioner held that Atty. Lupeba's repeated and unjustified failure to obey the orders of the Court was "disrespect to the judicial incumbents and to the branch of government which they belong x x x." Atty. Lupeba, as a lawyer, is called upon to obey court orders and processes. "They should stand foremost in complying with Court's directives or instructions. x x x This is absolutely essential to the maintenance of a government of laws and not of men."[12]

In a resolution dated February 22, 2018, the IBP Board of Governors affirmed the recommendation of suspension for five (5) years and imposed a fine of ₱10,000.00 against Atty. Lupeba.

Ruling of the Court

This Court finds evidence on record to support the recommended penalty imposed on Atty. Lupeba.

It must be remembered that the practice of law is not a right but a mere privilege and, as such, must bow to the inherent regulatory power of the Supreme Court to exact compliance

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[11] IBP Report, *id*. at 42.

[12] *Id*.

with the lawyers public responsibilities.[13] Lawyers are called upon to obey court orders and processes and their deference is underscored by the fact that willful disregard thereof will subject the lawyer not only to punishment for contempt but to disciplinary sanctions as well. In fact, a lawyer is imposed graver responsibility than any other to uphold the integrity of the courts and to show respect to their processes.[14]

From the facts, Atty. Lupeba failed to comply with the Court's lawful orders. He did not give any justifiable reason why he disobeyed the directives of this Court. Atty. Lupeba was given time from 2009 to 2015 to explain why he should not be sanctioned, yet he failed to respond to any of the said orders of the Court. In fact, he did not even participate at the proceedings before the IBP. Atty. Lupeba only filed a Compliance for payment of the fine of ₱1,000.00 and also filed the Motion for Reconsideration of Our Resolution dismissing the Petition for repeated failure to file a Reply.[15] We emphasize that a "Court's resolution is not to be construed as a mere request, nor should it be complied with partially, inadequately or selectively."[16] Atty. Lupeba's actions not only stand his disrespect to the Court, but also constitute gross misconduct and willful disobedience of the lawful orders of this Court, which under Section 27,[17] Rule 138 of the Rules of Court is a sufficient cause for suspension or disbarment.

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[13] See *Maniago v. Atty. De Dios*, A.C. No. 7472, March 30, 2010 citing *Letter of Atty. Cecilio Y. Arevalo, Jr., Requesting Exemption from Payment of IBP Dues*, B.M. No. 1370, May 9, 2005, 458 SCRA 209, 216.

[14] *Sebastian v. Atty. Bajar*, A.C. No. 3731, September 7, 2007, 532 SCRA 435, 449.

[15] *Rollo*, p. 11.

[16] *Sebastian v. Atty. Bajar*, *supra* at 449.

[17] Section 27. Attorneys removed or suspended by Supreme Court on what grounds. – A member of the bar may be removed or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a willfull disobedience of any lawful order of a superior court, or for corruptly or willful appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law

The penalty of suspension or disbarment is meted out in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court. Atty. Lupeba's acts in wantonly disobeying his duties as an officer of the court show utter disrespect for the Court and a complete disregard of his duties as a member of the legal profession. Therefore, his suspension for five years is warranted.

Records[18] also show that Atty. Lupeba did not settle the ₱5,000.00 fine imposed by this Court in the Resolution dated October 14, 2014.[19] In view of his inordinate delay to settle said amount, the imposition of twice the value of the initial fine is proper to sanction Atty. Lupeba and to make an example of his case in order to deter others from the same conduct. This Court affirms the payment of the fine of ₱10,000.00.

WHEREFORE, respondent Attorney Cipriano P. Lupeba is hereby **SUSPENDED** from the practice of law for a period of **FIVE (5) YEARS** effective from notice and to pay a fine of ₱10,000.00; with a **STERN WARNING** that a repetition of the same or similar acts will be dealt with more severely.

Let a copy of this Resolution be entered in the personal records of respondent as a member of the Bar, and copies furnished to the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Leonen, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando, and *Carandang*, *JJ.*, concur.

Perlas-Bernabe, J., on official leave.

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for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

[18] IBP Report, *rollo*, p. 42.

[19] *Id*. at 25.

EN BANC

[G.R. No. 207281. March 5, 2019]

ELAINE R. ABANTO, NINFA B. ABOTOTO, MAGTANGGOL P. AGUILA, MARIE PAZ F. AGUILA, MERLINDA V. ALCANTARA, REMEGIO S. AMAR, JOSEFINA A. AMPAT, ADRIAN E. ANCHETA, ANDRES P. ANDRADA, DANILO R. ANGELES, JOSEFINA P. ARCE, SALVACION G. ARZADON, JOEL F. ASCAÑO, MA. VICTORIA B. ASETRE, EMILIO I. BACCAY, JESUSA A. BALINGAO, GIL C. BANDILLA, LAURA G. BAQUIRAN, MARLAN G. BARBA, LOURDES M. BEAULAC, EDISON A. BELARMINO, RENE L. BELJERA, DALISAY D. BERNARDO, AUREO B. BILANGEL, JR.,[i] LUCIBAR G. BODO, MELBA GLORIA M. BUMA-AT, CLARA LANI G. CABABARO, BERNADETTE G.[ii] CABERTE, EVANGELINE J. CALUB, MA. ROSARIO P. CALUB, SONIA F. CASTEN, JOSE P. CASTRO, AIDA LINA D. CELINO, EMILY A. COLICO, TOBIAS V. COLINA, FRANCISCO R. CRUZ, LILEIZA A. CRUZ, LEROY A. CUEVAS, ANTONIO P. CUSTODIO, SYLVIA G. DACUAN, RITA M. DAGAL, ROSALIER B. DAGONDON, MARCELO S. DANGCALAN,[iii] OFELIA C. DE GUZMAN,

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[i] Stated as "Aureo Jr. B. Bilangel" in the title of the Petition and Manifestation, *rollo* (G.R. No. 207281), pp. 3, 316. Substituted by his heirs Salvadora N. Bilangel, Judy Ann N. Bilangel, Monica N. Bilangel, Charles N. Bilangel, and John N. Bilangel; see Notice of Death of Party and Substitution, *rollo* (G.R. No. 207281), Vol. 2, pp. 992-994.

[ii] Also stated as "C" in other parts of the *rollo*.

[iii] Substituted by his heirs Jovencia T. Dangcalan, Joemar Tan Dangcalan, and Kim Tan Dangcalan; see Notice of Death of Party and Substitution, *rollo* (G.R. No. 210922), Vol. 2, pp. 978-981 and Manifestation Re: Notice of Death and Substitution for Petitioner Marcelo Sumiwan Dangcalan, *id*. at 986-988.

CARINA G. DELA CRUZ, ELIZABETH M. DELA PEÑA, RODOLFO T. DE LEON, DENNIS A. DINO, LETICIA N. DUCUSIN, FRED S. EDANIO, ROSABEL C. ESTEBAN, LEONORA A. FERNANDEZ, MARIETTA F. FERNANDEZ, ROSALIO G. FETALBO, ROGELIO C. FLORES, PURIFICACION G. FRONDOZO, MA. ANA B. FUENTES, MARIETA M. GARCIA, NUMIER T. GO, ROLANDO N. GORDOVEZ, ADELAIDA B. GUANZON, DOMINGO A. HABULAN, CECILIA S. HERMOSURA, CESAR M. JACOB, ESTRELLA E. ICASIANO, MA. LUZ L. JARDENIL, ANICETO K. JAVIER, JR.,[iv] ZENAIDA D. JOSE, RODELIO L. LABIT, CRISTINA V. LAFUENTE, JANNETTE G. LAGAREJOS, RUFO M. LEDESMA, LOURDES ANNE E. LIAO, ENRIQUETA A. LLORENTE, ALBERTO S. LOPEZ, LEDELINA B. LOVERES, JOSE R. LUMINATE, THELMA V. MACEDA, CLARITO L.[v] MAGSINO, CEFERINA C. MAKASIAR, NELSON D. MAKASIAR, AMORDELIZA C. MANAMTAM, DANILO A. MANAMTAM,[vi] LORNA S. MANLAPIG, AIDA D. MANZANO, GETULIO E. MARCOS,[vii] JUANITA C. MATA, MARILOU S. MATANGUIHAN, CAESAR M. MATIGNAS, NATIVIDAD S.

[iv] Also stated as "Aniceto Jr. K. Javier" in the title of the Petition and Manifestation, *rollo* (G.R. No. 207281), pp. 4, 317.

[v] Also stated as "D" in other parts of the *rollo*.

[vi] Substituted by his heirs Amordeliza C. Manamtam, Andrey Dan Manamtam, Aleeza Danice Manamtam, and Aldrich Dan Manamtam; see Notice of Death of Party and Substitution, *rollo* (G.R. No. 210922), Vol. 1, pp. 716-718 and Manifestation Re: Notice of Death for Petitioner Danilo Abisinia Manamtam, *rollo* (G.R. No. 210922), Vol. 2, pp. 973-977.

[vii] Substituted by his heirs Feliciana S. Marcos, Jefferson S. Marcos, Jenny Pearl S. Marcos, Christopher S. Marcos, and Roxanne S. Marcos; see Notice of Death of Party and Substitution with Manifestation, *rollo* (G.R. No. 207281), Vol. 1, pp. 753-758.

MAUSISA, CONRADO P. MEDINA, GREGORIO M. MICO, JR.,[viii] EULINIA S. MORALES, LILIAN O. MORALES, GORGONIO T. MORA, BERNARDINO E. OLAYVAR, JR.,[ix] EDUARDO A. ONG, MARIA LUISA J. PADILLA, CESAR A. PADRIQUE, ROSARIO MELANIE C. PAMA, SOTERO A. PINE, MA. THERESA L. QUIRINO, AURORA A. RADOMES, RICARDO O. RAMIREZ, ADELA P. RARA, EDUARDO E. REYES, AIDA A. RIVERA, EDITHA P. RIVERA, ANITA C. RIVERO, SUSAN V. RODRIGUEZ, GIL A. ROMERO, ARSENIO V. ROYALES V,[x] ENRIQUE P. SADIE, DIANA T. SANTIAGO, TERESITA S. SANTIAGO, RICARDO P. SANTILLAN,[xi] ALMA P. SANTOS, DOROTHY C.[xii] SANTOS, JUANITO C. SEBASTIAN, IGNACIO C. SERRANO, JOCELYN G. SIONGCO, MA. BELLA L. SORIANO, THELMA C. SUSTENTO,[xiii] RAUL T. TAASAN, IMELDA L. TAGARAO, RODEL C. TANIÑAS,[xiv] MA. LIBERTY C. TEC, BENILDA A. TEJADA, NENITA C. TENORIO, GRACE M. TERTE, AME CRIS C. TOLEDO, ERNESTO P. TORPIAS, GRESELDA MARGARITA S. TORRALBA, DANILO S.

[viii] Also stated as "Gregorio Jr. M. Mico" in the title of the Petition and Manifestation, *rollo* (G.R. No. 207281), pp. 4, 317.

[ix] Also stated as "Bernardino Jr. E. Olayvar" in the title of the Petition and Manifestation, *id*.

[x] Also stated as "Arsenio V.V. Royales" in the title of the Petition and Manifestation, *id*.

[xi] See Manifestation, *rollo* (G.R. No. 207281), Vol. 1, pp. 316-321.

[xii] Also stated as "D" in other parts of the *rollo*.

[xiii] Substituted by her heirs Joanna Chris C. Sustento and Julius Cezar C. Sustento; see Notice of Death of Party and Substitution, *rollo* (G.R. No. 210922), Vol. 1, pp. 692-695.

[xiv] Substituted by his heir Teresita D. Taniñas; see Notice of Death of Patty and Substitution, *rollo* (G.R. No. 210922), Vol. 2, pp. 1033-1035.

VELORIA, ALMARIO SJ. VENTURA, EUGENIO O. VERDE, MA. ISABEL H. VERDE, ANNABELLA T. VERGARA, ALBERTO D. VILLARIN, AURITA B. VILLOSO, and DANIEL C. VINLUAN, *petitioners, vs.* **THE BOARD OF DIRECTORS OF THE DEVELOPMENT BANK OF THE PHILIPPINES, namely: JOSE A. NUÑEZ, GIL BUENAVENTURA, JUAN KEVIN G. BELMONTE, DANIEL Y. LAOGAN, ALBERTO A. LIM, CECILIO B. LORENZO, and JOSE LUIS L. VERA,** *respondents.*

MARY IRMA D. LARA and JOSEPHINE JAURIGUE, *petitioners-in-intervention.*

[G.R. No. 210922. March 5, 2019]

DEVELOPMENT BANK OF THE PHILIPPINES, *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 4968 (*TEVES RETIREMENT LAW*); EARLY RETIREMENT INCENTIVE PLAN; IN DETERMINING WHETHER A RETIREMENT PLAN IS AN EARLY RETIREMENT INCENTIVE PLAN, AS OPPOSED TO A PROHIBITED SUPPLEMENTARY RETIREMENT PLAN, THE PRIMARY CONSIDERATION IS THE OBJECTIVE; CASE AT BAR.— x x x [I]n determining whether a retirement plan is indeed an early retirement incentive plan (as opposed to a prohibited supplementary retirement plan), the primary consideration is the objective. In *GSIS v. COA,* the objective of the RFP was "[t]o motivate and reward employees for meritorious, faithful, and satisfactory service." The Court ruled that its purpose was not to encourage GSIS' employees to retire before the retirement age, but to augment the benefits they would receive. In stark contrast, the general objective of DBP's ERIP IV is to "ensure the vitality of the Bank for the

next ten (10) years and make it attuned to the continuing advances in banking technology." Specifically, the purposes of the ERIP IV are to: (1) infuse new talents/skills/insights into the Bank through the entry/promotion of younger corps of personnel; (2) enable the Bank to attain cost savings in its personnel budget; and (3) create new opportunities for career advancement in the Bank. Thus, judging from the stated objectives of the ERIP IV, the same should be considered as an early retirement incentive plan and not a supplemental retirement plan. However, in the same case of *GSIS v. COA,* which the COA cites in the instant petition, the Court made a pronouncement that in addition to being based on a reorganization, a valid early retirement incentive plan must *not* be offered to employees who are already qualified to retire, either optionally or compulsorily. To note, under R.A. 8291 or the *GSIS Act,* the employees qualified to retire are those who have rendered at least 15 years of service and is, upon retirement, at least 60 years old (for voluntary retirement) or 65 years old (for compulsory retirement). It should be noted that the assailed retirement plan in *GSIS v. COA* is not on all fours with ERIP IV. The Implementing Policies of the **GSIS RFP** states that "[t]o be entitled to the plan, the employee must be qualified to retire with 5[-]year lump sum under RA 660 or RA 8291 or had previously retired under applicable retirement laws." Read with its stated objective of motivating and rewarding employees for meritorious, faithful, and satisfactory service, the GSIS RFP was undoubtedly a supplementary retirement plan. It cannot be considered as an early retirement incentive plan because the *only* employees entitled thereto are those already qualified to retire or had previously retired — no reorganization or streamlining is involved. x x x In contrast, **DBP's ERIP IV** is not limited to employees who are qualified to retire or those who have previously retired. Rather, it is open to (1) officials and employees aged 50 or above with at least 15 years of service; and (2) others who may be displaced as a consequence of realignment or streamlining of work processes, regardless of their age or years of service. Coupled with its general objective of reorganization and streamlining, it can be concluded that ERIP IV still falls within the definition of an early retirement

incentive plan. The fact that those who are qualified to retire may also be covered does not negate its classification as an early retirement incentive plan. Again, the primary consideration should be the purpose of the plan.

2. ID.; ID.; ID.; ENTITLEMENT OF QUALIFIED EMPLOYEES TO RECEIVE SEPARATION PAY AND RETIREMENT BENEFITS IS NOT COVERED BY THE CONSTITUTIONAL PROSCRIPTION ON DOUBLE COMPENSATION, SUSTAINED; CASE AT BAR.— [I]n *Betoy,* the Court explained that the receipt of retirement benefits does not bar the retiree from receiving separation pay, stating that "a separation pay at the time of the reorganization of the [National Power Corporation] and retirement benefits at the appropriate future time are two separate and distinct entitlements." The Court therein clarified that entitlement of qualified employees to receive separation pay *and* retirement benefits is not covered by the Constitutional proscription on double compensation. This is because separation pay and retirement benefits are different entitlements as they have different *legal bases,* different *sources of funds,* and different *intents*. As applied to the instant case, the ERIP IV partakes the form of a separation pay in that it is given to employees who are affected by the reorganization and streamlining of DBP. To recall, separation pay is given to an employee in cases under Articles 298 and 299 of the Labor Code. Specifically, these involve the installation of labor-saving devices, redundancy, retrenchment to prevent losses, closing or cessation of operation of establishment, or in case the employee suffers from a disease such that his continued employment is prohibited by law. By analogy, the objective of ERIP IV is similar to those grounds for termination under Article 298 of the Labor Code on *Closure of Establishment and Reduction of Personnel.* To reiterate, retirement benefits and separation pay are not mutually exclusive. *"Retirement benefits* are a form of reward for an employee's loyalty and service to an employer and are earned under existing laws, CBAs, employment contracts and company policies. On the other hand, *separation pay* is that amount which an employee receives at the time of his severance from employment, designed to provide the employee with the wherewithal during the period that he

is looking for another employment and is recoverable only in instances enumerated under Articles 283 and 284 of the Labor Code or in illegal dismissal cases when reinstatement is not feasible." Thus, considering that the ERIP IV is analogous to separation pay, then the grant of benefits under it along with the grant of benefits under other retirement laws should not be considered as a form of double compensation.

3. ID.; ID.; ID.; THE PROHIBITED SUPPLEMENTARY RETIREMENT PLAN UNDER THE *TEVES RETIREMENT LAW* IS EXPRESSLY AUTHORIZED UNDER THE DEVELOPMENT BANK OF THE PHILIPPINES (DBP) CHARTER; RATIONALE; CASE AT BAR.— [E]ven if the Court were to classify the ERIP IV not as a valid early retirement incentive plan but as a prohibited supplementary retirement plan, the same should not have been disallowed by the COA on the basis of the *Teves Retirement Law*. This has already been settled in *DBP v. COA,* the relevant portions of which are quoted below: **Even assuming,** however, that the [DBP's Special Loan Program (SLP)] **constitutes a supplementary retirement plan**, RA 4968 [or **the *Teves Retirement Law*] does not apply to the case at bar. The DBP Charter, which took effect on 14 February 1986, expressly authorizes supplementary retirement plans "adopted by and effective in" DBP,** thus: x x x In the quoted portion itself, it states that "[t]he failure to add a specific repealing clause x x x indicates that the intent was not to repeal any existing law, unless an irreconcilable inconsistency and repugnancy exists in the terms of the new and old laws." Hence, while implied repeals are indeed disfavored, such would still occur if two laws are clearly irreconcilable and inconsistent. In the instant case, there is an irreconcilable inconsistency between the *Teves Retirement Law* and the DBP Charter because while the former prohibits supplementary retirement plans, the latter expressly authorizes supplementary retirement plans. As unequivocally held in *DBP v. COA,* the DBP Charter prevails over the *Teves Retirement Law* not only because it is a later law but also because it is a special law. To recall, it is a rule in statutory construction that a special law prevails over a general law, regardless of the laws' respective dates of passage. Thus, based on the DBP Charter, the Board is authorized to provide a supplementary retirement plan. However, such authority is

by no means unbridled. The Charter also states that there should be a prior approval by the Secretary of Finance. In this regard, the COA argues that even assuming that the DBP Board is authorized by its Charter to implement supplementary retirement benefits, the disallowance of ERIP IV is still proper in view of the absence of prior approval by the Secretary of Finance. The COA is correct in saying that the prior approval of the Secretary of Finance is necessary for the validity of DBP's supplementary retirement plan. Nevertheless, it is already held that ERIP IV is not a supplementary retirement plan. Hence, the prior approval of the Secretary of Finance is not necessary. x x x In sum, DBP is authorized by its Charter to provide a supplementary retirement plan, subject to the prior approval of the Secretary of Finance. Nonetheless, since ERIP IV is not a supplementary retirement plan, prior approval by the Secretary of Finance is not necessary. Its absence, therefore, cannot invalidate ERIP IV. In any event, it is clear from the foregoing that the Secretary of Finance, through his own study and evaluation of the ERIP IV, interposed no objection "to the adoption, approval and implementation of the subject ERIPs by the DBP Board" as they were found "to be factually and legally proper and in order" as "clearly provided for by Section 13, in relation to Section 9(a)" of DBP's Charter. Thus, the ineluctable conclusion is that COA erred in disallowing the benefits under ERIP IV-2003.

4. ID.; ID.; ID.; COMPROMISE AGREEMENT; A COMPROMISE AGREEMENT IS LEGALLY ACCEPTABLE, WHEN NOTHING THEREIN IS CONTRARY TO LAWS, MORALS, GOOD CUSTOMS, AND PUBLIC POLICY, AND THE SAME HAVE BEEN FREELY AND INTELLIGENTLY EXECUTED BY AND BETWEEN THE PETITIONERS RETIREES AND THEIR EMPLOYER.— In view of the Court's ruling herein that the ERIP IV is valid, there is nothing that prevents DBP from releasing the benefits under ERIP IV-2010. Thus, the Court finds the Compromise Agreement legally acceptable, nothing therein being contrary to laws, morals, good customs, and public policy, and the same having been freely and intelligently executed by and between the petitioners-retirees (including petitioners-movants) and DBP, judicial approval thereof is in order.

APPEARANCES OF COUNSEL

Calleja Law Office for petitioners and petitioners-in-intervention in G.R. No. 207281.

Office of the Government Corporate Counsel for respondents in G.R. No. 207281.

DBP Legal Services Group for petitioners in G.R. No. 210922.

The Solicitor General for respondent in G.R. No. 210922.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court are two consolidated petitions relating to the validity of the Early Retirement Incentive Program (ERIP) IV-2010 of the Development Bank of the Philippines (DBP). **G.R. No. 207281** is a Petition for *Mandamus*[1] filed by 141 former DBP employees (petitioners-retirees) who retired under the ERIP IV-2010 against the DBP Board of Directors (DBP Board); while **G.R. No. 210922** is a Petition for *Certiorari*[2] with application for temporary restraining order (TRO) and/or writ of preliminary injunction filed by the DBP against the Commission on Audit (COA) questioning the Audit Observation Memorandum and the Notice of Disallowance issued by the latter over the ERIP IV-2006 and 2007.

Factual Antecedents

Background on the ERIP

In 1999, the DBP Board approved DBP's Position Classification System and Compensation Plan. In line with this, the DBP Board adopted Resolution No. 0176[3] on June 6, 2003, which granted retirement benefits to qualified officials and

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[1] *Rollo* (G.R. No. 207281), Vol. 1, pp. 3-181, excluding Annexes.

[2] *Rollo* (G.R. No. 210922), Vol. 1, pp. 3-62, excluding Annexes.

[3] *Id*. at 75-81.

employees through the ERIP IV for Calendar Years (CY) 2003 and 2008. The general objective of ERIP IV was to ensure the vitality of the bank for the next 10 years and make it attuned to the continuing advances in banking technology.[4]

Several ERIP Programs were approved and implemented prior to 2003, namely: ERIP I, ERIP II, and ERIP III from 1985 to 2002. ERIP IV was approved in 2003 (ERIP IV-2003), with a 10-year period implementation beginning 2003 until 2012 and an estimated budget outlay of around ₱1.7 Billion. It has two tranches: 2003-2008 and 2008-2012. Petitioners-retirees belong to the second tranche.[5]

On June 12, 2003, DBP Circular No. 15[6] was issued, providing the guidelines on the implementation of the ERIP IV for CY 2003 and 2008. Below are the relevant portions of said circular:

A. OBJECTIVES:

General Objective

The general objective of ERIP IV is to ensure the vitality of the Bank for the next ten (10) years and make it attuned to the continuing advances in banking technology.

Specific Objectives

The specific objectives are:

1. to infuse new talents/skills/insights into the Bank through the entry/promotion of younger corps of personnel via a Bank[-]wide succession program[;]
2. to enable the Bank to attain cost savings in its personnel budget[; and]
3. to create new opportunities for career advancement in the Bank.

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[4] *Rollo* (G.R. No. 207281), Vol. 1, pp. 8-9.

[5] *Id*. at 9.

[6] *Rollo* (G.R. No. 210922), Vol. 1, pp. 82-89.

B. COVERAGE

The ERIP IV shall be open to:

1. officials and employees aged 50 or above with at least 15 years of creditable government service as of the date of application[;]
2. other officials and employees identified by the Screening Committee who may be displaced as a consequence of realigmnent or streamlining of work processes, regardless of whether or not they meet the age and service requirements of #1 above. Management, through the Sector Heads, shall so advise said officials and employees in writing to apply immediately.[7]

The Audit Observation Memorandum and the Notice of Disallowance

On February 19, 2007, the COA, through its Supervising Auditor assigned in DBP, Atty. Hilconeda P. Abril (Atty. Abril), issued **AOM No. HO-HRM-ERIP-AOM-2006-03**[8] (AOM) which stated that DBP's ERIP IV-2003 was implemented contrary to the provision of Republic Act No. (R.A.) 8523.[9]

In the AOM, Atty. Abril recommended that DBP: (i) secure the approval of the Secretary of Finance; (ii) suspend, in the meantime, the implementation of ERIP IV; and (iii) require the recipients of ERIP IV to return the benefits received in excess of that allowed by DBP's gratuity plan.[10]

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[7] *Id*. at 82.

[8] *Id*. at 91-94.

[9] *Id*. at 629. R.A. 8523 is entitled "AN ACT STRENGTHENING THE DEVELOPMENT BANK OF THE PHILIPPINES, AMENDING FOR THE PURPOSE EXECUTIVE ORDER NO. 81."

[10] *Id*. at 94 and 629.

DBP filed its Reply to the AOM, arguing that Section 34[11] of Executive Order No. (E.O.) 81[12] or the Revised DBP Charter (DBP Charter) which requires prior approval of the Secretary of Finance should be applied only to a supplementary retirement plan.[13]

Pursuant to the AOM, Atty. Abril issued **Notice of Disallowance No. ERIP-2006-007(03-06)**[14] (ND) dated May 17, 2007 which disallowed the payment of retirement benefits granted to DBP's officials and employees under ERIP IV-2003 for lack of approval from the Secretary of Finance and the President as required under Section 34 of the DBP Charter, as amended, and Section 3 of Memorandum Order No. 20 dated June 25, 2001 issued by the Office of the President. The ND further directed the persons named therein to settle immediately the aforesaid disallowance.[15]

Proceedings before the COA, with material incidents within DBP

Aggrieved by the issuance of the ND, DBP filed on October 9, 2007 a Notice of Appeal before the COA Office of the Corporate Auditor (OCA).[16]

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[11] SEC. 34. *Separation Benefits.* — All those who shall retire from the service or are separated therefrom on account of the reorganization of the Bank under the provisions of this Charter shall be entitled to all gratuities and benefits provided for under existing laws and/or supplementary retirement plans adopted by and effective in the Bank: *Provided,* that any separation benefits and incentives which may be granted by the Bank subsequent to June 1, 1986, which may be in addition to those provided under existing laws and previous retirement programs of the Bank prior to the said date, for those personnel referred to in this section shall be funded by the National Government; *Provided, further,* that, any supplementary retirement plan adopted by the Bank after the effectivity of this Charter shall require the prior approval of the Minister of Finance.

[12] PROVIDING FOR THE 1986 REVISED CHARTER OF THE DEVELOPMENT BANK OF THE PHILIPPINES.

[13] *Rollo* (G.R. No. 210922), Vol. 1, p. 629.

[14] *Id.* at 95-113.

[15] *Id.* at 629.

[16] *Id.*

Meanwhile, in a letter[17] dated March 16, 2007, the Department of Budget and Management (DBM) approved DBP's request to be exempted from the preparation of a Rationalization Plan under E.O. 366.[18]

Despite its initial objection to secure the approval from the authorizing officials, DBP nonetheless requested for the approval of the Secretary of Finance and confirmation by then President Gloria Macapagal-Arroyo (President Arroyo), which were favorably acted upon through letters dated January 14, 2009 and April 22, 2010, respectively. However, the COA argued that the President's approval was good for the period of up to June 30, 2010 only.[19]

On June 16, 2010, during the pendency of its appeal before the OCA, DBP approved the resumption of ERIP IV through **Board Resolution No. 01**[20] (ERIP IV-2010).[21] Said Board Resolution provides that the application period for the ERIP IV-2010 shall be from the issuance of its implementing guidelines until December 31, 2011 and the effective date of retirement shall be no later than December 31, 2012.[22]

On July 9, 2010, DBP filed with COA's Cluster Director (where the appeal from the ND was pending) a Manifestation and Motion alleging that the disallowance on the ERIP IV-2003 has been rendered moot and academic by virtue of the approval and confirmation made by the Secretary of Finance and then President Arroyo.[23]

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[17] *Id.* at 114.

[18] *Id.* at 629-630.

[19] *Id.* at 630.

[20] *Rollo* (G.R. No. 207281), Vol. 1, p. 214.

[21] *Rollo* (G.R. No. 210922), Vol. 1, p. 630.

[22] *Rollo* (G.R. No. 207281), Vol. 1, pp. 12, 214.

[23] *Rollo* (G.R. No. 210922), Vol. 1, p. 630.

On November 12, 2010, DBP issued an Advisory[24] to all DBP employees informing them that per Board Resolution No. 0323, the deadline for the filing of applications under the ERIP IV-2010 was moved from December 31, 2011 to December 31, 2010. Consequently, petitioners-retirees, along with other DBP employees, heeded the invitation to avail of the retirement benefits under ERIP IV-2010.[25]

Meanwhile, in CGS-A Decision No. 005[26] **(CGS Decision)** dated December 28, 2010, the COA Corporate Government Sector (CGS) denied the appeal and affirmed the ND, ruling that DBP's ERIP IV-2003 violated Section 10 of R.A. 4968[27] or the *Teves Retirement Law,* which prohibits the creation of a supplementary retirement plan. Also, the CGS ruled that the President's approval was made within the election period, where the giving of salary or remuneration increase is prohibited under Section 261, Article XXII of Batas Pambansa Bilang 881 or the Omnibus Election Code.[28]

On February 17, 2011, DBP filed a petition for review[29] before the COA, seeking to reverse the CGS Decision on the following grounds: (i) DBP's right to due process was violated when the CGS cited additional grounds for the disallowance which were not mentioned in the ND; (ii) ERIP IV is not a supplementary retirement plan contemplated in R.A. 4968; (iii) DBP has the authority to fix the compensation, remuneration, and emoluments of its employees including the adoption of ERIP

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[24] *Rollo* (G.R. No. 207281), Vol. 1, p. 215.

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

[26] *Rollo* (G.R. No. 210922), Vol. 1, pp. 180-187. Penned by Director IV Luz Loreto-Tolentino.

[27] AN ACT AMENDING FURTHER COMMONWEALTH ACT NUMBERED ONE HUNDRED AND EIGHTY-SIX, AS AMENDED; approved on June 17, 1967 and published on February 24, 1969.

[28] *Rollo* (G.R. No. 210922), Vol. 1, p. 630.

[29] *Id*. at 188-258.

IV; and (iv) the employees and officers should not be ordered to refund the disallowed amount on account of good faith.[30]

Despite the disallowance of ERIP IV-2003, petitioners-retirees allege that their applications under ERIP IV-2010 were still approved by DBP beginning February 2, 2012 and confirmed by the DBP Board. According to them, DBP did not warn them of any possible setback on the ERIP program to allow the availees to at least rethink their positions. Rather, they continued to offer the ERIP IV-2010 to DBP employees. They claim that DBP even invited the Government Service Insurance System (GSIS) to conduct seminars on retirement options and benefits despite their knowledge of the CGS Decision and the pendency of their appeal before the COA. Additionally, sometime in October 2012, DBP issued an advisory asking the ERIP IV-2010 retirees to identify and train potential successors to their positions prior to the effectivity of their retirement.[31]

Subsequently, on January 30, 2013, the COA issued the assailed Decision No. 2013-046[32] **(COA Decision),** the dispositive portion of which states:

> **WHEREFORE,** foregoing premises considered, the Petition is **DENIED** and COA CGS-A Decision No. 005 dated December 28, 2010 affirming ND No. ERIP-2006-007(03-06) dated May 17, 2007 on the payment of retirement benefits to DBP officials and employees in the total amount of ₱747,174,594.28 is hereby **AFFIRMED.**[33]

Meanwhile, in a letter dated February 14, 2013, the DBP Board informed the ERIP IV-2010 availees who retired effective December 31, 2012 (mostly under Board Resolution No. 0167 – the resumption of ERIP IV) that DBP had decided to hold

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

[31] *Rollo* (G.R. No. 207281), Vol. 1, pp. 13-14.

[32] *Rollo* (G.R. No. 210922), Vol. 1, pp. 63-72. Decided by Chairperson Ma. Gracia M. Pulido-Tan, Commissioner Juanito G. Espino, Jr. and Commissioner Heidi L. Mendoza.

[33] *Id*. at 71-72.

in abeyance the final implementation of the ERIP IV pending the resolution of the ND.[34]

DBP filed a Motion for Reconsideration (MR) of the COA Decision, which was denied by the COA in a Resolution[35] dated December 6, 2013.[36]

In the interim, petitioners-retirees sent a demand letter on March 12, 2013 to Jose Nuñez (Mr. Nuñez), chairman of the Board, asking for immediate release of their benefits and informing the DBP Board that they are still open to negotiation in order to reach a peaceful settlement.[37]

On March 15, 2013, Mr. Nuñez and Gil Buenaventura (Mr. Buenaventura), a board member, sent individual letters to petitioners-retirees informing them that on March 1, 2013, DBP received a copy of the COA Decision affirming the disallowance of the ERIP IV-2003. The letters also informed them that DBP already prepared the Guidelines for the Return to Work of the ERIP IV-2010 retirees. In the letter, the following portion of the Opinion of the Civil Service Commission was quoted, to wit:

> Therefore, in case the DBP decides not to move for the reconsideration of the COA Decision dated January 30, 2013, the same will attain finality and become executory. Verily, the DBP may already reinstate the ERIP IV availees to their former positions with payment of back salaries and other benefits including leave credits from the time they were separated from the service until their actual reinstatement. However, if the DBP moves for reconsideration of the COA decision, the reinstatement of the affected employees will depend on the decision of the COA on the Motion for Reconsideration. x x x[38]

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[34] *Id*. at 15.

[35] *Id*. at 73-74.

[36] *Id*. at 631.

[37] *Rollo* (G.R. No. 207281), Vol. 1, p. 15.

[38] *Id*. at 16. Italics and underscoring omitted.

Essentially, petitioners-retirees were given two choices: (1) to return to work on the condition that they withdraw their ERIP IV-2010 application; or (2) to await the COA resolution on the MR that DBP then intended to file.[39]

On March 21, 2013, Mr. Nuñez sent a letter-reply to the demand letter where he reiterated his previous explanations as to the disallowance and claimed that DBP, "in exercising extraordinary due diligence in the handling of public funds [was] constrained not to release the ERIP IV[-2010] incentives."[40] Then, as mentioned earlier, DBP filed on March 27, 2013 its MR of the COA Decision.[41]

On June 13, 2013, the petitioners-retirees filed the instant **Petition for *Mandamus*** against the DBP Board, praying for the release of their retirement benefits under ERIP IV-2010. Subsequently, on February 3, 2014, DBP filed the instant **Petition for *Certiorari* with application for TRO and/or Writ of Preliminary Injunction,** assailing the COA Decision.

Petitions before the Court

Petition for Mandamus

In their Petition for *Mandamus,* petitioners-retirees argue that the DBP Board unlawfully neglected the release of their retirement benefits which the law specifically enjoins as their duty. They point out that there is no disallowance for ERIP IV-2010 as the COA Decision pertained to ERIP IV-2003 to 2008. They also argue that they have a vested right to the retirement benefits and it is the DBP Board's ministerial duty to release the same after they have complied with all the requirements under the ERIP IV Guidelines. In addition, they aver that the DBP Board acted in bad faith when the latter retired them from their positions despite their knowledge of the Decision disallowing ERIP IV-2003. Lastly, they cite

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[39] *Id*. at 16-17.

[40] *Id*. at 17.

[41] *Id*. at 268-309, excluding Annexes.

R.A. 10154,[42] which mandates that the highest priority should be given to the payment of retirement benefits of retiring government employees.[43]

On October 29, 2013, the DBP Board filed its Comment.[44] At the outset, it claims that petitioners-retirees are not entitled to the writ of *mandamus* for failing to show that they have a clear right to the ERIP IV benefits, in light of the COA Decision which ruled against the validity of the entire ERIP IV Program. Moreover, *mandamus* does not lie because the act sought to be done is not ministerial. The DBP Board insists that it acted in accordance with their duty to exercise extraordinary diligence in their treatment of DBP's properties.[45]

On January 16, 2014, the petitioners-retirees filed their Reply[46] maintaining their entitlement to the writ of *mandamus* and reiterating their grounds raised in the petition.

Petition for Certiorari

In its Petition for *Certiorari,* DBP claims that the COA gravely abused its discretion in denying its appeal on the ND. DBP maintains that the prohibition in the *Teves Retirement Law* does not preclude the adoption of an early retirement incentive plan. Moreover, DBP avers that the ERIP IV is not a supplementary retirement plan which is prohibited by the *Teves Retirement Law*. In any case, even if the ERIP IV were a supplementary retirement plan, DBP claims that no less than this Court, in the 2004 case of *DBP v. COA,*[47] held that the

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[42] AN ACT REQUIRING ALL CONCERNED GOVERNMENT AGENCIES TO ENSURE THE EARLY RELEASE OF THE RETIREMENT PAY, PENSIONS, GRATUITIES, AND OTHER BENEFITS OF RETIRING GOVERNMENT EMPLOYEES.

[43] *Rollo* (G.R. No. 207281), Vol. 1, pp. 17-20.

[44] *Id*. at 354-393.

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

[46] *Id*. at 542-569.

[47] 467 Phil. 62 (2004).

DBP Board has the authority under its charter to adopt a supplementary retirement plan. Finally, even assuming that the disbursements under ERIP IV were properly disallowed, DBP argues that the COA should have applied the prevailing jurisprudence that disallowed benefits received in good faith need not be refunded.[48]

Additionally, DBP repleads the same ground in its prayer for the issuance of a TRO and/or writ of preliminary injunction.[49]

On February 18, 2014, the Court issued a Resolution[50] which reads in part:

> x x x Acting on the Petition x x x, the Court Resolved, without giving due course to the petition, to
>
> (a) **REQUIRE** the respondent to **COMMENT** on the petition within ten (10) days from notice hereof; and\
>
> (b) **ISSUE** a **TEMPORARY RESTRAINING ORDER,** effective immediately and continuing until further orders from this Court, restraining the respondent from implementing assailed Decision No. 2013-046 dated January 30, 2013, Resolution dated December 6, 2013 and Notice of Disallowance No. ERIP-2006-007 (03-06) dated May 17, 2007 on petitioner's Early Retirement Incentive Program (ERIP) IV.[51]

On May 2, 2014, the COA filed its Comment[52] to the petition for *certiorari,* maintaining that the disallowance was proper because ERIP IV is a supplemental retirement plan proscribed by the *Teves Retirement Law*. It argues that the DBP Board does not have authority under its Charter to grant the ERIP IV, and even if it was authorized, it was still incumbent upon the Board to obtain prior approval by the Secretary of Finance.

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[48] *Rollo* (G.R. No. 210922), Vol. 1, pp. 16-18.

[49] *Id*. at 56-57.

[50] *Id*. at 615-616.

[51] *Id*. at 615.

[52] *Id*. at 628-650.

The COA also maintains that the payees are liable for the return of the disallowed benefits under the ERIP IV.

On August 20, 2014, DBP filed its Reply,[53] insisting that the ERIP IV is a valid early retirement plan and the fact that the ERIP IV is available to employees eligible to retire under the GSIS retirement laws is not inconsistent with an early retirement plan. This is because the nature and purpose of the program define whether it is an early retirement plan or a supplementary retirement plan. Additionally, DBP avers that the incentives granted under the ERIP IV are akin to the separation pay allowed by this Court in the case of *Betoy v. The Board of Directors, National Power Corporation*[54] *(Betoy),* and that such benefit in addition to retirement benefits does not amount to double compensation prohibited by the Constitution. DBP also argues that the authority granted by law to the DBP Board to define what constitutes as part of compensation relates to its independence and autonomy to design its own compensation plan. Assuming that the incentives are classified as "retirement benefits," DBP invokes jurisprudence which provides that even retirement benefits received in good faith need not be refunded.[55]

Subsequently, the Court issued a Resolution[56] consolidating the two petitions.

On October 20, 2017, Mary Irma D. Lara and Josephine Jaurigue (petitioners-movants) filed a Motion for Inclusion[57] as petitioners to G.R. No. 207281. They claim that they are also retirees under the ERIP IV-2010 and are similarly situated as the petitioners-retirees. In its Comment[58] dated December 20, 2017, DBP interposed no objection to the motion filed by the

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[53] *Id*. at 659-679.

[54] 674 Phil. 204 (2011).

[55] *Rollo* (G.R. No. 210922), Vol. 1, pp. 659-661.

[56] *Id*. at 652.

[57] *Rollo* (G.R. No. 210922), Vol. 2, pp. 964-970.

[58] *Id*. at 995-998.

petitioners-movants. This Comment was subsequently noted by the Court.[59]

Compromise Agreement

On March 23, 2018, the petitioners-retirees[60] and DBP filed a Manifestation and Motion for Resolution with Joint Motion for Judgment Based on Compromise Agreement,[61] where they pray for:

1. The Honorable Court [to] resolve the consolidated cases G.R. Nos. 207281 and 210922; and

2. In the event of a decision in favor of DBP in G.R. No. 210922, the parties pray for the Honorable Court to approve the attached Compromise Agreement and that judgment be rendered in accordance therewith, without pronouncement as to the cost of suit.[62]

Based on the Compromise Agreement,[63] DBP has agreed to release to the petitioners-retirees the full amount of their benefits under ERIP IV-2010.

In the said Motion, the parties therein claimed that they referred the Compromise Agreement to COA Chairperson Michael G.[64] Aguinaldo, who wrote in a letter[65] dated July 14, 2017 that: "[c]onsidering that the issue on the propriety and/or legality of the disallowance on the retirement benefits under the ERIP is

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[59] *Id*. at 1013-1014. Resolution dated January 30, 2018.

[60] *Id*. at 1021. Petitioners-movants Mary Irma D. Lara and Josephine Jaurigue also signed the Compromise Agreement with the following notation: "subject to a favorable resolution of their Motion for Inclusion as Petitioners to G.R. No. 207281 dated October 19, 2017."

[61] *Id*. at 1015-1030, including Annexes.

[62] *Id*. at 1016.

[63] *Id*. at 1021-1029.

[64] Also stated as "C" in the Manifestation and Motion for Resolution with Joint Motion for Judgment Based on Compromise Agreement and the Compromise Agreement, *id*. at 1016, 1024.

[65] *Rollo* (G.R. No. 210922), Vol. 2, p. 1030.

litis pendentia, this Commission deems it prudent to await the final decision of the Supreme Court on the case or on the proposed compromise agreement before taking any further action on [the] proposal."[66]

Issues

1) Whether COA gravely abused its discretion amounting to lack or excess of jurisdiction in disallowing the benefits under DBP's ERIP IV-2003; and

2) Whether the petition for *mandamus* should be granted to compel the DBP Board to release the benefits under ERIP IV-2010.

The Court's Ruling

The Petition for *Certiorari* is granted, while judgment on the Petition for *Mandamus* shall be rendered based on the compromise agreement.

Classification of the ERIP

Based on the submissions[67] of the parties before the Court, both DBP and COA have limited the issues on the legal basis for the disallowance of ERIP IV to the following threshold questions: whether the same is a supplementary retirement plan prohibited by the *Teves Retirement Law* and whether the DBP Board is authorized to grant the same under its Charter. Hence, the Court shall likewise limit its evaluation on these grounds.

In order to properly classify ERIP IV, resort is made to DBP Circular No. 15 which contains the Guidelines on the Implementation of the ERIP IV for Calendar Years 2003 and 2008. For easier reference, the pertinent provisions are reproduced below:

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[66] *Id.*

[67] *Rollo* (G.R. No. 207281), Vol. I, pp. 16-20 (DBP's Petition); *rollo* (G.R. No. 210922), Vol. 1, pp. 632 (COA's Comment) and 659-661 (DBP's Reply); *rollo* (G.R. No. 210922), Vol. 2, pp. 755-756 (DBP's Memorandum) and 912 (COA's Memorandum).

A. OBJECTIVES:

General Objective

The general objective of ERIP IV is to **ensure the vitality of the Bank for the next ten (10) years** and make it attuned to the continuing advances in banking technology.

Specific Objectives

The specific objectives are:

1. to **infuse new talents/skills/insights** into the Bank through the entry/promotion of younger corps of personnel via a Bank[-]wide succession program[;]
2. to enable the Bank to attain **cost savings in its personnel budget**[; and]
3. to create **new opportunities for career advancement** in the Bank.

B. COVERAGE

The ERIP IV shall be open to:

1. officials and employees **aged 50 or above with at least 15 years of creditable government service** as of the date of application[; and]
2. other officials and employees identified by the Screening Committee **who may be displaced as a consequence of realignment or streamlining of work processes, regardless of whether or not they meet the age and service requirements of #1 above.** Management, through the Sector Heads, shall so advise said officials and employees in writing to apply immediately.

C. ERIP IV INCENTIVES

1. The basic incentive [is] computed as follows:

   Highest Basic Monthly Salary x 1.50 x Length of Gov't. Service
   (As of date of application) (Factor) in Gratuity Months

x x x x x x x x x

2. A service [a]ward of ₱4,000.00 per actual year of service in the government

3. **An additional incentive for availees who choose to retire under RA 660**[68] (Magic 87) computed as follows:

   a. Estimated retirement benefit under RA 1616[69]:

      Gratuity Estimate + Premium Refund Estimates (Personal share plus interest and government share without interest).

   b. Less: Lump sum annuity (discounted amount) paid by GSIS under RA 660

   c. Difference x 150%

x x x x x x x x x

H. MISCELLANEOUS PROVISIONS

x x x x x x x x x

2. The grant of ERIP IV incentives is **without prejudice to the retiree's entitlement to**:

   a) the **regular retirement benefit under any of the existing GSIS retirement laws;** and

   b) the payment of the **money value of leave credit** (MVLC) balance, if any, under Bank policies.[70]

When COA disallowed the ERIP IV-2003 on the finding that it was a supplementary retirement benefit prohibited under the *Teves Retirement Law,* it cited items C.3. and H.2. of

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[68] 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.

[69] 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.

[70] *Rollo* (G.R. No. 210922), Vol. 1, pp. 82-85. Additional emphasis supplied.

DBP Circular No. 15 as mentioned above. The COA concluded that: "[t]he additional incentive given to the availees constitutes additional or supplemental retirement benefits. Such incentive augments the benefits that a retiring employee would have received under the GSIS retirement laws."[71]

In contrast, DBP argues that based on the objectives stated in the guidelines, the ERIP IV is not a supplementary retirement plan. According to DBP, "[t]he purpose of an early retirement incentive plan is to encourage, induce or motivate employees to voluntarily retire early on account of a reorganization or streamlining to achieve economy and efficiency. Meanwhile, a supplementary retirement plan x x x has for its purpose rewarding the employee for his loyalty and lengthy service in order to help him or her enjoy the remaining years of his life."[72]

In this regard, the case of *GSIS v. COA*[73] is instructive. In that case, the COA disallowed GSIS' Employees Loyalty Incentive Plan, renamed as Retirement/Financial Plan (RFP), for violating the prohibition in the *Teves Retirement Law* on supplemental retirement schemes. Therein, the Court made the following pronouncements regarding early retirement incentive plans:

> It is true that under Section 41(n) of Republic Act No. 8291, GSIS is expressly granted the power to adopt a retirement plan and/or financial assistance for its employees, but a closer look at the provision readily shows that this power is not absolute. It is qualified by the words "early," "incentive," and "for the purpose of retirement." The retirement plan must be an **early retirement incentive plan** and such early retirement incentive plan or financial assistance must be for the purpose of retirement.
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> According to Webster's Third New International Dictionary, **"early"** means "occurring before the expected or usual time," while **"incentive"** means "serving to encourage, rouse, or move to action," or "something that constitutes a motive or spur."

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[71] *Id*. at 67.

[72] *Id*. at 25.

[73] 674 Phil. 578 (2011).

It is clear from the foregoing that Section 41(n) of Republic Act No. 8291 contemplates a situation wherein GSIS, **due to a reorganization, a streamlining of its organization, or some other circumstance, which calls for the termination of some of its employees, must design a plan to encourage, induce, or motivate these employees, who are not yet qualified for either optional or compulsory retirement under our laws, to instead voluntarily retire. This is the very reason why under the law, the retirement plan to be adopted is in reality an incentive scheme to encourage the employees to retire before their retirement age.**[74]

As can be deduced from above, in determining whether a retirement plan is indeed an early retirement incentive plan (as opposed to a prohibited supplementary retirement plan), the primary consideration is the objective.

In *GSIS v. COA*, the objective of the RFP was "[t]o motivate and reward employees for meritorious, faithful, and satisfactory service."[75] The Court ruled that its purpose was not to encourage GSIS' employees to retire before the retirement age, but to augment the benefits they would receive.[76]

In stark contrast, the general objective of DBP's ERIP IV is to "ensure the vitality of the Bank for the next ten (10) years and make it attuned to the continuing advances in banking technology."[77] Specifically, the purposes of the ERIP IV are to: (1) infuse new talents/skills/insights into the Bank through the entry/promotion of younger corps of personnel; (2) enable the Bank to attain cost savings in its personnel budget; and (3) create new opportunities for career advancement in the Bank.[78]

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[74] *Id*. at 600. Emphasis and underscoring supplied; emphasis in the original omitted.

[75] *Id*. at 584, 601.

[76] *Id*. at 601.

[77] *Rollo* (G.R. No. 210922), Vol. 1, p. 82.

[78] *Id*.

Thus, judging from the stated objectives of the ERIP IV, the same should be considered as an early retirement incentive plan and not a supplemental retirement plan.

However, in the same case of *GSIS v. COA,* which the COA cites in the instant petition,[79] the Court made a pronouncement that in addition to being based on a reorganization, a valid early retirement incentive plan must *not* be offered to employees who are already qualified to retire, either optionally or compulsorily.[80] To note, under R.A. 8291 or the *GSIS Act,* the employees qualified to retire are those who have rendered at least 15 years of service and is, upon retirement, at least 60 years old (for voluntary retirement) or 65 years old (for compulsory retirement).[81]

It should be noted that the assailed retirement plan in *GSIS v. COA* is not on all fours with ERIP IV. The Implementing Policies of the **GSIS RFP** states that "[t]o be entitled to the plan, the employee must be qualified to retire with 5[-]year lump sum under RA 660 or RA 8291 or had previously retired under applicable retirement laws."[82] Read with its stated objective of motivating and rewarding employees for meritorious, faithful,

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[79] *Id*. at 635-636.

[80] See *GSIS v. COA, supra* note 73, at 604.

[81] SEC. 13. *Retirement Benefits.* – x x x

x x x x x x x x x

(b) Unless the service is extended by appropriate authorities, retirement shall be compulsory for an employee at sixty-five (65) years of age with at least fifteen (15) years of service: *Provided,* That if he has less than fifteen (15) years of service, he may be allowed to continue in the service in accordance with existing civil service rules and regulations.

SEC. 13-A. *Conditions for Entitlement.* — A member who retires from the service shall be entitled to the benefits enumerated in paragraph (a) of Section 13 hereof: *Provided,* That:

(1) he has rendered at least fifteen (15) years of service;

(2) he is at least sixty (60) years of age at the time of retirement; and

(3) he is not receiving a monthly pension benefit from permanent total disability.

[82] *GSIS v. COA, supra* note 73, at 585. Underscoring supplied.

and satisfactory service,[83] the GSIS RFP was undoubtedly a supplementary retirement plan. It cannot be considered as an early retirement incentive plan because the *only* employees entitled thereto are those already qualified to retire or had previously retired — no reorganization or streamlining is involved. As the Court held therein:

> x x x [The GSIS RFP's] **very objective**, "[t]o motivate and reward employees for meritorious, faithful, and satisfactory service," **contradicts the nature of an early retirement incentive plan, or a financial assistance plan, which involves a substantial amount that is given to motivate employees to retire *early*. Instead, it falls exactly within the purpose of a retirement benefit, which is a form of reward for an employee's loyalty and *lengthy* service,** in order to help him or her enjoy the remaining years of his life.
>
> Furthermore, **to be able to apply for the GSIS RFP, one must be qualified to retire under Republic Act No. 660 or Republic Act No. 8291, or must have previously retired under our existing retirement laws.** This only means that the employees covered by the GSIS RFP were those who were already eligible to retire or had already retired. **Certainly, this is not included in the scope of "an early retirement incentive plan or financial assistance for the purpose of retirement."**
>
> The fact that GSIS **changed the name** from "Employees Loyalty Incentive Plan" to "Retirement/Financial Plan" does not change its essential nature. A perusal of the plan shows that its **purpose is not to encourage GSIS's employees to retire before their retirement age, but to augment the retirement benefits they would receive under our present laws.** Without a doubt, the GSIS RFP is a supplementary retirement plan, which is prohibited by the Teves Retirement Law.[84]

In contrast, **DBP's ERIP IV** is not limited to employees who are qualified to retire or those who have previously retired. Rather, it is open to (1) officials and employees aged 50 or above with at least 15 years of service; and (2) others who may be displaced as a consequence of realignment or streamlining of work processes, regardless of their age or years

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[83] *Id.* at 584.

[84] *GSIS v. COA, supra* note 73, at 601. Emphasis and underscoring supplied; emphasis in the original omitted.

of service.[85] Coupled with its general objective of reorganization and streamlining, it can be concluded that ERIP IV still falls within the definition of an early retirement incentive plan. The fact that those who are qualified to retire may also be covered does not negate its classification as an early retirement incentive plan. Again, the primary consideration should be the purpose of the plan. Hence, there is merit in the following averments made by DBP:

> Clearly, an employee who is as young as 50 years old but has served 15 years in the government may avail of the ERIP IV. When the employee leaves the Bank, he is not yet qualified to receive the retirement benefits offered by GSIS. Under R.A. No. 8291, to qualify for retirement, the employee must, not only have rendered at least 15 years of service, he must also be at least 60 years of age upon retirement.
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> In fact, **for the availees of the ERIP IV in the years 2003-2006, i.e., those covered by the Notice of Disallowance, 335 were not yet qualified to retire under the GSIS,** 117 of whom are aged 50 years old and below.
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> x x x x x x x x x
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> It is elementary to state that **unless one is compelled to retire by reason of *compulsory retirement,* the decision to retire and when to retire rest[s] in the employee concerned.** He or she may continue to work until the law requires him to leave government service.
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> **Even assuming for argument's sake that a few, some[,] or all of the availees of the ERIP IV are eligible to retire under GSIS retirement laws, it does not change the fact that ERIP IV was adopted and implemented to induce them to retire early which otherwise they would not have decided to [do] if they were not offered the incentives.**
>
> Unlike under compulsory retirement, **the decision to retire under the ERIP IV was voluntary on the part of the employees who were aware that, more than the incentives to be received, their action would promote the objectives that DBP sought to achieve** — streamlining, cost-savings, and infusion of young blood.

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[85] *Rollo* (G.R. No. 210922), Vol. 1, p. 82.

x x x [T]he ERIP IV induced the employees by way of incentives to retire before they were required to retire compulsorily, i.e., before their expected or usual time for retirement. Indeed, a 55-year old ERIP IV availee could work ten (10) more years in DBP and the latter cannot command him to retire before that time.

Contrary to COA's assertion, **the fact that ERIP IV is available to employees eligible to retire under the GSIS retirement laws is not inconsistent with the nature of an early retirement plan.** If the ERIP IV's purpose is to encourage DBP employees to retire under GSIS laws earlier than they would have been compelled to in order to achieve DBP's purpose of cost savings and allow the infusion of "young blood," then it is, in fact, an early retirement plan.[86]

Still, the COA insists that the ERIP IV violates the *Teves Retirement Law* by increasing the benefits of retiring employees beyond what is allowed under the GSIS retirement laws. According to the COA, the fact that retirees would be entitled to the regular benefits under GSIS laws, on top of what they would receive under ERIP IV, clearly constitutes supplementary retirement benefits, which is a form of double compensation.[87] DBP counters that ERIP IV is in the form of a separation pay resulting from a reorganization; hence, the availees are not precluded from claiming benefits under existing retirement laws despite receiving benefits from the ERIP IV.[88]

DBP's averments are not novel. There have already been cases decided by the Court wherein it was held that those who avail of early retirement incentive plans may still avail of benefits under existing retirement laws. Said cases have also recognized the benefits under an early retirement incentive plan as a form of separation pay.

In *Laraño v.* COA[89] *(Laraño)* the COA denied the claim for retirement benefits under R.A. 1616 of petitioners-retirees

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[86] *Rollo* (G.R. No. 210922), Vol. 2, pp. 769-771. Emphasis and underscoring supplied; emphasis and underscoring in the original omitted.

[87] *Rollo* (G.R. No. 210922), Vol. 1, p. 637.

[88] See *id*. at 22-24.

[89] 565 Phil. 271 (2007).

from the Metropolitan Waterworks and Sewerage System (MWSS) after they had received their benefits under MWSS' Revised Early Retirement Incentive Package (Revised ERIP). The Court partially reversed the COA, ruling that petitioners who were affected by the reorganization of MWSS and qualified to retire under R.A. 1616 are entitled to receive their retirement benefits thereunder, notwithstanding their receipt of benefits under the Revised ERIP of MWSS.[90]

The pronouncement in *Laraño* had been affirmed in the subsequent case of *Herrera v. National Power Corporation*,[91] where the Court also classified the MWSS' Revised ERIP as a form of separation pay, to wit:

> We are, of course, aware that in *Laraño v. Commission on Audit,* we held that **employees, who were separated from the service because of the reorganization** of the [MWSS] and Local Waterworks and Utilities Administration (LWUA) pursuant to RA No. 8041, **were entitled to both a separation package and retirement benefits.**
>
> In *Laraño,* however, the **Early Retirement Incentive Plan** submitted to and approved by then President Fidel V. Ramos **explicitly provided for a separation package that would be given over and above the existing retirement benefits.** Therein lies the fundamental difference. Hence, unlike in this case, there was specific authority for the grant of both separation pay and retirement benefits.[92]

Further, in *Betoy,* the Court explained that the receipt of retirement benefits does not bar the retiree from receiving separation pay, stating that "a separation pay at the time of the reorganization of the [National Power Corporation] and retirement benefits at the appropriate future time are two separate and distinct entitlements."[93] The Court therein clarified that

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[90] *Id*. at 290, 291.

[91] 623 Phil. 383 (2009).

[92] *Id*. at 402. Emphasis and underscoring supplied; emphasis and underscoring in original omitted.

[93] *Supra* note 54, at 251-252.

entitlement of qualified employees to receive separation pay *and* retirement benefits is not covered by the Constitutional proscription on double compensation.[94] This is because separation pay and retirement benefits are different entitlements as they have different *legal bases,* different *sources of funds,* and different *intents.*[95]

As applied to the instant case, the ERIP IV partakes the form of a separation pay in that it is given to employees who are affected by the reorganization and streamlining of DBP. To recall, separation pay is given to an employee in cases under Articles 298[96] and 299[97] of the Labor Code. Specifically, these involve the installation of labor-saving devices, redundancy, retrenchment to prevent losses, closing or cessation of operation

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[94] *Id.* at 253.

[95] *Id.* at 255.

[96] 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 (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

[97] 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 (½) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

of establishment, or in case the employee suffers from a disease such that his continued employment is prohibited by law.[98] By analogy, the objective of ERIP IV is similar to those grounds for termination under Article 298 of the Labor Code on *Closure of Establishment and Reduction of Personnel.*

To reiterate, retirement benefits and separation pay are not mutually exclusive. *"Retirement benefits* are a form of reward for an employee's loyalty and service to an employer and are earned under existing laws, CBAs, employment contracts and company policies. On the other hand, *separation pay* is that amount which an employee receives at the time of his severance from employment, designed to provide the employee with the wherewithal during the period that he is looking for another employment and is recoverable only in instances enumerated under Articles 283 and 284 of the Labor Code or in illegal dismissal cases when reinstatement is not feasible."[99]

Thus, considering that the ERIP IV is analogous to separation pay, then the grant of benefits under it along with the grant of benefits under other retirement laws should not be considered as a form of double compensation.

Authority of the DBP Board

Despite the foregoing pronouncements, even if the Court were to classify the ERIP IV not as a valid early retirement incentive plan but as a prohibited supplementary retirement plan, the same should not have been disallowed by the COA on the basis of the *Teves Retirement Law.* This has already been settled in *DBP v. COA,* the relevant portions of which are quoted below:

Even assuming, however, that the [DBP's Special Loan Program (SLP)] **constitutes a supplementary retirement plan**, RA 4968 [or

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[98] *Arc-Men Food Industries Corp. v. NLRC,* 436 Phil. 371, 380-381 (2002).

[99] *Goodyear Philippines, Inc. v. Angus,* 746 Phil. 668, 681 (2014). Italics supplied.

the *Teves Retirement Law*] does not apply to the case at bar. The DBP Charter, which took effect on 14 February 1986, expressly authorizes supplementary retirement plans "adopted by and effective in" DBP, thus:

> SEC. 34. *Separation Benefits. — **All those who shall retire*** from the service or are separated therefrom on account of the reorganization of the Bank under the provisions of this Charter ***shall be entitled to all gratuities and benefits provided for under existing laws and/or supplementary retirement plans adopted by and effective in the Bank:*** Provided, that any separation benefits and incentives which may be granted by the Bank subsequent to June 1, 1986, which may be in addition to those provided under existing laws and previous retirement programs of the Bank prior to the said date, for those personnel referred to in this section shall be ftmded by the National Government; **Provided, further, that, any supplementary retirement plan adopted by the Bank after the effectivity of this Chapter shall require the prior approval of the Minister of Finance.**
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> x x x x x x x x x
>
> SEC. 37. *Repealing Clause.* — All acts, executive orders, administrative orders, proclamations, rules and regulations or parts thereof inconsistent with any of the provisions of this charter are hereby repealed or modified accordingly. (Italics supplied)

Being a *special and later law,* the DBP Charter prevails over RA 4968. The DBP originally adopted the SLP in 1983. **The Court cannot strike down the SLP now based on RA 4968 in view of the subsequent DBP Charter authorizing the SLP.**[100]

Despite this ruling, the COA insists that the *Teves Retirement Law* still applies to DBP, citing the following pronouncements in *GSIS v. COA:*

> x x x unless the intention to revoke is clear and manifest, the abrogation or repeal of a law cannot be assumed. The repealing clause contained

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[100] *DBP v. COA, supra* note 47, at 82-83. Additional emphasis and underscoring supplied.

in Republic Act No. 8291 is not an express repealing clause because it fails to identify or designate the statutes that are intended to be repealed. It is actually a clause, which predicated the intended repeal upon the condition that a substantial conflict must be found in existing and prior laws.

Since Republic Act No. 8291 made no express repeal or abrogation of the provisions of Commonwealth Act No. 186 as amended by the Teves Retirement Law, the reliance of the petitioners on its general repealing clause is erroneous. The failure to add a specific repealing clause in Republic Act No. 8291 indicates that the intent was not to repeal any existing law, unless an irreconcilable inconsistency and repugnancy exists in the terms of the new and old law[s].[101]

The contention is without merit.

In the quoted portion itself, it states that "[t]he failure to add a specific repealing clause x x x indicates that the intent was not to repeal any existing law, unless an irreconcilable inconsistency and repugnancy exists in the terms of the new and old laws."[102] Hence, while implied repeals are indeed disfavored, such would still occur if two laws are clearly irreconcilable and inconsistent.

In the instant case, there is an irreconcilable inconsistency between the *Teves Retirement Law* and the DBP Charter because while the former prohibits supplementary retirement plans, the latter expressly authorizes supplementary retirement plans. As unequivocally held in *DBP v. COA,* the DBP Charter prevails over the *Teves Retirement Law* not only because it is a later law but also because it is a special law. To recall, it is a rule in statutory construction that a special law prevails over a general law, regardless of the laws' respective dates of passage.[103]

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[101] *Rollo* (G.R. No. 207281), Vol. 1, p. 258, citing *GSIS v. COA, supra* note 73, at 598. Emphasis in the original omitted.

[102] *GSIS v. COA, id*. Underscoring supplied.

[103] *De Lima v. Guerrero,* G.R. No. 229781, October 10, 2017, 843 SCRA 1, 160.

Thus, based on the DBP Charter, the Board is authorized to provide a supplementary retirement plan. However, such authority is by no means unbridled. The Charter also states that there should be a prior approval by the Secretary of Finance. In this regard, the COA argues that even assuming that the DBP Board is authorized by its Charter to implement supplementary retirement benefits, the disallowance of ERIP IV is still proper in view of the absence of prior approval by the Secretary of Finance.

The COA is correct in saying that the prior approval of the Secretary of Finance is necessary for the validity of DBP's supplementary retirement plan. Nevertheless, it is already held that ERIP IV is not a supplementary retirement plan. Hence, the prior approval of the Secretary of Finance is not necessary.

In this regard, it is worthy to mention that as a result of the ND, DBP indeed sought approval of ERIP IV from the Secretary of Finance. In a letter[104] dated January 14, 2009 addressed to the DBP President, the Secretary of Finance himself opined that the requirement of prior approval by the Department of Finance is inapplicable. Still, the Secretary of Finance went on to state that:

> In any event, in our exercise of administrative supervision over DBP, **we evaluated the subject ERIPs, and found the same to be factually and legally proper and in order.** We believe that the **authority of the DBP to adopt, approve and implement the ERIPs is clearly provided for** by Section 13, in relation to Section 9(a) of its Charter. Accordingly, this **Department interposes no objection** to the adoption, approval and implementation of the subject ERIPs by the DBP Board.[105]

Additionally, DBP also sent a letter[106] to then President Arroyo to seek confirmation of the DBP Board's authority to approve a compensation plan for its personnel. The letter contains the following portions of Board Resolution No. 0045, which was approved by the President:

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[104] *Rollo* (G.R. No. 210922), Vol. 1, p. 115.

[105] *Id*. Emphasis and underscoring supplied.

[106] *Id*. at 178-179.

THEREFORE, be it resolved, as it is hereby resolved, to seek CONFIRMATION by the Office of the President of the Philippines of the power and authority of the DBP Board of Directors, independently of M.O. No. 20, to approve and allow the implementation and subsequent refinements of DBP's Compensation Plan, including but not limited to the following specific components of the Plan:

x x x x x x x x x

4) **Implementation of DBP's Early Retirement Incentive Program (ERIP),** the adoption and implementation of which has been **recognized by the DBM** as compliance with the government's rationalization plan as mandated by Executive Order No. 366 **and by the Department of Finance**as within the DBP Board's authority x x x[.][107]

The above-mentioned DBM recognition pertains to DBP's request for consideration of its rehabilitation program and organization refinements as substantial compliance to E.O. 366 or the *Strategic Review of the Operations and Organizations of the Executive Branch.* This request was granted through a letter[108] from the DBM dated March 16, 2007 which states in part:

x x x the Bank's streamlined structure, staffing pattern, and work procedures have contributed to the improvement of service delivery and growth of net income and total assets.

We recognize that the Bank's periodic and continuing efforts at an internal reorganization, together with a special separation package, has helped maintain its competitive position and good financial standing in the banking industry.

Foregoing considered, your request is hereby approved and DBP may be exempted from the preparation of a Rationalization Plan under EO 366.[109]

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[107] *Id*. Emphasis and underscoring supplied; italics omitted.

[108] *Id*. at 114.

[109] *Id*.

In sum, DBP is authorized by its Charter to provide a supplementary retirement plan, subject to the prior approval of the Secretary of Finance. Nonetheless, since ERIP IV is not a supplementary retirement plan, prior approval by the Secretary of Finance is not necessary. Its absence, therefore, cannot invalidate ERIP IV. In any event, it is clear from the foregoing that the Secretary of Finance, through his own study and evaluation of the ERIP IV, interposed no objection "to the adoption, approval and implementation of the subject ERIPs by the DBP Board" as they were found "to be factually and legally proper and in order" as "clearly provided for by Section 13, in relation to Section 9(a)" of DBP's Charter.[110]

Thus, the ineluctable conclusion is that COA erred in disallowing the benefits under ERIP IV-2003.

On the Petition for Mandamus and the Compromise Agreement

As regards the Petition for *Mandamus,* the Court clarifies that what is involved is ERIP IV-2010, not ERIP IV-2003 which is the subject of the Petition for *Certiorari.* In the former petition, the petitioners-retirees pray for the issuance of a writ of *mandamus* to compel the DBP Board to release their benefits under ERIP IV-2010. To recall, DBP held in abeyance the final implementation of ERIP IV-2010 pending the resolution of the ND over ERIP IV-2003.[111]

Petitioners-retirees claim that that they have established a clear right to the incentives under ERIP IV-2010. According to them, the DBP Board unlawfully neglected or refused to perform their duties under the ERIP IV-2010 and R.A. 10154.[112]

Petitioners-retirees also harp on the fact that ERIP IV-2010 was not disallowed by the COA. They insist that the disallowance for ERIP IV-2003 will not affect the validity of ERIP IV-2010

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[110] *Id.* at 115.

[111] See *rollo* (G.R. No. 207281), Vol. 1, p. 15.

[112] *Rollo* (G.R. No. 210922), Vol. 2, pp. 867-868.

and DBP cannot use such disallowance as basis for refusing the release of retirement incentives to them.[113]

For their part, the DBP Board maintains that petitioners-retirees have not shown a well-defined, clear, and certain right to warrant the grant of benefits under ERIP IV-2010 in light of the COA's disallowance of the entire ERIP IV program. Moreover, the act sought by petitioners-retirees to be done is not ministerial and the DBP Board cannot be compelled by *mandamus* to release the benefits. At any rate, the DBP Board claims that they acted in accordance with their duty to exercise extraordinary diligence in their treatment of DBP's properties.[114]

However, the Court notes that DBP and the petitioners-retirees including the petitioners-movants[115] have entered into a Compromise Agreement sometime in February 2018,[116] which is reproduced below:

COMPROMISE AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This Compromise Agreement made and entered into this ___ day of _____ 2018, in Makati City, by and between:

> **THE CY 2011-2012 RETIREES OF THE DEVELOPMENT BANK OF THE PHILIPPINES UNDER ITS EARLY RETIREMENT INCENTIVE PROGRAM-IV** who are the petitioners of SC-G.R. SP. NO. 207281, entitled "Elaine R. Abanto, et al. vs. The Board of Directors of the Development Bank of the Philippines", represented herein by their attorney-in-fact, Atty. Howard M. Calleja, hereinafter referred to as the "Petitioning ERIP-IV Retirees";

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[113] *Id.* at 841.

[114] *Id.* at 889-899.

[115] *Rollo* (G.R. No. 207281), Vol. 2, pp. 1001-1002. Subject to a favorable resolution of their Motion for Inclusion as Petitioners to G.R. No. 207281 dated October 19, 2017.

[116] *Rollo* (G.R. No. 210922), Vol. 2, p. 1065. Actual date not stated in the *rollo*.

-- and --

DEVELOPMENT BANK OF THE PHIL[I]PPINES, a government financial institution duly organized, existing and operating pursuant to Executive Order No. 81, as amended by Republic Act No. 8523, otherwise known as the 1986 Revised Charter of the DBP, with principal office at DBP Building, Sen. Gil J. Puyat Avenue corner Makati Avenue, Makati City, represented herein by its President and CEO Cecilia C. Borromeo, hereinafter referred to as "DBP";

WITNESSETH: That-

WHEREAS, the petitioning ERIP-IV Retirees retired from DBP under its ERIP-IV Program in CY 2011-2012.

WHEREAS, in 2013 DBP suspended the implementation of the ERIP-IV Program and did not release the early retirement incentives of the petitioning ERIP-IV Retirees due to, among others, the issuance by the Commission on Audit (COA) of a Notice of Disallowance calling into question the validity and legality of the entire ERIP-IV Program.

WHEREAS, in order to compel the release of the retirement incentives, the petitioning ERIP-IV Retirees filed a mandamus petition before the Supreme Court docketed as G.R. No. 207821, entitled *"Elaine R. Abanto, et al. vs. The Board of Director of DBP."* This petition has been pending since 20 June 2013, and in that time some of the petitioners have already passed away and are now represented by their respective heirs, while the majority who are now senior citizens – some of whom are suffering from various illnesses – have limited opportunities for productive employment and are still waiting for the release of their retirement incentives.

WHEREAS, COA's declaration of invalidity of DBP's ERIP-IV Program is the subject of DBP's Petition for Review on Certiorari docketed as G.R. No. 210922, entitled *"Development Bank of the Philippines vs. Commission on Audit",* which is consolidated with the above-described mandamus petition. In an Order dated 18 February 2014, the Honorable Supreme Court issued a Temporary Restraining Order enjoining COA from implementing its assailed decision against DBP's ERIP-IV Program.

WHEREAS, DBP's adoption and implementation of its ERIP-IV Program has been repeatedly approved/confirmed and acknowledged

as valid and legal by the Executive Department, as shown under a letter dated 16 March 2007 issued by the Department of Budget and Management (DBM), a letter dated 14 January 2009 by the Secretary of Finance, and by the 22 April 2010 confirmation by President Gloria Macapagal-Arroyo.

WHEREAS, the President of the Philippines on 22 March 2016 issued Executive Order No. 203 series of 2016 [*Adopting a Compensation and Position Classification System (CPCS) and a General Index of Occupational Services (IOS) for the* GOCC *Sector Covered by Republic Acts No. 10149 and For Other Purposes*] which, among others, provides for an early retirement incentive plan for government employees and early retirement incentives in addition to retirement benefits under existing laws.

WHEREAS, E.O. 203 series of 2016 is an explicit recognition by the Executive Department that an early retirement incentive plan providing additional retirement incentives is not invalid *per se* and is not repugnant to law, morals, good customs, public order, or public policy.

WHEREAS, E.O. 203 series of 2016 supports the position that DBP's ERIP-IV Program is valid and legal by and of itself, in addition to it already having the stamp of approval of the DBM, Secretary of Finance and President of the Philippines.

WHEREAS, retirement benefits serve a humanitarian purpose of providing for the sustenance and, hopefully, even comfort, of retirees when they no longer have the stamina or capability to earn a livelihood.

WHEREAS, considering that ERIP-IV is a retirement program repeatedly approved and acknowledged as valid by Executive *fiat,* most recently through Executive (sic) E.O. 203 series of 2016, and in view of the policy favoring the liberal interpretation of retirement laws in favor of those who are intended to be benefited, and for humanitarian grounds considering the advanced age of the petitioning ERIP-IV Retirees, and in order to put an end to their litigation in G.R. No. 207281, DBP, through its current Board of Directors, has agreed to release the ERIP-IV incentives of the petitioning ERIP-IV Retirees, subject to the prior approval of this Compromise Agreement by the Supreme Court.

WHEREAS, DBP President and CEO Cecilia C. Borromeo was duly authorized under Resolution No. 0074 series of 2017 to enter into and sign this Compromise Agreement; and the following terms and

conditions of compromise are in line with the instructions given by the DBP Board of Directors in Resolution No. 0282 series of 2017.

WHEREAS, in a letter dated 14 July 2017, COA through its Chairperson Michael C. Aguinaldo, said that "[c]onsidering that the issue on the propriety and/or legality of the disallowance on the retirement benefits under the ERIP is *litis pendentia,* this Commission deems it prudent to await the final decision of the Supreme Court on the case **or on the proposed compromise agreement before taking any further action on (the) proposal."**

NOW THEREFORE, for and in consideration of the foregoing, and the covenants hereinafter provided, the parties agree as follows:

1. Upon the execution of this Agreement, the parties shall submit this Compromise Agreement for the approval of the Supreme Court *En Banc* in the consolidated cases docketed as G.R. No. 210922 and G.R. 207281, and the judgment on the Compromise Agreement rendered by the Honorable Court shall be final and executory, and no further appeal shall be made by either party.

2. DBP shall release the full amount of the petitioning ERIP-IV Retirees' early retirement incentive under the ERIP-IV Program, without any interest whatsoever to their duly authorized representative, Atty. Howard M. Calleja, subject to his submission of a Special Power of Attorney executed by the Retirees, under the following conditions:

(a) Release of the subject incentive shall be within twenty (20) working days from the receipt of the Supreme Court's resolution approving the Compromise Agreement and the submission by the petitioning ERIP-IV Retirees of individual Quitclaims/Releases and Waivers as well as complete documents relative to their availment of the ERIP-IV Program.

(b) It is understood that ERIP-IV incentives to be released shall be net of any outstanding payables that the petitioning ERIP- IV Retirees owe DBP, the DBP Provident Fund and the DBP Cooperative Credit Union; as well as any specific employee benefit received during their employment which is presently the subject of COA disallowances.

(c) The computation and determination by the DBP Human Resources Management Group of net ERIP-IV incentives to be released to the ERIP-IV Retirees shall be final, binding and conclusive upon the parties.

3. In consideration of their receipt of their ERlP-IV incentives, each of the petitioning ERIP-IV Retirees hereby agree to unconditionally and voluntarily release, waive and forever discharge DBP, its stockholders, officers, directors, agents and its employees, from any and all claims, demands, obligations, liabilities, indebtedness, and causes of action of every type, kind, nature, description or character, known or unknown, direct or indirect, whether civil, criminal or administrative, which arose as a result of, or in connection with or otherwise relating to their employment with DBP, including any and all claims for PERA/AdCom differential and similar benefits, their intention being to completely and absolutely free DBP and its officers, employees, and agents from such claims, demands, or causes of action.

4. The Quitclaim/Release and Waiver submitted by the Retirees pursuant to par. 2 (a) and as stated in par. 3 may be pleaded for the dismissal of any pending case, and as a bar to future suits that may be brought in any court, office or agency of whatever jurisdiction.

5. The parties acknowledge that they have read and understood the contents of this Agreement and that they have signed the same willingly, voluntarily, and with full knowledge of their rights and obligations.

6. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter and shall super[s]ede any prior expression of intent or understanding with respect to the transaction. This Agreement may not be amended or modified, except by written agreement of the parties hereto.

7. This Agreement shall be binding upon and be enforceable by the parties hereto and their respective successors and assigns.

8. If any one of the provisions contained in this Agreement or documents executed in cmmection herewith shall be declared invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

IN WITNESS WHEREOF, the parties hereto have set their hands on the date and place first above-written.

THE CY 2011-2012 PETITIONER-RETIREES OF THE DEVELOPMENT BANK OF THE PHILIPPINES UNDER ITS EARLY RETIREMENT INCENTIVE PROGRAM-IV	**DEVELOPMENT BANK OF THE PHILIPPINES**
Represented by:	Represented by:
(Sgd.) **ATTY. HOWARD M. CALLEJA** Counsel	(Sgd.) **CECILIA C. BORROMEO** President and CEO

Signed in the presence of:

(Sgd.) Atty. Daniel [indecipherable]	(Sgd.) Atty. Rene A. Gaerlan

ACKNOWLEDGMENT

x x x x[117]

In their Manifestation and Motion for Resolution with Joint Motion for Judgment Based on Compromise Agreement[118] dated March 22, 2018, the petitioners-retirees and DBP pray that:

1. The Honorable Court resolve the consolidated cases G.R. Nos. 207281 and 210922; and

2. In the event of a decision in favor of DBP in G.R. No. 210922, the parties pray for the Honorable Court to approve the attached Compromise Agreement and that judgment be rendered in accordance therewith, without pronouncement as to the cost of suit.[119]

In the same Motion, the parties acknowledge that "COA is inevitably an indispensable party to a full and complete resolution of the consolidated cases and as such, must be

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[117] *Id*. at 1021-1029. Citations omitted.

[118] *Id*. at 1015-1020.

[119] *Id*. at 1016.

given an opportunity to express its position for or against the subject compromise."[120] Pursuant to this, DBP wrote a letter to COA.

For its part, the COA, thru Chairperson Michael G. Aguinaldo, sent a letter in reply to DBP, the pertinent portions of which are reproduced below:

> This refers to your letter dated 6 July 2017 forwarding, for the consideration of this Office, the Opinion of the Office of the Government Corporate Counsel (OGCC) on the proposed Compromise Agreement between the [DBP] and the [petitioners-retirees] in *"Abanto, et al. v. Board of Directors of DBP, G.R. No. 207281."*
>
> In its Opinion dated 10 May 2017, the **OGCC concluded that "DBP may enter into a compromise agreement with the petitioners but subject to the express consent of the COA and approval of the Supreme Court."** The OGCC stated that **COA is an indispensable party to any compromise agreement between the petitioners and DBP and thus, should be a signing party** to the proposed agreement.
>
> We take note of the fact that *G.R. No. 207281* is consolidated with *G.R. No. 210922,* a case initiated by DBP against COA questioning the [ND] against the release of retirement benefits to an earlier batch of retirees under a similar [ERIP]. It is this very ND that prompted the DBP to withhold the release of the retirement benefits of Abanto, et al. leading to the filing of *G.R.207281* before the Supreme Court.
>
> **Considering that the issue on the propriety and/or legality of the disallowance on the retirement benefits under the ERIP is *litis pendentia,* this Commission deems it prudent to await the final decision of the Supreme Court on the case or on the proposed compromise agreement before taking any further action on [the] proposal.**[121]

However, contrary to the opinion of the OGCC, the Court rules that the express consent of the COA is not necessary for the validity of the Compromise Agreement between DBP and the petitioners-retirees, in light of the decision reached by this Court in this case which upholds the validity of the ERIPs of DBP.

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[120] *Id*.

[121] *Id*. at 1030. Emphasis and underscoring supplied.

In view of the Court's ruling herein that the ERIP IV is valid, there is nothing that prevents DBP from releasing the benefits under ERIP IV-2010.

Thus, the Court finds the Compromise Agreement legally acceptable, nothing therein being contrary to laws, morals, good customs, and public policy, and the same having been freely and intelligently executed by and between the petitioners-retirees (including petitioners-movants) and DBP, judicial approval thereof is in order.

WHEREFORE, the Petition for *Certiorari* dated February 3, 2014 filed by the Development Bank of the Philippines in **G.R. No. 210922** is **GRANTED.** The Decision No. 2013-046 dated January 30, 2013 of the Commission on Audit (COA) which affirmed the Notice of Disallowance (ND) No. ERIP-2006-007(03-06) dated May 17, 2007 disallowing the payment of retirement benefits to DBP officials and employees in the total amount of ₱747,174,594.28 is hereby **REVERSED AND SET ASIDE.** The Temporary Restraining Order dated February 18, 2014 restraining the COA from implementing Decision No. 2013-046 and ND No. ERIP-2006-007(03- 06) is made **PERMANENT.**

Further, in **G.R. No. 207281,** judgment is hereby rendered in accordance with the Compromise Agreement between the petitioners-retirees (including petitioners-movants) and DBP which was submitted to the Court, and the parties are enjoined to abide by its terms and conditions.

Furthermore, the Motion for Inclusion as petitioners in G.R. No. 207281 of petitioners-movants Mary Irma D. Lara and Josephine Jaurigue dated October 19, 2017 is hereby **GRANTED.**

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Leonen, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando, and *Carandang, JJ.,* concur.

Jardeleza, *J.*, no part.

Perlas-Bernabe, J., on official leave.

EN BANC

[G.R. No. 233016. March 5, 2019]

REYNALDO S. ZAPANTA, *petitioner,* **EDILBERTO U. LAGASCA,** *petitioner-intervenor*, *vs.* **COMMISSION ON ELECTIONS and ALFRED J. ZAPANTA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTIONS; NUISANCE CANDIDATES; DEFINED; THE PARAMOUNT CONCERN IN BARRING NUISANCE CANDIDATES FROM PARTICIPATING IN THE ELECTORAL EXERCISE IS THE AVOIDANCE OF CONFUSION AND FRUSTRATION OF THE DEMOCRATIC PROCESS BY PREVENTING A FAITHFUL DETERMINATION OF THE TRUE WILL OF THE ELECTORATE.— In *Martinez III v. House of Representatives Electoral Tribunal*, this Court thoroughly discussed the reasons why nuisance candidates are abhorred: In controversies pertaining to nuisance candidates as in the case at bar, the law contemplates the likelihood of confusion which the similarity of surnames of two (2) candidates may generate. A nuisance candidate is thus defined as one who, based on the attendant circumstances, has no *bona fide* intention to run for the office for which the certificate of candidacy has been filed, his sole purpose being the reduction of the votes of a strong candidate, upon the expectation that ballots with only the surname of such candidate will be considered stray and not counted for either of them. x x x Given the realities of elections in our country and particularly contests involving local positions, what emerges as the paramount concern in barring nuisance candidates from participating in the electoral exercise is the avoidance of confusion and frustration of the democratic process by preventing a faithful determination of the true will of the electorate.

2. ID.; ID.; ID.; HOW THE VOTES OF NUISANCE CANDIDATES IN A MULTI-SLOT OFFICE SHOULD BE TREATED, CLARIFIED.— With the recent promulgation of *Santos*, this Court clarified how the votes of nuisance candidates in a multi-slot office should be treated: In a multi-slot office, such as membership of the *Sangguniang Panlungsod*, a registered voter may vote for more than one candidate. Hence, it is possible that the legitimate candidate and nuisance candidate, having similar names, may both receive votes in one ballot. The Court agrees with the OSG that in that scenario, the vote cast for the nuisance candidate should no longer be credited to the legitimate candidate; otherwise, the latter shall receive two votes from one voter. Therefore, in a multi-slot office, the COMELEC must not merely apply a simple mathematical formula of adding the votes of the nuisance candidate to the legitimate candidate with the similar name. To apply such simple arithmetic might lead to the double counting of votes because there may be ballots containing votes for both nuisance and legitimate candidates. x x x Thus, to ascertain that the votes for the nuisance candidate is accurately credited in favor of the legitimate candidate with the similar name, the COMELEC must also inspect the ballots. In those ballots that contain both votes for nuisance and legitimate candidate, only one count of vote must be credited to the legitimate candidate. x x x Here, the *Santos* doctrine must be applied: the votes for petitioner alone should be counted in favor of private respondent; if there are votes for both petitioner and private respondent in the same ballot, then only one (1) vote should be counted in the latter's favor. This will not only discourage nuisance candidates, but will also prevent the disenfranchisement of voters.

3. ID.; ID.; ID.; THE ONLY REAL PARTY IN INTEREST IN A PETITION FOR DISQUALIFICATION OF A NUISANCE CANDIDATE ARE THE ALLEGED NUISANCE CANDIDATE AND THE AFFECTED LEGITIMATE CANDIDATE, WHILE THE OTHER CANDIDATES ARE MERE SILENT OBSERVERS; UNAFFECTED PETITIONER-INTERVENOR, WHO DOES NOT HAVE ANY SIMILARITY WITH THE NUISANCE CANDIDATE'S NAME, NEED NOT BE IMPLEADED IN NUISANCE CASE.— The legal standing of

> unaffected candidates in a nuisance petition has already been settled in *Santos*: The Court finds that in a petition for disqualification of a nuisance candidate, the only real parties in interest are the alleged nuisance candidate, the affected legitimate candidate, whose names are similarly confusing. A real [party-in-interest] is the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit. In *Timbol v. COMELEC (Timbol)*, it was stated that to minimize the logistical confusion caused by nuisance candidates, their COC may be denied due course or cancelled by the petition of a legitimate candidate or by the COMELEC. x x x Thus, when a verified petition for disqualification of a nuisance candidate is filed, the real parties-in-interest are the alleged nuisance candidate and the interested party, particularly, the legitimate candidate. x x x Glaringly, there was nothing discussed in *Timbol* that other candidates, who do not have any similarity with the name of the alleged nuisance candidate, are real parties-in-interest or have the opportunity to be heard in a nuisance petition. Obviously, these other candidates are not affected by the nuisance case because their names are not related with the alleged nuisance candidate. **Regardless of whether the nuisance petition is granted or not, the votes of the unaffected candidates shall be completely the same.** Thus, they are mere silent observers in the nuisance case. As a mere observer, petitioner-intervenor is not required to be impleaded in the Nuisance Petition. Hence, his right to due process could not have been violated.

APPEARANCES OF COUNSEL

Rodvick J. Abarca for petitioner.
The Solicitor General for public respondent.
Dexter A. Francisco for private respondent Alfred J. Zapanta.

D E C I S I O N

LEONEN, *J.*:

In a multi-slot office, all votes cast in favor of the nuisance candidate whose name is confusingly similar to a bona fide

candidate shall not be automatically credited in the latter's favor. If the ballot contains one (1) vote for the nuisance candidate and no vote for the bona fide candidate, that vote will be counted in the latter's favor. However, if the nuisance candidate and the bona fide candidate each gets a vote, only one (1) vote will be counted in the latter's favor.

For this Court's resolution is a Petition for *Certiorari* and Prohibition and Motion to Admit Petition for Intervention with Urgent Application for Temporary Restraining Order and/or Writ of Preliminary Injunction.[1] The Petition prays that the May 8, 2016[2] and August 8, 2017[3] Resolutions of the Commission on Elections (the Commission) be reversed and set aside, and that a temporary restraining order and/or writ of preliminary injunction be issued to enjoin the execution of the assailed Resolutions.[4] The Commission declared Reynaldo S. Zapanta (Reynaldo) as a nuisance candidate and ordered that the votes he received be added to the votes received by Alfred J. Zapanta (Alfred).[5]

For the May 9, 2016 national and local elections, Reynaldo, Alfred, and petitioner-intervenor Edilberto U. Lagasca (Lagasca) each filed a Certificate of Candidacy for city councilor of the Second District of Antipolo City,

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[1] *Rollo*, pp. 3-37. Filed under Rule 64 in relation to Rule 65 of the 1997 Rules of Civil Procedure.

[2] *Id*. at 39-46. The Resolution was signed by Presiding Commissioner Al A. Parreño and Commissioners Arthur D. Lim and Sheriff M. Abas of the Second Division, Commission on Elections, Manila.

[3] *Id*. at 50-59. The Resolution was signed by Chairman J. Andres D. Bautista and Commissioners Christian Robert S. Lim, Al A. Parreño, Luie Tito G. Guia, Arthur D. Lim, Ma. Rowena Amelia V. Guanzon, and Sheriff M. Abas of the *En Banc*, Commission on Elections, Manila.

[4] *Id*. at 31.

[5] *Id*. at 45 and 57-58.

Rizal.[6] The Second District of Antipolo City is entitled to eight (8) seats in the *Sangguniang Panlungsod*.[7]

Alfred and Lagasca filed their Certificates of Candidacy on October 16, 2015. Alfred, a nominee of political party Aksyon Demokratiko, was then an incumbent city councilor of the Second District of Antipolo City.[8] Reynaldo, a member and nominee of Lakas-CMD, filed his Certificate of Candidacy on December 10, 2015 to replace another candidate, Rolando Z. Zonio.[9]

On December 14, 2015, Alfred filed before the Commission a Verified Petition To Deny Due Course and/or To Cancel Certificate of Candidacy of Reynaldo S. Zapanta as Nuisance Candidate[10] (Nuisance Petition).[11] He alleged that Reynaldo indicated the name "Alfred" both as his nickname in his Certificate of Candidacy and as his name in the official ballots.[12] He claimed that Reynaldo never identified himself as "Alfred."[13] To prove his allegations, Alfred attached a printed copy of Reynaldo's social media accounts, which showed that Reynaldo was using the name "Rey Zapanta."[14] Alfred also attached screenshots of public conversations from the same social media accounts, where different people pertained to the account holder as "Rey."[15]

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[6] *Id*. at 5 and 39.

[7] *Id*.

[8] *Id*. at 5 and 316.

[9] *Id*. at 5.

[10] *Id*. at 61-64. The Nuisance Petition was docketed as SPA No. 15-212 (DC).

[11] *Id*. at 40.

[12] *Id*. at 40 and 62.

[13] *Id*.

[14] *Id*. at 71, Annex E of the Nuisance Petition.

[15] *Id*. at 72, Annex F of the Nuisance Petition.

Alfred averred that Reynaldo's use of the name "Alfred" was "designed to mislead the voters"[16] to steal the votes intended for him. He contended that Reynaldo "has no [bona fide] intention to run for the office [and only aims to] cause confusion among the voters of Antipolo City and thus prevent the faithful determination of the true will of the electorate of Antipolo City."[17] He prayed that Reynaldo be declared as a nuisance candidate and that Reynaldo's Certificate of Candidacy be canceled. He further prayed that Reynaldo's name be excluded in the official ballots and, should his Petition be decided after the elections, that the votes Reynaldo would have received be counted in his favor.[18]

On January 13, 2016, Reynaldo filed his Answer,[19] praying that Alfred's Nuisance Petition be dismissed.[20] He questioned the authenticity of the social media accounts presented by Alfred, arguing that the latter could not establish that they belonged to him.[21] To further show that he was indeed identified as "Alfred," Reynaldo presented two (2) affidavits.[22] His wife, Fe Zapanta,[23] stated in her affidavit that Reynaldo had been using the name "Alfred" even before their marriage, and that his friends and relatives also called him "Alfred,"[24] In another affidavit, former barangay official Armando G. Panganiban said that from the time he met Reynaldo, who was then a sitio coordinator, he and other people had already called Reynaldo "Alfred."[25]

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[16] *Id*. at 62.

[17] *Id*.

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

[19] *Id*. at 74-87.

[20] *Id*. at 40 and 85.

[21] *Id*. at 40-41 and 75-77.

[22] *Id*. at 41.

[23] *Id*. at 94.

[24] *Id*.

[25] *Id*. at 93.

Reynaldo emphasized that he was nominated as councilor by Lakas-CMD. His membership in a political party, he said, established that he has a bona fide intention to run. Further, he had expertise and experience in both the private and public sectors to serve its constituents.[26]

Finally, Reynaldo claimed that, come election day, there would be no confusion since his and Alfred's entries in the official ballots were different: Reynaldo's name would be "ZAPANTA ALFRED LAKAS," while Alfred's would be "ZAPANTA ALFRED J."[27]

Alfred and Reynaldo filed their Memoranda on January 25, 2016 and January 26, 2016, respectively.[28]

In its May 8, 2016 Resolution,[29] the Commission's Second Division granted Alfred's Petition.[30] It found that Reynaldo's name, as it would be indicated in the official ballots, was "confusingly similar"[31] to Alfred's name. The Commission held:

> Without a doubt, an examination of the name REYNALDO S. ZAPANTA would disclose that the nickname "ALFRED" nowhere resembles the name of the Respondent. While the Respondent submitted affidavits of his two (2) witnesses attesting to the fact that he is known to be using "ALFRED" as his nickname, the same fails to persuade this Commission.
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> . . . . . .
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> In the case, it is worthy to note that Petitioner is an incumbent Member of the City Council of Antipolo, Rizal, as such, it seems that he is known to the City as only ALFRED ZAPANTA. Thus, the

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[26] *Id*. at 78-82.

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

[28] *Id*. at 41.

[29] *Id*. at 39-46.

[30] *Id*. at 45.

[31] *Id*. at 43.

inclusion of another candidate with strikingly the same name for the same position in the ballot will definitely sow confusion among the voters. Hence, the COC of Respondent is only meant to cause confusion among the voters by the similarity of his name appearing on the official ballot to that of the Petitioner, who is running for reelection.

The likelihood of confusion is apparent considering that Petitioner's preferred name to appear on the Official Ballot is ["ZAPANTA ALFRED J.,"] while Respondent is ["ZAPANTA ALFRED LAKAS."] Moreover, on the same premise, it likewise appears that Respondent has no *bona fide* intention to run for the office for which his COC has been filed. Hence, Respondent should be declared a nuisance candidate.[32] (Emphasis in the original)

The dispositive portion of the May 8, 2016 Resolution read:

WHEREFORE, the Petition is **GRANTED**. Accordingly, **REYNALDO S. ZAPANTA**, is hereby declared a **NUISANCE CANDIDATE** and his Certificate of Candidacy for Member of the *Sangguniang Panglungsod* of Antipolo City for the May 9, 2016 National and Local Elections is hereby **CANCELLED**.

SO ORDERED.[33] (Emphasis in the original)

Meanwhile, the national and local elections took place on May 9. 2016. The 10 candidates who got the highest votes for the *Sangguniang Panlungsod* of Antipolo City Second District were:

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[32] *Id*. at 43-45. In its Resolution, the Commission mistakenly interchanged in the last paragraph quoted here the parties' names as indicated in the official ballots.

[33] *Id*. at 45.

Names of Candidates	**Number of Votes**	**Ranking**
Acop, Dok Bong	119,226	1
Leyva, Loni	97,532	2
Tapales, Paui	95,897	3
Alarcon, Christian	93,237	4
Masangkay, Tony	84,532	5
O'hara, Edward	74,896	6
Aranas, Nixon	64,210	7
Lagasca, Eddie	63,724	8
Zapanta, Alfred J. - *Petitioner*	*45,210*	*9*
Zapanta, Reynaldo. - *Respondent*	*31,667*	*10*[34] (Emphasis in the original)

On June 1, 2016, Reynaldo moved for the reconsideration of the May 8, 2016 Resolution of the Commission's Second Division.[35] He argued that his name's likeness with Alfred's "does not necessarily make him a nuisance candidate."[36] He maintained that it was Alfred who should present evidence to prove that his candidacy was not made in good faith, and that the Commission erred in placing the burden of proving his nickname's authenticity on him.[37] He argued that confusion based on similar names could not arise in an automated election, and reiterated that his evidence proved that he had always been known as "ALFRED."[38]

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[34] *Id*. at 57.

[35] *Id*. at 50.

[36] *Id*.

[37] *Id*.

[38] *Id*. at 50-51.

On June 7, 2016, Alfred filed his Opposition, reiterating his arguments in his previous pleadings before the Commission's Second Division.[39]

In its August 8, 2017 Resolution,[40] the Commission *En Banc* denied Reynaldo's Motion for Reconsideration for lack of merit.[41] It held that since the name "Alfred" could not be directly connected to Reynaldo's name, Reynaldo should have presented sufficient evidence to establish his allegation. Otherwise, his use of the nickname "Alfred" would confuse the electorate and prejudice Alfred's candidacy. The Commission *En Banc* ruled that Reynaldo failed to provide credible proof that he was publicly known as "Alfred"; the submitted affidavits alone did not suffice.[42]

The Commission *En Banc* further held that Reynaldo's nomination by Lakas-CMD was not enough to mitigate the confusion that could arise from his use of the name "Alfred."[43] Thus, even if he was nominated, two (2) candidates with the name "ZAPANTA ALFRED" would still appear on the official ballots and "voters would still be confused as to which name refer to which candidate."[44] His nomination, Commission *En Banc* ruled, was insufficient to show that his intention to run as councilor was genuine.[45]

Finally, the Commission *En Banc* held that confusion may still arise in an automated election as held in *Dela Cruz v. Comelec*:[46]

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[39] *Id*. at 51.

[40] *Id*. at 50-59.

[41] *Id*. at 57.

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

[43] *Id*. at 55.

[44] *Id*.

[45] *Id*.

[46] *Id*. at 56 *citing* 698 Phil. 548 (2012) [Per *J*. Villarama, Jr., *En Banc*].

[T] he possibility of confusion in the names (sic) of candidates if the names of nuisance candidates remained on the ballots on election day, cannot be discounted or eliminated, ***even under the automated voting system*** *especially considering that voters who mistakenly shaded the oval beside the name of the nuisance candidate instead of the bona fide candidate they intended to vote for could no longer ask for replacement ballots to correct the same.*[47] (Emphasis in the original)

The Commission *En Banc* ruled that the votes in favor of Reynaldo should be credited to Alfred, pursuant to *Dela Cruz*.[48] The dispositive portion of its August 8, 2017 Resolution read:

WHEREFORE, premises considered, the Commission (*En Banc*) **RESOLVED**, as it hereby **RESOLVES**, to **DENY** the Motion for Reconsideration filed by Reynaldo S. Zapanta for **LACK OF MERIT**. The *Second Division* Resolution declaring Reynaldo S. Zapanta as a **NUISANCE CANDIDATE** and **CANCELLING** his Certificate of Candidacy is hereby **AFFIRMED**.

Accordingly:

1. A Special City Board of Canvassers shall be constituted which shall be **DIRECTED** to:

1.1. **CONVENE** a session, not later than ten (10) days after the finality of this *Resolution*, with notice of the place, date and time of the session to the parties in this case and to the affected *Sangguniang Panglungsod Members* for the Second District of Antipolo City;

1.2. **AMEND/CORRECT**, in the course of the session, the official *Certificate of Canvass* of Antipolo by **crediting** the votes counted for *Respondent* Reynaldo Santiago Zapanta in favor of *Petitioner* Alfred Jarlego Zapanta; and thereafter

1.3. **AMEND/CORRECT** the official *Certificate of Canvass of Votes and Proclamation* on the basis of the vote figures after the votes counted for *Respondent* Reynaldo Santiago Zapanta shall have been credited in favor of *Petitioner* Alfred Jarlego Zapanta.

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[47] *Id*.

[48] *Id*. at 56-57.

2. The Amended/Corrected *Certificate of Canvass of Votes and Proclamation* shall supersede the previous *Certificate of Canvass of Votes and Proclamation* and the previous proclamation of any candidate who is not included in the amended/corrected *Certificate* is deemed nullified.

3. The Law Department of this Commission is directed to investigate whether there is basis to commence an election offense proceedings (*sic*) by reason of the acts found to have committed in this case.

Let the Clerk of the Commission, in coordination with the Election Officer of Antipolo City, **FURNISH** copies of this Resolution to the parties and the *Sangguniang Panlungsod Members* for the Second Division of Antipolo City.

SO ORDERED.[49] (Emphasis in the original)

On August 15, 2017, Reynaldo filed before this Court a Petition and Motion to Admit Petition for Intervention[50] against the Commission and Alfred, with Lagasca joining as a petitioner-intervenor. Petitioner prays that the May 8, 2016 and August 8, 2017 Resolutions of public respondent be nullified and set aside, and that a temporary restraining order and/or writ of preliminary injunction be issued to prevent the Resolutions' execution.[51]

Petitioner argues that public respondent committed grave abuse of discretion when it: (1) declared petitioner as a nuisance candidate; (2) directed the proclamation of private respondent as the winning candidate; and (3) declared void the proclamation of petitioner-intervenor as councilor of the *Sangguniang Panlungsod* of the Second District of Antipolo City.[52]

Petitioner contends that having the same nickname as private respondent does not automatically translate to an insincere candidacy. He maintains that the affidavits prove that he was known as "Alfred" and stresses his affiliation with a political

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

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

[51] *Id*. at 3 and 31.

[52] *Id*. at 10-11.

party. He again argues that there can be no confusion in an automated election. Moreover, private respondent actively introduced himself during the campaign period as "21. ZAPANTA, ALFRED (AKSYON)" in the official ballots; thus, the electorate was aware of his identity, and there could be no confusion between them.[53]

Petitioner further argues that if the votes he garnered will be added to the votes of private respondent, then the electorate will be disenfranchised; their right to suffrage, violated. He asserts that it is "preposterous, if not downright foolish,"[54] for voters if public respondent assumes that all those who voted for petitioner were confused.[55]

Lastly, petitioner claims that public respondent's earlier rulings violated petitioner-intervenor's right to due process, as he "was never involved or heard in the proceedings therein."[56]

To support his prayer for a temporary restraining order, petitioner argues that the elements for the grant of a temporary restraining order are present.[57] His right to "equal access to opportunities for public service"[58] and petitioner-intervenor's right to due process will be threatened should the Resolutions be implemented.[59] Further, the invasion of their rights "is material and substantial."[60] Since the Resolutions are executory and the removal of petitioner-intervenor is impending, an injunctive writ is necessary to prevent irreparable damage.[61]

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[53] *Id*. at 11-22.

[54] *Id*. at 24.

[55] *Id*. at 22-24.

[56] *Id*. at 25.

[57] *Id*. at 29.

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

[59] *Id*.

[60] *Id*. at 30.

[61] *Id*.

On August 18, 2017, the Commission issued a Certificate of Finality,[62] declaring its August 8, 2017 Resolution final and executory. It also issued a Writ of Execution[63] on August 31, 2017, directing the Special City Board of Canvassers to:

1. **CONVENE** on 12 September 2017, 3:00 p.m., at the Comelec Session Hall, 8th Floor, Palacio del Gobernador Building, Intramuros, Manila, with notice to all affected parties and to the affected Sangguniang Panlungsod Members for the Second District of Antipolo City;
2. **AMEND/ CORRECT**, in the course of the session, the official Certificate of Canvass for the Second District of Antipolo City by crediting the votes counted for Respondent Reynaldo Santiago Zapanta in favor of Petitioner Alfred Jarlego Zapanta;
3. **AMEND/ CORRECT**, the official Certificate of Canvass of Votes and Proclamation on the basis of the vote figures after the votes counted for Respondent Reynaldo Santiago Zapanta shall have been credited in favor of Petitioner Alfred Jarlego Zapanta; and
4. **PROCLAIM** the following as the duly elected Members of the Sangguniang Panlungsod Members for the Second District of Antipolo City, Rizal:

Names of Candidates	Number of Votes	Ranking
Philip Conrad Acop	119,226	1
Catalino Leyva	97,532	2
Irvin Paulo Tapales	95,897	3
Christian Edward Alarcon	93,237	4
Antonio Masangkay	84,532	5
Alfred J. Zapanta	76,877	6
Edward O'hara	74,896	7
Nixon Aranas	64,210	8[64]

[62] *Id*. at 181-184.

[63] *Id*. at 187-191.

[64] *Id*. at 190-191.

On November 6, 2017, private respondent filed his Comment,[65] arguing that the Commission, in issuing its rulings, did not commit grave abuse of discretion. He avers that despite being given a number of opportunities, petitioner failed to show that he was and had been using the nickname "Alfred" so as to use the name in the ballot. He claims that petitioner neither campaigned nor distributed or posted a single campaign paraphernalia.[66] Petitioner's only action during the campaign period was to send a text message to different individuals where he stated, "RE-ELECT" ALFRED ZAPANTA No. 22 for 2nd District Councilor."[67] For private respondent, petitioner's use of the word "RE-ELECT" was malicious since he was not even an incumbent city councilor.

Moreover, private respondent claims that petitioner, in his text message, used his campaign slogan and did not even state his political party.[68] Petitioner, he points out, did not campaign personally to confuse and mislead the voters, but relied on the confusion that his tactics as a nuisance candidate would bring to the electorate.[69]

Private respondent refutes petitioner's claim that the Commission committed grave abuse of discretion in declaring him as the winning candidate, arguing that:

> The petitioner also claims that it was preposterous and downright foolish on the part of the Commission to think that there were 31,667 confused voters in the 2nd District of Antipolo City who wrongfully casted their votes in his favor while voting for private respondent who is an incumbent City Councilor. **But it would be more preposterous and downright foolish to say that an unknown candidate in the person of the petitioner, a candidate who never campaigned even a single**

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[65] *Id*. at 214-226.

[66] *Id*. at 216-217.

[67] *Id*. at 217.

[68] *Id*.

[69] *Id*. at 217-218.

day during the entire campaign period, who did not post even a single campaign poster in the eight Barangays of 2nd District of Antipolo City, who did not bother to distribute even a single sample ballot during election day, who is not even known as a running candidate in his own Sitio and even in the Tricycle Operators and Drivers Association (TODA) where he is a member, would garner THIRTY ONE THOUSAND SIX HUNDRED SIXTY SEVEN (31, 667) votes. The ones disenfranchised as a result of this dirty political tactic and maneuvering were the voters of private respondent and not the petitioner[.][70] (Emphasis in the original)

Private respondent adds that the Commission did not unseat petitioner-intervenor, but merely corrected its wrongful proclamation. He maintains that petitioner-intervenor was not duly elected; he merely benefited from petitioner's political tactics. Since he was never elected, petitioner-intervenor was not ousted from the position and his right to due process was not violated when he was not impleaded in the Nuisance Petition. Private respondent further contends that there is no provision under the Commission's Rules of Procedure that require him to implead any elected official who may be affected by his Petition. Nonetheless, petitioner-intervenor was accorded due process since he was given a copy of the Commission's August 8, 2017 Resolution.[71]

Lastly, private respondent argues that the August 8, 2017 Resolution became final and executory since no temporary restraining order was issued within five (5) days from petitioner's receipt of the Resolution's copy. He adds that the issuance of a temporary restraining order or a writ of preliminary injunction is no longer possible because the Commission had already issued a Certificate of Finality on August 18, 2017.[72]

On November 9, 2017, the Office of the Solicitor General, as counsel for public respondent, filed its Comment.[73] It argues

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[70] *Id*. at 219.

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

[72] *Id*. at 221-223.

[73] *Id*. at 235-250.

that the Commission "correctly declared petitioner a nuisance candidate and, accordingly, cancelled his certificate of candidacy."[74] However, the 31,667 votes petitioner received should not be automatically credited in private respondent's favor. Since voters can cast more than one (1) vote for the position of city councilor, the nuisance candidate and the bona fide candidate may each receive a vote from a single voter. Thus, to add the votes cast for the nuisance candidate to the votes cast for the bona fide candidate would be erroneous, as this may result in the latter receiving two (2) votes from the same voter. It asserts that if the voter casts a vote for the nuisance candidate only, then only that vote can be credited to the bona fide candidate.[75]

On January 15, 2018, petitioner and petitioner-intervenor filed their Reply,[76] reiterating that petitioner is not a nuisance candidate.[77] Assuming that he was, they agreed with the Office of the Solicitor General that the votes cast for petitioner should not be instantly added to the votes for private respondent. Instead, they should be considered as stray votes.[78]

On December 5, 2018, public respondent filed its own Comment.[79] It stands by its earlier ruling that petitioner is a nuisance candidate whose Certificate of Candidacy was correctly canceled. Like the Office of the Solicitor General, it opines that the votes in petitioner's favor should not be automatically credited to the votes in private respondent's favor,[80] in accordance with this Court's new ruling in *Santos v. Commission*

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[74] *Id*. at 241.

[75] *Id*. at 244-246.

[76] *Id*. at 253-262.

[77] *Id*. at 254-256.

[78] *Id*. at 256-258.

[79] *Id*. at 282-297.

[80] *Id*. at 293-294.

on Elections.[81] Still, it insists that it did not commit grave abuse of discretion since it merely applied the doctrine in *Dela Cruz*. It submits that the Special Board of Canvassers of the Second District of Antipolo City should be reconvened for the recounting and recanvassing of votes for the city councilor position.[82]

The issues for this Court's resolution are:

First, whether or not public respondent Commission on Elections, in declaring petitioner Reynaldo S. Zapanta as a nuisance candidate, committed grave abuse of discretion amounting to lack or excess of jurisdiction;

Second, whether or not public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ordered that the votes cast for petitioner be credited to the votes cast for private respondent Alfred J. Zapanta; and

Finally, whether or not public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction when it declared as void the proclamation of petitioner-intervenor Edilberto U. Lagasca as the duly elected member of the *Sangguniang Panlungsod* of the Second District of Antipolo City.

The Petition is partly meritorious.

In *Martinez III v. House of Representatives Electoral Tribunal*[83] this Court thoroughly discussed the reasons why nuisance candidates are abhorred:

> In controversies pertaining to nuisance candidates as in the case at bar, the law contemplates the likelihood of confusion which the similarity of surnames of two (2) candidates may generate. A nuisance candidate is thus defined as one who, based on the attendant

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[81] G.R. Nos. 235058 & 235064, September 4, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64577> [Per *J*. Gesmundo, *En Banc*].

[82] *Rollo*, pp. 289-294.

[83] 624 Phil. 50 (2010) [Per *J*. Villarama, Jr., *En Banc*].

circumstances, has no *bona fide* intention to run for the office for which the certificate of candidacy has been filed, his sole purpose being the reduction of the votes of a strong candidate, upon the expectation that ballots with only the surname of such candidate will be considered stray and not counted for either of them.

In elections for national positions such as President, Vice-President and Senator, the sheer logistical challenge posed by nuisance candidates gives compelling reason for the Commission to exercise its authority to eliminate nuisance candidates who obviously have no financial capacity or serious intention to mount a nationwide campaign. Thus we explained in *Pamatong v. Commission on Elections*:

"The rationale behind the prohibition against nuisance candidates and the disqualification of candidates who have not evinced a *bona fide* intention to run for office is easy to divine. ***The State has a compelling interest to ensure that its electoral exercises are rational, objective, and orderly.*** Towards this end, the State takes into account the practical considerations in conducting elections. Inevitably, the greater the number of candidates, the greater the opportunities for logistical confusion, not to mention the increased allocation of time and resources in preparation for the election. These practical difficulties should, of course, never exempt the State from the conduct of a mandated electoral exercise. At the same time, remedial actions should be available to alleviate these logistical hardships, whenever necessary and proper. Ultimately, a disorderly election is not merely a textbook example of inefficiency, but a rot that erodes faith in our democratic institutions. . . .

. . . . . .

"The preparation of ballots is but one aspect that would be affected by allowance of "nuisance candidates" to run in the elections. Our election laws provide various entitlements for candidates for public office, such as watchers in every polling place, watchers in the board of canvassers, or even the receipt of electoral contributions. Moreover, there are election rules and regulations the formulations of which are dependent on the number of candidates in a given election.

"Given these considerations, the ignominious nature of a nuisance candidacy becomes even more galling. The organization of an election with *bona fide* candidates standing

> is onerous enough. To add into the mix candidates with no serious intentions or capabilities to run a viable campaign would actually impair the electoral process. . . .
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> . . . . . .
>
> Given the realities of elections in our country and particularly contests involving local positions, what emerges as the paramount concern in barring nuisance candidates from participating in the electoral exercise is the avoidance of confusion and frustration of the democratic process by preventing a faithful determination of the true will of the electorate, more than the practical considerations mentioned in *Pamatong*. A report published by the Philippine Center for Investigative Journalism in connection with the May 11, 1998 elections indicated that the tactic of fielding nuisance candidates with the same surnames as leading contenders had become one (1) "dirty trick" practiced in at least 18 parts of the country. The success of this clever scheme by political rivals or operators has been attributed to the last-minute disqualification of nuisance candidates by the Commission, notably its "slow-moving" decision-making.[84]
> (Emphasis in the original, citations omitted)

Here, the names of petitioner and private respondent in the official ballots are indicated as follows:

> 21. ZAPANTA, ALFRED (AKSYON)
> 22. ZAPANTA, ALFRED (LAKAS)[85]

The only way to distinguish petitioner from private respondent is their number on the ballot and their affiliations. Other than that, a voter who wanted to vote for "Alfred Zapanta," but only knows the name "Alfred" or surname "Zapanta," would be confused on which oval to shade to reflect his or her choice. No other candidate for the position of city councilor has either the name "Alfred" or "Zapanta."

After a perusal of the case records, this Court holds that petitioner was not able to sufficiently show that voters can clearly identify that his chosen nickname pertains only to him.

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[84] *Id*. at 69-71.

[85] *Rollo*, p. 142.

The affidavits he presented are not enough to show that he had been using the name "Alfred" or that he is publicly known by that name.

Moreover, despite being given an opportunity to counter private respondent's allegations, petitioner failed to deny that he had no campaign materials using the name "Alfred Zapanta," or present evidence to the contrary. He merely banked on his membership in a political party to support his claim that he had a bona fide intention to run for office. Association to a political party per se does not necessarily equate to a candidate's bona fide intent; instead, he or she must show that he or she is serious in running for office. This, petitioner failed to demonstrate.

Additionally, private respondent is more recognized by his constituents as "Alfred Zapanta," being an incumbent city councilor who was running for another term.

This Court further holds that public respondent's order of adding petitioner's votes to private respondent's votes is not tainted with grave abuse of discretion. However, its ruling on this issue must be set aside.

In *David v. Senate Electoral Tribunal*:[86]

> The term "grave abuse of discretion" has been generally held to refer to such arbitrary, capricious, or whimsical exercise of judgment as is tantamount to lack of jurisdiction:
>
> > [T]he abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. Mere abuse of discretion is not enough: it must be grave.
>
> There is grave abuse of discretion when a constitutional organ such as the Senate Electoral Tribunal or the Commission on Elections, makes manifestly gross errors in its factual inferences such that critical pieces of evidence, which have been nevertheless properly introduced

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[86] 795 Phil. 529 (2016) [Per J. Leonen, *En Banc*].

by a party, or admitted, or which were the subject of stipulation, are ignored or not accounted for.

A glaring misinterpretation of the constitutional text or of statutory provisions, as well as a misreading or misapplication of the current state of jurisprudence, is also considered grave abuse of discretion. The arbitrariness consists in the disregard of the current state of our law.[87] (Citations omitted)

Public respondent explained that it based its ruling on *Dela Cruz*,[88] where this Court held that the votes for the nuisance candidate should be added to the votes for the bona fide candidate.[89] Despite involving a single-slot office, where only one (1) candidate can win for the position, public respondent applied *Dela Cruz* as it was the prevailing doctrine when it decided on this case. More, there were then no rules or jurisprudence dealing with the votes of a nuisance candidate in a multi-slot office.

This Court finds that public respondent did not exercise its judgment in an arbitrary, capricious, or whimsical manner when it ordered adding the votes cast for petitioner to the votes cast for private respondent. On the contrary, it merely applied "the current state of our law."[90]

With the recent promulgation of *Santos*[91] this Court clarified how the votes of nuisance candidates in a multi-slot office should be treated:

In a multi-slot office, such as membership of the *Sangguniang Panlungsod*, a registered voter may vote for more than one candidate.

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[87] *Id*. at 565-566.

[88] 698 Phil. 548 (2012) [Per *J*. Villarama, Jr., *En Banc*].

[89] *Id*. at 569.

[90] *David v. Senate Electoral Tribunal*, 795 Phil. 529, 566 (2016) [Per *J*. Leonen, *En Banc*].

[91] G.R. Nos. 235058 & 235064, September 4, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64577> [Per *J*. Gesmundo, *En Banc*].

Hence, it is possible that the legitimate candidate and nuisance candidate, having similar names, may both receive votes in one ballot. The Court agrees with the OSG that in that scenario, the vote cast for the nuisance candidate should no longer be credited to the legitimate candidate; otherwise, the latter shall receive two votes from one voter.

Therefore, in a multi-slot office, the COMELEC must not merely apply a simple mathematical formula of adding the votes of the nuisance candidate to the legitimate candidate with the similar name. To apply such simple arithmetic might lead to the double counting of votes because there may be ballots containing votes for both nuisance and legitimate candidates.

As properly discussed by the OSG, a legitimate candidate may seek another person with the same surname to file a candidacy for the same position and the latter will opt to be declared a nuisance candidate. In that scenario, the legitimate candidate shall receive all the votes of the nuisance candidate and may even receive double votes, thereby, drastically increasing his odds.

At the same time, it is also possible that a voter may be confused when he reads the ballot containing the similar names of the nuisance candidate and the legitimate candidate. In his eagerness to vote, he may shade both ovals for the two candidates to ensure that the legitimate candidate is voted for. Similarly, in that case, the legitimate candidate may receive two (2) votes from one voter by applying the simple arithmetic formula adopted by the COMELEC when the nuisance candidate's COC is cancelled.

Thus, to ascertain that the votes for the nuisance candidate is accurately credited in favor of the legitimate candidate with the similar name, the COMELEC must also inspect the ballots. In those ballots that contain both votes for nuisance and legitimate candidate, only one count of vote must be credited to the legitimate candidate.

While the perils of a fielding nuisance candidates against legitimate candidates cannot be overemphasized, it must also be guaranteed that the votes of the nuisance candidate are properly and fairly counted in favor of the said legitimate candidate. In that manner, the will of the electorate is upheld.[92] (Citation omitted)

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[92] *Id*.

Here, the *Santos* doctrine must be applied: the votes for petitioner alone should be counted in favor of private respondent; if there are votes for both petitioner and private respondent in the same ballot, then only one (1) vote should be counted in the latter's favor. This will not only discourage nuisance candidates, but will also prevent the disenfranchisement of voters.

On the third issue, petitioner-intervenor contends that he was denied his right to due process since he was not impleaded in the Nuisance Petition, nor was he furnished with public respondent's processes or private respondent's pleadings.

The legal standing of unaffected candidates in a nuisance petition has already been settled in *Santos*:

> The Court finds that in a petition for disqualification of a nuisance candidate, the only real parties in interest are the alleged nuisance candidate, the affected legitimate candidate, whose names are similarly confusing. A real [party-in-interest] is the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit.
>
> In *Timbol v. COMELEC (Timbol)*, it was stated that to minimize the logistical confusion caused by nuisance candidates, their COC may be denied due course or cancelled by the petition of a legitimate candidate or by the COMELEC. This denial or cancellation may be *motu proprio* or upon a verified petition of an interested party, subject to an opportunity to be heard. It was emphasized therein that the COMELEC should balance its duty to ensure that the electoral process is clean, honest, orderly, and peaceful with the right of an alleged nuisance candidate to explain his or her *bona fide* intention to run for public office before he or she is declared a nuisance candidate.
>
> Thus, when a verified petition for disqualification of a nuisance candidate is filed, the real parties-in-interest are the alleged nuisance candidate and the interested party, particularly, the legitimate candidate. Evidently, the alleged nuisance candidate and the legitimate candidate stand to be benefited or injured by the judgment in the suit. The outcome of the nuisance case shall directly affect the number of votes of the legitimate candidate, specifically, whether the votes of the nuisance candidate should be credited in the former's favor.
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> Glaringly, there was nothing discussed in *Timbol* that other candidates, who do not have any similarity with the name of the

alleged nuisance candidate, are real parties-in-interest or have the opportunity to be heard in a nuisance petition. Obviously, these other candidates are not affected by the nuisance case because their names are not related with the alleged nuisance candidate. **Regardless of whether the nuisance petition is granted or not, the votes of the unaffected candidates shall be completely the same.** Thus, they are mere silent observers in the nuisance case.[93] (Emphasis in the original, citations omitted)

As a mere observer, petitioner-intervenor is not required to be impleaded in the Nuisance Petition. Hence, his right to due process could not have been violated. Records also show that petitioner-intervenor did not deny private respondent's allegation that it received a copy of public respondent's August 8, 2017 Resolution.[94] Despite receipt, petitioner-intervenor did not take action to protect his interest.

WHEREFORE, the August 31, 2017 Writ of Execution of public respondent Commission on Elections En Banc in SPA Case No. 15-212 (DC) is **AFFIRMED** with **MODIFICATION**, as follows:

1. **RE-CONVENE** the Special Board of Canvassers of Antipolo City to re-canvass the votes for the position of Members of the *Sangguniang Panlungsod* of the Second District of Antipolo City;
2. **COUNT** the votes for Reynaldo S. Zapanta, a nuisance candidate, in favor of Alfred J. Zapanta. However, if there is a ballot that contains votes in favor of both Reynaldo S. Zapanta and Alfred J. Zapanta, only one (1) vote shall be counted in the latter's favor; and
3. **PROCLAIM** the duly elected Members of the *Sangguniang Panlungsod* for the Second District of Antipolo City in accordance with the result of the proper counting of votes.

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[93] *Santos v. Commission on Elections*, G.R. Nos. 235058 & 235064, September 4, 2018 <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64577> 17-18 [Per J. Gesmundo, *En Banc*].

[94] *Rollo*, p. 220-221.

This Decision is immediately executory. Public respondent Commission on Elections is **ORDERED** to complete the implementation of the August 31, 2017 Writ of Execution, as modified, within thirty (30) days from receipt of this Decision.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando, and *Carandang, JJ.*, concur.

Perlas-Bernabe, J., on official leave.

EN BANC

[G.R. No. 237813. March 5, 2019]

JAMES ARTHUR T. DUBONGCO, Provincial Agrarian Reform Program Officer II of Department of Agrarian Reform Provincial Office-Cavite in representation of Darpo-Cavite and all its officials and employees, *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; IN A PETITION FOR *CERTIORARI*; THE BURDEN IS ON THE PART OF THE PETITIONER TO PROVE NOT MERELY REVERSIBLE ERROR, BUT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION ON THE PART OF THE PUBLIC RESPONDENT ISSUING THE ORDER.— In a petition for *certiorari*, the burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Mere abuse of discretion is not enough; it must be grave. In this case, petitioner failed to prove grave

abuse of discretion on COA's part. On the contrary, the COA discharged its constitutional duty to examine and audit all accounts pertaining to the expenditures and uses of public funds and property.

2. **POLITICAL LAW; LAW ON PUBLIC OFFICERS AND EMPLOYEES; PUBLIC SECTOR LABOR MANAGEMENT COUNCIL (PLSMC); RESOLUTION NO. 4, SERIES OF 2002 (GRANT OF COLLECTIVE NEGOTIATION AGREEMENT [CNA] INCENTIVE FOR NATIONAL GOVERNMENT AGENCIES, STATE UNIVERSITIES AND COLLEGES AND LOCAL GOVERNMENT UNITS; ONLY SAVINGS GENERATED AFTER THE SIGNING OF THE CNA MAY BE USED FOR THE CNA INCENTIVE; SOURCES OF CNA INCENTIVE.—** PSLMC Resolution No. 4, Series of 2002, authorizes the grant of the CNA Incentive, the primary purpose of which is to recognize the joint efforts of labor and management in the achievement of planned targets, programs and services approved in the budget of the agency at a lesser cost. The same Resolution mandates that "only savings generated after the signing of the CNA may be used for the CNA Incentive." Specifically, savings refer to such balances of the agency's released allotment for the year, free from any obligation or encumbrance and which are no longer intended for specific purpose/s. It may be derived from any of the following: a. After completion of the work/activity for which the appropriation is authorized; b. Arising from unpaid compensation and related costs pertaining to vacant positions; or c. Realized from the implementation of the provisions of the CNA which resulted in improved systems and efficiencies, thus, enabled the agency to meet and deliver the required or planned targets, programs and services approved in the annual budget at a lesser cost.

3. **ID.; ID.; ID.; ID.; ID.; THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP) FUND CAN NOT BE USED TO FINANCE THE GRANT OF CNA INCENTIVE.—** On December 27, 2005, former President Gloria Macapagal-Arroyo issued A.O. No. 135, which confirmed the grant of the CNA incentive to rank-and-file employees under PSLMC Resolution No. 4, Series of 2002. A.O. No. 135 specifically stated that the CNA Incentive shall be sourced only from the savings generated during the life of the CAN. Then, on February 1, 2006, DBM issued Budget Circular No. 2006-1, which provides the procedural

guidelines and limitations on the grant of the CNA Incentive: x x x From the foregoing provisions, it is unequivocal that the CARP Fund could not be legally used to finance the grant of the CNA Incentive. Both A.O. No. 135 and DBM Budget Circular No. 2006-01 use the word "shall" when pertaining to the funds to be used in the CNA Incentive, that is, savings from operating expenses. The word "shall" is imperative, underscoring the mandatory character of the provisions. Petitioner cannot give a different interpretation to the provisions of A.O. No. 135 and DBM Budget Circular No. 2006-01 and insist that the CNA Incentive may be taken from the CARP Fund. The words of the abovementioned issuances are clear and unambiguous.

4. **CIVIL LAW; HUMAN RELATIONS; PRINCIPLE OF UNJUST ENRICHMENT; THERE IS UNJUST ENRICHMENT WHEN A PERSON UNJUSTLY RETAINS A BENEFIT TO THE LOSS OF ANOTHER, OR WHEN A PERSON RETAINS MONEY OR PROPERTY OF ANOTHER AGAINST THE FUNDAMENTAL PRINCIPLES OF JUSTICE, EQUITY AND GOOD CONSCIENCE; APPLICATION IN CASE AT BAR.—** In this case, it must be emphasized that the grant of CNA Incentive was financed by the CARP Fund, contrary to the express mandate of PSLMC Resolution No. 4, Series of 2002, A.O. No. 135 and DBM Budget Circular No. 2006-01. This is not simply a case of a negotiating union lacking the authority to represent the employees in the CNA negotiations, or lack of knowledge that the CNA benefits given were not negotiable, or failure to comply with the requirement that payment of the CNA Incentive should be a one-time benefit after the end of the year. Here, the use of the CARP Fund has no basis as the three issuances governing the grant of CNA Incentive could not have been any clearer in that the CNA Incentive shall be sourced solely from savings from released MOOE allotments for the year under review. Consequently, the payees have no valid claim to the benefits they received. x x x [T]he obligation of the recipients to return the CNA Incentive financed by the CARP Fund finds support in Section 103 of the Presidential Decree No. 1445 or the Government Auditing Code of the Philippines.

5. **ID.; ID.; ID.; ID.; ID.; PAYEES OF CNA BENEFITS FINANCED BY THE CARP SHOULD RETURN THE CNA BENEFITS AS TRUSTEES OF THE DISALLOWED AMOUNTS.—** Finally, the payees received the disallowed benefits with the mistaken belief

that they were entitled to the same. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes. A constructive trust is substantially an appropriate remedy against unjust enrichment. It is raised by equity in respect of property, which has been acquired by fraud, *or where, although acquired originally without fraud*, it is against equity that it should be retained by the person holding it. In fine, the payees are considered as trustees of the disallowed amounts, as although they committed no fraud in obtaining these benefits, it is against equity and good conscience for them to continue holding on to them.

APPEARANCES OF COUNSEL

The Solicitor General for respondent.

D E C I S I O N

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

This is a petition for *certiorari* under Rule 64 of the Revised Rules of Court seeking to reverse and set aside the May 2, 2017 Decision[1] and the October 26, 2017 Resolution[2] of the Commission on Audit (COA) in Decision No. 2017-140 and COA CP Case No. 2011-337, respectively.

The Facts

On November 14, 2002, the Public Sector Labor Management Council (PSLMC) issued Resolution No. 4, Series of 2002, entitled "Grant of Collective Negotiation Agreement (CNA) Incentive for National Government Agencies, State Universities and Colleges and Local Government Units." The CNA Incentive is awarded to employees in "recognition of the joint efforts of labor and management in the achievement of planned targets, programs and services approved in the budget of the agency

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[1] *Rollo*, pp. 19-25.

[2] *Id*. at 26.

at a lesser cost."[3] Section 1 of the same Resolution mandates that "only savings generated after the signing of the CNA may be used for the CNA Incentive."[4] Specifically, savings refer to such balances of the agency's released allotment for the year, free from any obligation or encumbrance and which are no longer intended for specific purpose/s. It may be derived from any of the following:

a. After completion of the work/activity for which the appropriation is authorized;

b. Arising from unpaid compensation and related costs pertaining to vacant positions; or

c. Realized from the implementation of the provisions of the CNA which resulted in improved systems and efficiencies, thus, enabled the agency to meet and deliver the required or planned targets, programs and services approved in the annual budget at a lesser cost.[5]

Administrative Order No. 135, Series of 2005 (A.O. No. 135) issued by former President Gloria Macapagal-Arroyo, confirmed the grant of CNA Incentive to rank-and-file employees.[6] Subsequently, the Department of Budget and Management (DBM) released Budget Circular No. 2006-1, dated February 1, 2006, to implement A.O. No. 135 and to lay down the guidelines in the grant of CNA Incentive. In Section 7.1 thereof, it was stated that "the CNA Incentive shall be sourced solely from savings from released Maintenance and Other Operating Expenses (MOOE) allotments for the year under review x x x."

In 2009 and 2010, the Department of Agrarian Reform-Provincial Office-Cavite (DARPO-Cavite) released CNA Incentive to its officials and employees in the aggregate amounts

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[3] PSLMC Resolution No. 4, Series of 2002, Section 1.

[4] *Id*.

[5] *Id*. at Sec. 3.

[6] Administrative Order No. 135, Series of 2005, Sec. 2.

of ₱1,518,800.00 and ₱1,176,000.00, respectively. The grant was sourced from the Comprehensive Agrarian Reform Program (CARP) Fund, or Fund 158.

Consequently, respondent COA, through the Audit Team Leader and Supervising Auditor of Audit Group E-Cavite Province, issued two Notices of Disallowance (NDs) against DARPO-Cavite: 1) ND No. 11-01-158-CNA(09), dated January 17, 2011;[7] and 2) ND No. 11-02-158-CNA(09), dated January 31, 2011,[8] both of which pertain to the CNA Incentive released in 2009 and 2010. The audit officers reasoned that the utilization of the CARP Fund for the grant of CNA Incentive was illegal because the appropriation and expenditure of the CARP Fund must be in accordance with the law creating the same.

Thus, Cynthia E. Lapid (Lapid) and Felixberto Q. Kagahastian (Kagahastian), then Provincial Agrarian Reform Officers II of DARPO-Cavite, appealed the disallowances to the COA Regional Office No. IV.

The Ruling of the COA Regional Office No. IV

In a Decision,[9] dated September 1, 2011, the COA Regional Office No. IV ruled that the grant of CNA Incentive may only be sourced from MOOE savings as specifically stated in DBM Budget Circular No. 2006-1. It noted that the DBM Circular uses the word "shall" denoting the mandatory character of the provision. The *fallo* reads:

> Premises considered, the instant Appeals are hereby DENIED for lack of merit. Accordingly, the assailed NDs are hereby affirmed.[10]

Aggrieved, Lapid and Kagahastian filed a petition for review before the COA *En Banc*.

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

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

[9] Penned by Regional Director Leonardo L. Jamoralin; *id*. at 35-38.

[10] *Id*. at 38.

The Ruling of the COA En Banc

In a Decision,[11] dated May 2, 2017, the COA held that the grant of the CNA Incentive to DARPO-Cavite officials and employees, sourced from the CARP Fund, was illegal. It reasoned that the source of funds for the grant was not taken from the savings of the allotment for MOOE, but was charged against the CARP Fund of the agency. The COA added that the CARP Fund is a special fund which could only be utilized for the purpose for which it was created, that is, solely for the implementation of CARP projects. It further declared that the opinion of then DBM Secretary Rolando G. Andaya, Jr. (Secretary Andaya, Jr.) does not bind the COA which is constitutionally mandated to audit expenditure of public funds.

The COA pronounced that good faith could not be appreciated considering that several audit disallowances on the CNA Incentive granted to DARPO officials and employees had previously been issued by auditors on the ground of illegality. Moreover, the grant of the CNA Incentive sourced from the CARP Fund is clearly prohibited by existing laws and regulations. The COA disposed the case in this wise:

WHEREFORE, premises considered, the Petition for Review of Mr. Felixberto Q. Kagahastian and Ms. Cynthia E. Lapid, both Provincial Agrarian Reform Officer II, Department of Agrarian Reform Provincial Office (DARPO) Cavite, is hereby **DENIED** for lack of merit. Accordingly, the Commission on Audit Regional Office No. IV Decision No. 2011-21 dated September 1, 2011 and Notice of Disallowance Nos. 11-01-158-CNA(09) and 11-02-158-CNA(09) dated January 17, 2011 and January 31, 2011, respectively, on the payment of Collective Negotiation Agreement Incentives to DARPO-Cavite officials and employees, in the total amount of ₱2,694,800.00 are **AFFIRMED**.

The Prosecution and Litigation Office, Legal Services Sector, this Commission, is hereby directed to forward the case to the Office of the Ombudsman for investigation and filing of appropriate charges, if warranted, against the persons liable for the transaction.[12]

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[11] *Supra* note 1.

[12] *Rollo*, p. 24.

Petitioner James Arthur T. Dubongco (petitioner), the current Provincial Agrarian Reform Program Officer II of DARPO-Cavite, moved for reconsideration, but the same was denied by the COA on October 26, 2017.[13] Hence, this petition for *certiorari*.

The Issues

WHETHER THE CARP FUND OR FUND 158 CAN BE A VALID SOURCE FOR THE GRANT OF CNA INCENTIVE TO RANK-AND-FILE EMPLOYEES; and

WHETHER THE RECIPIENTS MAY BE HELD LIABLE FOR THE REFUND OF THE DISALLOWED CNA INCENTIVE.

Petitioner argues that although the CARP Fund is a special fund, DARPO-Cavite holds the same for its own use and not for the benefit of another government agency; that although DBM Budget Circular No. 2006-01 uses the word "shall," the said circular did not specify the source of the savings which would be used in the grant of CNA Incentive; that DARPO-Cavite relied on the opinion of former DBM Secretary Andaya, Jr. to the effect that the use of the CARP Fund for the grant of the CNA Incentive is allowable; that the purpose for which the CARP Fund was created must necessarily include the grant of incentives to employees who are the lifeblood of the agency; and that the officials and employees acted in good faith when they received the CNA Incentive.[14]

In its Comment,[15] respondent COA counters that it merely enforced the provisions of DBM Budget Circular No. 2006-01, which provides that the CNA Incentive shall be sourced solely from savings from released MOOE allotments; that the DBM intended that the release of the CNA Incentive should only come from one source, *i.e.*, the agency's MOOE; that the opinion of former DBM Secretary Andaya, Jr. does not bind COA because any interpretation of the law that administrative or

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[13] *Id*. at 26.

[14] Petition for *Certiorari*; *id*. at 8-14.

[15] *Id*. at 62-78.

quasi-judicial agencies make is only preliminary and never conclusive; that the CARP Fund is a special trust fund created and to be disbursed only for a specific purpose; and that petitioner should refund the disallowed amounts because Section 103 of Presidential Decree (P.D.) No. 1445 provides that expenditures of government funds, or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

In his Reply,[16] petitioner admits that the CARP Fund is a special trust fund created and to be disbursed only for the fulfilment of the purpose for which the fund was created; that the purposes of the CARP Fund do not only pertain to those which are traditionally viewed as essentially for government functions, but must necessarily include the promotion of the employees' welfare; and that officials and employees of DARPO-Cavite could not be held personally liable for the disallowed incentives because they were of the honest belief that the grant of incentives had legal basis.

The Court's Ruling

The petition lacks merit.

CNA Incentive may be granted to rank-and-file employees only if there are savings from operating expenses

In a petition for *certiorari*, the burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Mere abuse of discretion is not enough; it must be grave.[17] In this

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[16] *Id*. at 82-89.

[17] *Information Technology Foundation of the Philippines v. Commission on Elections*, G.R. No. 159139, June 6, 2017, 826 SCRA 112, 132-133; *Manila International Airport Authority v. Commission on Audit*, 681 Phil. 644, 663 (2012); *Tan v. Spouses Antazo*, 659 Phil. 400, 404 (2011).

case, petitioner failed to prove grave abuse of discretion on COA's part. On the contrary, the COA discharged its constitutional duty to examine and audit all accounts pertaining to the expenditures and uses of public funds and property.[18]

PSLMC Resolution No. 4, Series of 2002, authorizes the grant of the CNA Incentive, the primary purpose of which is to recognize the joint efforts of labor and management in the achievement of planned targets, programs and services approved in the budget of the agency at a lesser cost.[19]

The same Resolution mandates that "only savings generated after the signing of the CNA may be used for the CNA Incentive."[20] Specifically, savings refer to such balances of the agency's released allotment for the year, free from any obligation or encumbrance and which are no longer intended for specific purpose/s. It may be derived from any of the following:

a. After completion of the work/activity for which the appropriation is authorized;

b. Arising from unpaid compensation and related costs pertaining to vacant positions; or

c. Realized from the implementation of the provisions of the CNA which resulted in improved systems and efficiencies, thus, enabled the agency to meet and deliver the required or planned targets, programs and services approved in the annual budget at a lesser cost.[21]

On December 27, 2005, former President Gloria Macapagal-Arroyo issued A.O. No. 135, which confirmed the grant of the CNA incentive to rank-and-file employees under PSLMC

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[18] CONSTITUTION (1987), Art. IX-D, Sec. 2(1).

[19] *Supra* note 3.

[20] *Id.*

[21] *Supra* note 3, at Secs. 1 and 3.

Resolution No. 4, Series of 2002.[22] A.O. No. 135 specifically stated that the CNA Incentive shall be sourced only from the savings generated during the life of the CNA.[23]

Then, on February 1, 2006, DBM issued Budget Circular No. 2006-1, which provides the procedural guidelines and limitations on the grant of the CNA Incentive:

5.0 Policy Guidelines

5.6 The amount/rate of the individual CNA Incentive:

5.6.1 Shall not be pre-determined in the CNAs or in the supplements thereto since it is dependent on savings generated from cost-cutting measures and systems improvement, and also from improvement of productivity and income in GOCCs and GFIs;

5.6.2 Shall not be given upon signing and ratification of the CNAs or supplements thereto, as this gives the CNA Incentive the character of the CNA Signing Bonus which the Supreme Court has ruled against for not being a truly reasonable compensation (Social Security System vs. Commission on Audit, 384 SCRA 548, July 11, 2002);

5.6.3 May vary every year during the term of the CNA, at rates depending on the savings generated after the signing and ratification of the CNA[.]

x x x x x x x x x

5.7 The CNA Incentive for the year shall be paid as a one-time benefit after the end of the year, provided that the planned programs/activities/projects have been implemented and completed in accordance with the performance targets for the year.

x x x x x x x x x

7.0 Funding Source

7.1 **The CNA Incentive shall be sourced solely from savings from released Maintenance and Other Operating Expenses (MOOE)**

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[22] *Supra* note 6.

[23] *Supra* note 6, at Sec. 4.

allotments for the year under review, still valid for obligation during the year of payment of the CNA, subject to the following conditions:

7.1.1 Such savings were generated out of cost-cutting measures identified in the CNAs and supplements thereto;

7.1.2 Such savings shall be reckoned from the date of signing of the CNA and supplements thereto;

x x x x x x x x x

7.3 GOCCs/GFIs and LGUs may pay the CNA Incentive from savings in their respective approved corporate operating budgets or local budgets. (Emphasis supplied)

From the foregoing provisions, it is unequivocal that the CARP Fund could not be legally used to finance the grant of the CNA Incentive. Both A.O. No. 135 and DBM Budget Circular No. 2006-01 use the word "shall" when pertaining to the funds to be used in the CNA Incentive, that is, savings from operating expenses. The word "shall" is imperative, underscoring the mandatory character of the provisions.[24] Petitioner cannot give a different interpretation to the provisions of A.O. No. 135 and DBM Budget Circular No. 2006-01 and insist that the CNA Incentive may be taken from the CARP Fund. The words of the abovementioned issuances are clear and unambiguous. A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application.[25] As the provisions are clear, plain, and free from ambiguity, they must be given their literal meaning and applied without attempted interpretation. This is what is known as the plain meaning rule, as expressed in the maxim, *verba legis non est recedendum*, or from the words of a statute there should be no departure.[26]

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[24] *Office of the Ombudsman v. Andutan, Jr.*, 670 Phil. 169, 181 (2011).

[25] *Amores v. House of Representatives Electoral Tribunal*, 636 Phil. 600, 608 (2010).

[26] *Padua v. People*, 581 Phil. 489, 501 (2008), citing R. AGPALO, *STATUTORY CONSTRUCTION*, 124 (5th ed., 2003).

Thus, there can be no logical conclusion than that the CNA Incentive may be awarded to rank-and-file employees only if there are savings in the agency's operating expenses. The grant of CNA incentives financed by the CARP Fund is not only illegal but also inconsiderate of the plight of Filipino farmers for whose benefit the CARP Fund is allocated. Moreover, it is disconcerting how petitioner could muster the courage to say that there were savings from the CARP Fund when in reality, agrarian reform funds are more often than not, insufficient to meet the needs of its beneficiaries. The Court also notes that as shown by the NDs, DARPO-Cavite awarded CNA Incentive to superior officers contrary to the explicit mandate of A.O. No. 135 that such incentive is to be given only to rank-and-file employees.

Another point which militates against petitioner's position is the character of the CARP Fund as a special fund, as stated in Sections 20 and 21 of Executive Order (E.O.) No. 229, Series of 1987 and Section 63 of R.A. No. 6657, to wit:

SEC. 20. *Agrarian Reform Fund*. — As provided in Proclamation No. 131 dated July 22, 1987, a **special fund** is created, known as The Agrarian Reform Fund, an initial amount of FIFTY BILLION PESOS (₱50 billion) to cover the estimated cost of the CARP from 1987 to 1992 which shall be sourced from the receipts of the sale of the assets of the Asset Privatization Trust (APT) and receipts of sale of ill-gotten wealth recovered through the Presidential Commission on Good Government and such other sources as government may deem appropriate. **The amount collected and accruing to this special fund shall be considered automatically appropriated for the purpose authorized in this Order.**

SEC. 21. *Supplemental Appropriations*. — The amount of TWO BILLION SEVEN HUNDRED MILLION PESOS (₱2.7 billion) is hereby appropriated to cover the supplemental requirements of the CARP for 1987, to be sourced from the receipts of the sale of ill-gotten wealth recovered through the Presidential Commission on Good Government and the proceeds from the sale of assets by the APT. The amount collected from these sources shall accrue to The Agrarian Reform Fund and shall likewise be considered automatically appropriated for the purpose authorized in this Order.

R.A. No. 6657

SEC. 63. *Funding Source*. — The initial amount needed to implement this Act for the period often (10) years upon approval hereof shall be funded from the Agrarian Reform Fund created under Sections 20 and 21 of Executive Order No. 229.

Additional amounts are hereby authorized to be appropriated as and when needed to augment the Agrarian Reform Fund in order to fully implement the provisions of this Act.

Sources of funding or appropriations shall include the following:

(a) Proceeds of the sales of the Assets Privatization Trust;

(b) All receipts from assets recovered and from sales of ill-gotten wealth recovered through the Presidential Commission on Good Government;

(c) Proceeds of the disposition of the properties of the Government in foreign countries;

(d) Portion of amounts accruing to the Philippines from all sources of official foreign grants and concessional financing from all countries, to be used for the specific purposes of financing production credits, infrastructures, and other support services required by this Act;

(e) Other government funds not otherwise appropriated.

All funds appropriated to implement the provisions of this Act shall be considered continuing appropriations during the period of its implementation. (Emphases supplied)

Considering that the CARP Fund is a special trust fund, the ruling of the Court in *Confederation of Coconut Farmers Organizations of the Philippines, Inc. v. Aquino III*,[27] thus, finds application in this case, *viz.*:

The revenue collected for a special purpose shall be treated as a special fund to be used exclusively for the stated purpose. This serves as a deterrent for abuse in the disposition of special funds. The coconut levy funds are special funds allocated for a specific purpose and can never be used for purposes other than for the benefit of

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[27] G.R. No. 217965, August 8, 2017, 835 SCRA 311, 332-333.

the coconut farmers or the development of the coconut industry. Any attempt to appropriate the said funds for another reason, no matter how noble or beneficial, would be struck down as unconstitutional. (Emphasis supplied)

Even petitioner admits that the CARP Fund is a special trust fund,[28] but he insists that the purpose of the CARP Fund may be broadened to include the grant of incentives to employees who play an integral role in the achievement of the CARP's objectives. While the Court recognizes the employees' indispensable part in the implementation of agrarian reforms, it cannot legally uphold the grant of incentives financed by the wrong source for to do so would lead to an abhorrent situation wherein the sources of funds for bonuses or incentives depend upon the whims and caprice of superior officials in blatant disregard of the laws which they are supposed to implement. In addition, it must be emphasized that the primary purpose of the CNA Incentive is to recognize the joint efforts of labor and management in the achievement of planned targets, programs and services at lesser cost. On the other hand, the CARP Fund is intended to support the State's policy of social justice which includes the adoption of "an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof."[29] The two serve very different purposes. The CNA Incentive is conditional as it is made to depend upon the availability of savings from operating expenses; whereas, the CARP Fund is derived from multiple sources of funding to ensure continued implementation of the agrarian reform program. In fact, the legislature deemed it proper to specifically state that "all funds appropriated to implement the provisions of [R.A. No. 6657] shall be considered continuing appropriations during the period of its implementation."[30] DARPO-Cavite's reliance on the opinion

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[28] Reply; *rollo*, p. 83.

[29] CONSTITUTION (1987), Art. XIII, Sec. 4.

[30] Republic Act No. 6657, Sec. 63.

of former DBM Secretary Andaya, Jr. that "the use of CARP Fund for CNA is allowable provided that the conditions for the granting of the same (under [DBM] Budget Circular No. 2006-1 dated February 1, 2006) are complied with,"[31] is not only wrong but also inexcusable. DARPO-Cavite could not feign ignorance of PSLMC Resolution No. 4, Series of 2002, A.O. No. 135 and DBM Budget Circular No. 2006-01, the three issuances that govern the grant of CNA Incentive. Further, even former DBM Secretary Andaya, Jr. impliedly declared that DBM Budget Circular No. 2006-1 should prevail over his opinion on the matter.

All recipients of the disallowed incentives should refund the same

Every person who, through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.[32] Unjust enrichment refers to the result or effect of failure to make remuneration of, or for property or benefits received under circumstances that give rise to legal or equitable obligation to account for them. To be entitled to remuneration, one must confer benefit by mistake, fraud, coercion, or request. Unjust enrichment is not itself a theory of reconveyance. Rather, it is a prerequisite for the enforcement of the doctrine of restitution.[33] Thus, there is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. The principle of unjust enrichment requires two conditions: (1) that a person is benefited without a valid basis or justification; and (2) that such benefit is derived at the

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[31] *Rollo*, p. 36.

[32] CIVIL CODE, Art. 22.

[33] *Philippine Transmarine Carriers, Inc. v. Legaspi*, 710 Phil. 838, 849 (2013).

expense of another.[34] Conversely, there is no unjust enrichment when the person who will benefit has a valid claim to such benefit.[35]

In this case, it must be emphasized that the grant of CNA Incentive was financed by the CARP Fund, contrary to the express mandate of PSLMC Resolution No. 4, Series of 2002, A.O. No. 135 and DBM Budget Circular No. 2006-01. This is not simply a case of a negotiating union lacking the authority to represent the employees in the CNA negotiations,[36] or lack of knowledge that the CNA benefits given were not negotiable,[37] or failure to comply with the requirement that payment of the CNA Incentive should be a one-time benefit after the end of the year.[38] Here, the use of the CARP Fund has no basis as the three issuances governing the grant of CNA Incentive could not have been any clearer in that the CNA Incentive shall be sourced solely from savings from released MOOE allotments for the year under review. Consequently, the payees have no valid claim to the benefits they received.

Further, CNA Incentive are granted to government employees who have contributed either in productivity or cost-saving measures in an agency. In turn, CNA Incentive are based on the CNA entered into between the accredited employees' organization as the negotiating unit and the employer or management. Rule XII of the Amended Rules and Regulations Governing the Exercise of the Right of Government Employees to Organize provides:

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[34] *De Roca v. Dabuyan*, G.R. No. 215281, March 5, 2018.

[35] *Republic v. Court of Appeals*, 612 Phil. 965, 982 (2009).

[36] *Silang v. Commission on Audit*, 769 Phil. 327, 348 (2015).

[37] *Career Executive Service Board v. Commission on Audit*, G.R. No. 212348, June 19, 2018.

[38] *Montejo v. Commission on Audit*, G.R. No. 232272, July 24, 2018.

Rule XII

COLLECTIVE NEGOTIATIONS

SEC. 1. Subject of negotiation. – Terms and conditions of employment or improvements thereof, except those that are fixed by law, may be the subject of negotiation.

SEC. 2. Negotiable matters. – The following concerns may be the subject of negotiation between the management and the accredited employees' organization:

x x x x x x x x x

(m) CNA incentive pursuant to PSLMC Resolution No. 4, s. 2002 and Resolution No. 2, s. 2003[.]

x x x x x x x x x

SEC. 4. Effectivity of CNA. – The CNA shall take effect upon its signing by the parties and ratification by the majority of the rank-and-file employees in the negotiating unit.

Hence, it can be gleaned that unlike ordinary monetary benefits granted by the government, CNA Incentives require the participation of the employees who are the intended beneficiaries. The employees indirectly participate through the negotiation between the government agency and the employees' collective negotiation representative and directly, through the approval of the CNA by the majority of the rank-and-file employees in the negotiating unit. Thus, the employees' participation in the negotiation and approval of the CNA, whether direct or indirect, allows them to acquire knowledge as to the prerequisites for the valid release of the CNA Incentive. They could not feign ignorance of the requirement that CNA Incentive must be sourced from savings from released MOOE.

In addition, the obligation of the recipients to return the CNA Incentive financed by the CARP Fund finds support in Section 103 of the Presidential Decree No. 1445 or the Government Auditing Code of the Philippines, to wit:

SEC. 103. *General liability for unlawful expenditures*. Expenditures of government funds or uses of government property in violation

of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

Finally, the payees received the disallowed benefits with the mistaken belief that they were entitled to the same. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.[39] A constructive trust is substantially an appropriate remedy against unjust enrichment. It is raised by equity in respect of property, which has been acquired by fraud, *or where, although acquired originally without fraud*, it is against equity that it should be retained by the person holding it.[40] In fine, the payees are considered as trustees of the disallowed amounts, as although they committed no fraud in obtaining these benefits, it is against equity and good conscience for them to continue holding on to them.

WHEREFORE, the petition is **DISMISSED**. The May 2, 2017 Decision and the October 26, 2017 Resolution of the Commission on Audit in Decision No. 2017-140 and COA CP Case No. 2011-337, respectively, are **AFFIRMED**. All the recipients of the disallowed CNA Incentive are liable to return the same through salary deduction or any other mode which the Commission on Audit may deem just and proper. This pronouncement is without prejudice to any other administrative or criminal liabilities of the officials responsible for the illegal disbursement.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Leonen, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Hernando, and *Carandang, JJ.*, concur

Perlas-Bernabe, J., on official leave.

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[39] CIVIL CODE, Art. 1456.

[40] *Roa, Jr. v. Court of Appeals*, 208 Phil. 2, 14 (1983).

SECOND DIVISION

[A.C. No. 11584. March 6, 2019]
(Formerly CBD Case No. 12-3604)

ROLANDO T. KO, *complainant, vs.* **ATTY. ALMA UY-LAMPASA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; MANDATORY CONTINUING LEGAL EDUCATION (MCLE) (BAR MATTER [BM] NO. 850); AN IBP (INTEGRATED BAR OF THE PHILIPPINES) MEMBER SHALL ONLY BE DECLARED DELINQUENT FOR FAILURE TO COMPLY WITH THE EDUCATION REQUIREMENTS AFTER THE 60-DAY PERIOD FOR COMPLIANCE HAS EXPIRED, WHICH SHALL COMMENCE FROM THE TIME SUCH MEMBER RECEIVED A NOTICE OF NON-COMPLIANCE; CASE AT BAR.— B.M. 850 requires members of the IBP to undergo continuing legal education "to ensure that throughout their career, they keep abreast with law and jurisprudence, maintain the ethics of the profession and enhance the standards of the practice of law." The *First Compliance Period* for the MCLE requirement was from 15 April 2001 to 14 April 2004; the *Second Compliance Period* was from 15 April 2004 to 14 April 2007; and the *Third Compliance Period*was from 15 April 2007 to 14 April 2010; and the *Fourth Compliance Period* was from 15 April 2010 to 14 April 2013. x x x Based on the rules, an IBP member shall only be declared delinquent for failure to comply with the education requirements "after the sixty (60) day period for compliance has expired." This 60-day period shall commence from the time such member received a notice of non-compliance. Without the notice of compliance, a member who believes that the units he or she had taken already amounts to full compliance may be declared delinquent without being made aware of such lack of units and with no chance to rectify the same. In the instant case, there is no showing that respondent had ever been issued a Notice of Non-Compliance. On the contrary, the records show that for the *first* to *third compliance periods*, she was exempted for being a member of the judiciary, and that she was able to complete the requirements for the

fourth compliance period. The Court also notes that when complainant filed the disbarment case on October 12, 2012, respondent still had until April 14, 2013 to comply with the *fourth compliance period*. She eventually completed the required units on May 19, 2012. Thus, there is no reason for respondent to be held liable and declared delinquent under B.M. 850.

2. ID.; 2004 RULE ON NOTARIAL PRACTICE (A.M. NO. 02-8-13-SC); A NOTARY PUBLIC MUST OBSERVE THE HIGHEST DEGREE OF CARE IN COMPLYING WITH THE BASIC REQUIREMENTS IN THE PERFORMANCE OF HIS OR HER DUTIES IN ORDER TO PRESERVE THE CONFIDENCE OF THE PUBLIC IN THE INTEGRITY OF THE NOTARIAL SYSTEM; VIOLATION IN CASE AT BAR.— The act of notarization is impressed with public interest. As such, a notary public must observe the highest degree of care in complying with the basic requirements in the performance of his or her duties in order to preserve the confidence of the public in the integrity of the notarial system. In this case, respondent failed to faithfully comply with her duties as a notary public. x x x Here, respondent clearly violated this provision when she notarized the deeds of absolute sale despite the incomplete signature and identification details of the vendors. Moreover, when the identification details were indeed provided in the deeds, the proof of identity indicated for all of them was the CTC Number. Jurisprudence already holds that a CTC is not considered as competent evidence of identity as it does not bear a photograph and a signature of the individual concerned, as required in Rule II, Section 12 of the Notarial Rules. Worse, while there are some signatures that do appear on the instruments, the vendors therein claimed that they did not actually sign the deeds. x x x The Notarial Rules clearly mandate that before notarizing a document, the notary public should require the presence of the very person who executed the same. Thus, he or she certifies that it was the same person who executed and personally appeared before him to attest to the contents and truth of what were stated therein. The presence of the parties to the deed is necessary to enable the notary public to verify the genuineness of the signature. When respondent affixed her signature and notarial seal on the deeds of sale, she led the public to believe that the parties personally appeared before her and attested to the truth and veracity of

the contents thereof when in fact, they deny doing so. Respondent's conduct is laden with dangerous possibilities, bearing in mind the conclusiveness accorded to the due execution of a document. Her conduct did not only jeopardize the rights of the parties to the instrument; it also undermined the integrity of a notary public and degraded the function of notarization. Thus, respondent should be liable for such act, not only as a notary public but also as a lawyer.

3. **ID.; ID.; FOR VIOLATING THE NOTARIAL RULES; A LAWYER ALSO FAILED TO ADHERE TO CANON 1 OF THE CODE OF PROFESSIONAL RESPONSIBILITY FOR LAWYERS (CPR), WHICH REQUIRES EVERY LAWYER TO UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND, AND PROMOTE RESPECT FOR THE LAW AND LEGAL PROCESSES; IMPOSABLE PENALTY.—** For having violated the Notarial Rules, respondent also failed to adhere to Canon 1 of the CPR, which requires every lawyer to uphold the Constitution, obey the laws of the land, and promote respect for the law and legal processes. She also violated Rule 1.01 of the CPR which proscribes a lawyer from engaging in any unlawful, dishonest, immoral, and deceitful conduct. Based on recent jurisprudence, a lawyer commissioned as a notary public who fails to discharge his or her duties as such is penalized with revocation of his or her notarial commission and disqualification from being commissioned as a notary public for a period of two (2) years. In addition, he or she may also be suspended from the practice of law for a period of six (6) months for notarizing a document without the appearance of the parties. Thus, the Court affirms the penalty imposed by the IBP Board.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is an administrative complaint[1] for disbarment filed by Rolando T. Ko (complainant) against Atty. Alma Uy-

[1] *Rollo*, pp. 2-9.

Lampasa (respondent) with the Commission on Bar Discipline (CBD), Integrated Bar of the Philippines (IBP).[2]

Complaint

In his Complaint dated October 2, 2012, complainant alleged that respondent violated the Code of Professional Responsibility for Lawyers (CPR). ***First***, he claimed that respondent notarized two purported deeds of sale between Jerry Uy (Jerry) and the Sultan siblings (heirs of a certain Pablo Sultan) over a parcel of land despite knowing that the two deeds of sale were spurious. From the records, it appears that the Sultan siblings are: Pablito, Anicieto, Cristita, Juanito, Felix, Leonardo, Crispen,[3] Lilia, Victoriano and Lucita.[4]

The Deeds of Absolute Sale dated October 12, 2011[5] and October 19, 2011,[6] are similar in the following respects: the vendee, the property covered, and the consideration. However, the two deeds differ as regards the name of the vendors. For the Deed dated October 12, the vendors named were Juanito, Felix, Leonardo, Crispen, Lilia, Pablito, Victoriano and Lucita, but only Leonardo, Lilia and Victoriano signed the deed. For the Deed dated October 19, Victoriano and Lucita were not included in the vendors and among those named, *i.e.*, Juanito, Felix, Leonardo, Crispen, Pablito, and Lilia, Pablito did not sign the deed. It is noted that only eight of the ten Sultan siblings are involved, as Anicieto and Cristita do not appear in either of the deeds.

In this regard, complainant claimed that an Extra-judicial Settlement of Estate with Absolute Sale[7] (Extra-judicial Settlement) covering the same property was executed on October

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[2] CBD Case No. 12-3604, *id*. at 2.

[3] Spelled as "Crispin" in some parts of the *rollo*.

[4] *Rollo*, pp. 40 and 44.

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

[6] *Id*. at 15-17.

[7] *Id*. at 44-46.

20, 2011 between his son, Jason U. Ko (Jason), and all ten of the Sultan siblings. Complainant calls the attention of the Court to the fact that in contrast with the deeds of sale notarized by respondent, this Extra-judicial Settlement contains the signatures and thumbmarks of all the Sultan siblings.

Second, complainant also claimed that respondent, as counsel for Jerry (the vendee in the abovementioned Deeds of Sale), filed a malicious case of *Estafa* against his son Jason and the Sultan siblings, grounded on the allegation that the Extra-judicial Settlement was not published when in fact, it was published as evidenced by an Affidavit of Publication.[8]

Lastly, complainant averred that respondent also committed perjury and has filed pleadings in court without the necessary Mandatory Continuing Legal Education (MCLE) compliance number, attaching to his complaint several pleadings and manifestations in support of such.[9]

Answer

In her Answer[10] dated November 10, 2012, respondent countered that she has not violated any provision of the CPR, arguing that: (1) the matter of whether the deeds of sale were spurious is now the subject of separate cases pending in court and with the City Prosecutor's Office of Catbalogan City, Western Samar; (2) the determination of whether the estafa case is malicious is within the jurisdiction of the City Prosecutor's Office conducting the preliminary investigation; and (3) she was exempted from MCLE requirements for the first up to the third compliance period because she was a former judge, and that she is currently in the process of complying with the requirement for the latest compliance period.[11]

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[8] *Id*. at 55.

[9] *Id*. at 5-6.

[10] *Id*. at 78-83.

[11] *Id*. at 78-82, 194.

Subsequently, the parties submitted their Reply[12] and Rejoinders[13] before the CBD in support of their arguments and counter-arguments. A mandatory conference was held on September 19, 2013 and upon its termination, both parties submitted their respective position papers.[14]

Report and Recommendation of the Investigating Commissioner

On December 18, 2013, the Investigating Commissioner of the CBD issued a Report and Recommendation,[15] the pertinent portions of which are reproduced below:

> xxx Stripped of the non-essentials, a scrutiny of the records would show that respondent has, indeed, notarized two (2) documents of sale involving the same parties but containing different dates of notarization. Respondent has never denied notarizing the subject documents in her verified answer and in her subsequent pleadings filed before the CBD. Very clearly, this alone is a violation of the notarial law. Moreover, there is sufficient evidence to prove that respondent failed to indicate her MCLE Compliance Certificate Number in various pleadings filed before the courts and the Prosecutors Office of Catbalogan City, Western Samar. Her argument that she was on the process of obtaining her MCLE certificate for the latest compliance period does not, in any way, exempt her from the mandate of the circular. Prudence dictates that respondent should have refrained from signing pleadings while her MCLE certificate is being processed. Unfortunately, however, she failed to do so.
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> **WHEREFORE, PREMISES CONSIDERED**, it is recommended that respondent shall be **suspended as a Notary Public for a period of SIX (6) MONTHS** with **a stern warning** that a repetition of the same shall be dealt with more severely.[16] (Emphasis and underscoring supplied)

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[12] *Id*. at 91-97.

[13] *Id*. at 109-112, 121-129.

[14] *Id*. at 303.

[15] *Id*. at 194-195.

[16] *Id*. at 195.

Resolution of the IBP Board of Governors

In a Resolution[17] dated October 11, 2014, the IBP Board of Governors (IBP Board) adopted and approved the Report and Recommendation of the Investigating Commissioner, finding the same to be fully supported by the evidence on record and applicable laws. The IBP Board found that respondent indeed violated the *2004 Rules on Notarial Practice* and *Bar Matter No. (B.M.) 850*. However, the IBP Board modified the recommendation of the Investigating Commissioner and imposed on respondent the penalty of **immediate revocation of her notarial commission and disqualification for re-appointment as notary public for two (2) years**, not six months as recommended by the Investigating Commissioner. In addition, the IBP Board also **suspended respondent from the practice of law for a period of six (6) months**.

Respondent filed a Motion for Reconsideration[18] (MR), which was denied by the IBP Board in a Resolution[19] dated February 25, 2016.

The Court notes that in respondent's MR before the IBP Board, she argued that the latter merely adopted the Report and Recommendation of the Investigating Commissioner, which was likewise not exhaustive enough in its findings and conclusions. Moreover, respondent claimed that the IBP Board failed to cite any specific violation of the Notarial and MCLE Rules. Lastly, respondent argued that the IBP Board increased the penalty imposed on her without citing any additional fact or basis.

Indeed, despite the numerous submissions of the parties, the Report and Recommendation of the Investigating Commissioner as well as the Resolutions of the IBP Board leave much to be desired. Thus, the Court shall expound on respondent's administrative liability.

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[17] *Id*. at 193-193-a.

[18] *Id*. at 196-210.

[19] *Id*. at 298-299.

Ruling of the Court

Non-compliance with the MCLE Requirements

On the issue of compliance with the MCLE, the Court disagrees with the Investigating Commissioner and the IBP Board.

B.M. 850 requires members of the IBP to undergo continuing legal education "to ensure that throughout their career, they keep abreast with law and jurisprudence, maintain the ethics of the profession and enhance the standards of the practice of law."[20] The *First Compliance Period* for the MCLE requirement was from 15 April 2001 to 14 April 2004; the *Second Compliance Period* was from 15 April 2004 to 14 April 2007; and the *Third Compliance Period* was from 15 April 2007 to 14 April 2010; and the *Fourth Compliance Period* was from 15 April 2010 to 14 April 2013.[21]

Here, complainant alleged that in several pleadings filed by respondent, the latter did not indicate her MCLE compliance number. He cited five pleadings filed by respondent which were dated December 7, 2011,[22] February 25, 2012,[23] March 8, 2012,[24] and two pleadings dated March 27, 2012,[25] thus falling under the *Fourth Compliance Period*.

For her part, respondent explained that she was exempted from MCLE compliance for the *First, Second*, and *Third Compliance Periods*, until she resigned as a judge on March 2010. After which, she endeavored to comply with the *Fourth*

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[20] B.M. 850, Rule I, Sec. 1.

[21] *Arnado v. Atty. Adaza*, 767 Phil. 696, 704 (2015).

[22] *Rollo*, p. 43.

[23] *Id*. at 66.

[24] *Id*. at 58.

[25] *Id*. at 65 and 68.

Compliance Period while also in the process of requesting copies of her certificate of exemption.[26]

The Court notes that respondent eventually completed the required units on May 19, 2012, which is still within the *Fourth Compliance Period*. Likewise, she was also issued Certificates of Exemption[27] on September 4, 2012 for the *First, Second*, and *Third Compliance Periods*.[28]

Moreover, respondent manifested that the presiding judge of the Regional Trial Court (RTC) where the cases involved were pending required her to submit her Certificates of Compliance. When respondent received said certificates, she immediately submitted the same to the trial court.[29]

In finding respondent administratively liable, the IBP Board merely stated that she violated B.M. 850. The relevant provisions thereof are Rules 12 and 13, which provide:

RULE 12
Non-Compliance Procedures

x x x x x x x x x

SECTION 2. *Non-compliance Notice and 60-day Period to Attain Compliance*. — Members **failing to comply will receive a Non-Compliance Notice stating the specific deficiency and will be given sixty (60) days from the date of notification to file a response clarifying the deficiency or otherwise showing compliance with the requirements**. xxx

x x x x x x x x x

Members given sixty (60) days to respond to a Non-Compliance Notice may use this period to attain the adequate number of credit *units* for compliance. xxx

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[26] *Id*. at 80.

[27] *Id*. at 212-214.

[28] *Id*. at 80, 212-215.

[29] *Id*. at 203.

RULE 13
Consequences of Non-Compliance

SECTION 1. *Non-compliance Fee*. — A member who, for whatever reason, is in non-compliance at the end of the compliance period shall **pay a non-compliance fee**.

SECTION 2. *Listing as Delinquent Member*. — A member who **fails to comply with the requirements after the sixty (60) day period for compliance has expired, shall be listed as a delinquent member** of the IBP **upon the recommendation of the MCLE Committee**. The investigation of a member for non-compliance shall be conducted by the IBP's Commission on Bar Discipline as a fact-finding arm of the MCLE Committee. (Emphasis and underscoring supplied)

Based on the rules, an IBP member shall only be declared delinquent for failure to comply with the education requirements "after the sixty (60) day period for compliance has expired." This 60-day period shall commence from the time such member received a notice of non-compliance. Without the notice of compliance, a member who believes that the units he or she had taken already amounts to full compliance may be declared delinquent without being made aware of such lack of units and with no chance to rectify the same.[30]

In the instant case, there is no showing that respondent had ever been issued a Notice of Non-Compliance. On the contrary, the records show that for the *first* to *third compliance periods*, she was exempted for being a member of the judiciary, and that she was able to complete the requirements for the *fourth compliance period*. The Court also notes that when complainant filed the disbarment case on October 12, 2012, respondent still had until April 14, 2013 to comply with the *fourth compliance period*. She eventually completed the required units on May 19, 2012. Thus, there is no reason for respondent to be held liable and declared delinquent under B.M. 850.

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[30] See *Strongbuilt Property Holdings, Inc. v. Belmi*, A.C. No. 11014, February 15, 2016, pp. 2-3 (Unsigned Resolution).

Violation of the Notarial Rules

Despite the foregoing, the Court agrees with the IBP Board that respondent can be held liable for violation of the Rules on Notarial Practice.

The act of notarization is impressed with public interest. As such, a notary public must observe the highest degree of care in complying with the basic requirements in the performance of his or her duties in order to preserve the confidence of the public in the integrity of the notarial system.[31] In this case, respondent failed to faithfully comply with her duties as a notary public.

It appears that respondent notarized two Deeds of Absolute Sale covering the same property and involving substantially the same parties. In the October 12, 2011 Deed of Absolute Sale, the Acknowledgement reads in part:

> BEFORE ME, a Notary Public for and in the Province of Samar, **personally appeared** JUANITO A. SULTAN, FELIX A. SULTAN, LEONARDO A. SULTAN, CRISPEN A. SULTAN, LILIA A. SULTAN, PABLITO A. SULTAN, VICTORIANO A. SULTAN, LUCITA S. UY and JERRY I. UY, **exhibiting to me their Community Tax Certificate numbers**, known to me to be the same persons who executed the foregoing instrument, which **they acknowledged to me** as their free and voluntary act and deed.[32] (Emphasis supplied)

However, among the vendors, only Leonardo, Lilia, and Victoriano actually signed the deed. Details of the Community Tax Certificate (CTC) of Juanito, Felix, and Crispen were provided, but they did not sign the deed. As for Pablito and Lucita, the space for the signature and identification details was left blank.

Likewise, in the October 19, 2011 Deed of Absolute Sale, the Acknowledgement reads in part:

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[31] *Atty. Bartolome v. Atty. Basilio*, 771 Phil. 1, 5 (2015).

[32] *Rollo*, p. 14.

BEFORE ME, a Notary Public for and in the Province of Samar, **personally appeared** JUANITO A. SULTAN, FELIX A. SULTAN, LEONARDO A. SULTAN, CRISPEN A. SULTAN, LILIA A. SULTAN, PABLITO A. SULTAN, and JERRY I. UY, **exhibiting to me their Community Tax Certificate numbers**, known to me to be the same persons who executed the foregoing instrument, which **they acknowledged to me** as their free and voluntary act and deed.[33] (Emphasis supplied)

As compared with the earlier deed, this latter deed no longer contains the names of Victoriano and Lucita as vendors. Also, while Juanito, Felix, Leonardo, Crispen, and Lilia appear to have signed, there was no signature for Pablito even though he was listed as a vendor.

In this regard, the Court notes that complainant submitted a copy of another deed of sale involving the same property, specifically the Extra-judicial Settlement between his son Jason and all the Sultan siblings. In contrast with the Deeds of Sale notarized by respondent, this Extra-judicial Settlement contains the names of all the Sultan siblings, along with their signatures and thumbprints affixed on all pages of the said document. Nonetheless, the issue on the genuineness of these deeds is subject of a pending civil case; hence, the Court will not rule on the matter. The instant resolution will focus on respondent's administrative liability.

Section 6 of Rule IV of the 2004 Rules on Notarial Practice states:

SEC. 6. *Improper Instruments or Documents*. — A notary public shall **not notarize**:

(a) a blank or **incomplete** instrument or document; or

(b) an instrument or document without appropriate notarial certification.

Here, respondent clearly violated this provision when she notarized the deeds of absolute sale despite the incomplete

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[33] *Id*. at 17.

signature and identification details of the vendors. Moreover, when the identification details were indeed provided in the deeds, the proof of identity indicated for all of them was the CTC Number. Jurisprudence[34] already holds that a CTC is not considered as competent evidence of identity as it does not bear a photograph and a signature of the individual concerned, as required in Rule II, Section 12 of the Notarial Rules.[35]

Worse, while there are some signatures that do appear on the instruments, the vendors therein claimed that they did not actually sign the deeds. In support of this, complainant attached in his Complaint the counter-affidavits of some of the Sultan siblings in the *estafa* case filed by Jerry (the vendee in the assailed deeds of sale), with respondent as counsel. The pertinent portions of the counter-affidavits are reproduced below:

In Victoriano Sultan's Counter-Affidavit,[36] he stated that:

> 18. Later[,] I was surprised unpleasantly that the deed [of absolute sale] had already been signed by my other siblings, by the witnesses[,] and subscribed to **before the notary public, which, on my part, I did not appear before her**. x x x[37] (Emphasis supplied).

Similarly, Crispin Sultan stated in his Counter-Affidavit[38] the following:

> 15. Later[,] I was **surprised to know that I supposedly appeared, signed and acknowledged the deed before a notary public on 19 October 2011**, the truth of the matter being that on such date I was in Bacolod City discharging my duties as security guard[.][39] (Emphasis supplied).

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[34] *Baylon v. Almo*, 578 Phil. 238 (2008).

[35] **SEC. 12.** *Competent Evidence of Identity*. — The phrase "competent evidence of identity" refers to the identification of an individual based on: (a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual x x x.

[36] *Rollo*, pp. 18-21.

[37] *Id*. at 20.

[38] *Id*. at 22-25.

[39] *Id*. at 24.

Also, in Felix Sultan's Counter-Affidavit,[40] he stipulated that:

19. It is noteworthy that **I did not appear before a notary public** in Catbalogan City **supposedly to execute and sign any deed of conveyance in the month of October 2011**; and specifically[,] I did not receive the amount of ₱500,000.00 from complainant[.][41] (Emphasis supplied)

Lastly, Juanito Sultan made a similar statement as Felix's in his Counter-Affidavit:[42]

22. It is noteworthy that **I did not appear before a notary public** in Catbalogan City **supposedly to execute and sign any deed of conveyance in the month of October 2011**; and specifically[,] I did not receive the amount of ₱500,000.00 from complainant[.][43] (Emphasis supplied)

This is also in clear violation of the Rules on Notarial Practice, Rule IV, Section 2 of which provides:

SEC. 2. *Prohibitions*. — x x x

x x x x x x x x x

(b) **A person shall not perform a notarial act if the person involved as signatory** to the instrument or document —

(1) is **not in the notary's presence personally at the time of the notarization**; and

(2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules. (Emphasis and underscoring supplied)

The Notarial Rules clearly mandate that before notarizing a document, the notary public should require the presence of the very person who executed the same. Thus, he or she certifies

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[40] *Id*. at 29-31.

[41] *Id*. at 31.

[42] *Id*. at 34-36.

[43] *Id*. at 36.

that it was the same person who executed and personally appeared before him to attest to the contents and truth of what were stated therein. The presence of the parties to the deed is necessary to enable the notary public to verify the genuineness of the signature.[44]

When respondent affixed her signature and notarial seal on the deeds of sale, she led the public to believe that the parties personally appeared before her and attested to the truth and veracity of the contents thereof when in fact, they deny doing so. Respondent's conduct is laden with dangerous possibilities, bearing in mind the conclusiveness accorded to the due execution of a document. Her conduct did not only jeopardize the rights of the parties to the instrument; it also undermined the integrity of a notary public and degraded the function of notarization. Thus, respondent should be liable for such act, not only as a notary public but also as a lawyer.

For having violated the Notarial Rules, respondent also failed to adhere to Canon 1 of the CPR, which requires every lawyer to uphold the Constitution, obey the laws of the land, and promote respect for the law and legal processes. She also violated Rule 1.01 of the CPR which proscribes a lawyer from engaging in any unlawful, dishonest, immoral, and deceitful conduct.

Based on recent jurisprudence, a lawyer commissioned as a notary public who fails to discharge his or her duties as such is penalized with revocation of his or her notarial commission and disqualification from being commissioned as a notary public for a period of two (2) years.[45] In addition, he or she may also be suspended from the practice of law for a period of six (6) months for notarizing a document without the appearance of the parties.[46] Thus, the Court affirms the penalty imposed by the IBP Board.

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[44] *Ferguson v. Ramos*, A.C. No. 9209, April 18, 2017, 823 SCRA 59, 65.

[45] *Baysac v. Atty. Aceron-Papa*, 792 Phil. 635, 646-647 (2016).

[46] *Ferguson v. Ramos*, *supra* note 44, at 67, citing *Ocampo-Ingcoco v. Atty. Yrreverre, Jr.*, 458 Phil. 814 (2003).

WHEREFORE, finding Atty. Alma Uy-Lampasa **GUILTY** of violating the Rules on Notarial Practice and Rule 1.01 and Canon 1 of the Code of Professional Responsibility, the Court hereby **SUSPENDS** her from the practice of law for six (6) months; **REVOKES** her notarial commission, effective immediately; and **PROHIBITS** her from being commissioned as a notary public for two (2) years. She is further **WARNED** that a repetition of the same or similar offense shall be dealt with more severely.

Let copies of this Decision be furnished to the Office of the Bar Confidant, to be appended to the respondent's personal record as attorney. Likewise, copies shall be furnished to the Integrated Bar of the Philippines and all courts in the country for their information and guidance.

SO ORDERED.

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

Perlas-Bernabe, J., on wellness leave.

FIRST DIVISION

[A.C. No. 12113. March 6, 2019]
(Formerly CBD 08-2193)

LEO LUMBRE, LEOJOHN L. LUMBRE, and RUFREX L. LUMBRE, *complainants, vs.* **ATTY. ERWIN BELLEZA,** *respondent.*

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

SYLLABUS

1. POLITICAL LAW; REPUBLIC ACT NO. 7610 (SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT); OTHER ACTS OF NEGLECT, ABUSE, CRUELTY OR EXPLOITATION AND OTHER CONDITIONS PREJUDICIAL TO THE CHILD'S DEVELOPMENT UNDER SECTION 10 THEREOF; COMMITTED BY A LAWYER WHO, CLAIMING OF MERELY ADVOCATING THE INTEREST OF HIS CLIENTS, WIELDED HIS GUN AND RAN AFTER MINORS; CASE AT BAR.— Evidently, the respondent ignored his sworn duty to uphold the law and to shy away from any conduct that tended to degrade the law profession. He wittingly turned himself into an instrument of terror against the minors. Not even his claim of merely advocating his client's interest justified his doing so. He ought to know that such advocacy of his client's cause was not boundless and that he had clearly exceeded the bounds of propriety by wielding his gun and running after the minors. His acts envinced a desire to menace them. His acts and actuations, which were in breach of our laws, should not now be ignored, least of all tolerated. He was an attorney who ought to have obeyed the laws. Worse, he allowed himself to commit acts that, in the objective view of the IBP Board of Governors, easily came under the classification of *Other Acts of Neglect, Abuse, Cruelty or Exploitation and other Conditions Prejudicial to the Child's Development* as defined and punished under Section 10 of Republic Act No. 7610.

2. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; RULE 1.01, CANON 1 AND RULE 7.03, CANON 7; VIOLATION THEREOF RENDERS A LAWYER LIABLE FOR GROSS MISCONDUCT; GROSS MISCONDUCT, DEFINED; PROPER PENALTY IN CASE AT BAR.— The respondent's behavior patently transgressed the earlier quoted provisions of the *Code of Professional Responsibility*, and rendered him liable for gross misconduct, defined as "improper or wrong conduct, the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies a wrongful intent and not mere error of judgment." We have been consistent in holding that any gross misconduct by an attorney in a professional or private capacity indicates his unfitness to manage

the affairs of others, and is a ground for the imposition of the penalty of suspension or disbarment, because good moral character is an essential qualification for the admission of an attorney and for the continuance of such privilege. Having determined the respondent to be guilty of gross misconduct, it now behooves us to ascertain if the recommended penalty of suspension from the practice of law for two months was proper and commensurate to the violation. We find the recommendation deficient in relation to the acts and actuations imputed to the respondent. In *Gonzalez v. Atty. Alcaraz*, we imposed a one-year suspension from the practice of law on the respondent attorney for violating Rule 1.01 of the *Code of Professional Responsibility* because he had wielded his gun and aimlessly fired the same in public. The same penalty is proper because the respondent endangered the lives and mental health of the minors.

APPEARANCES OF COUNSEL

Public Attorney's Office for complainants.

D E C I S I O N

BERSAMIN, *C.J.*:

The complainants, minors Leojohn Lumbre (Leojohn) and Rufrex Lumbre (Rufrex), initiated this disbarment complaint against the respondent alleging that he had chased and threatened them with his gun. The Board of Governors of the Integrated Bar of the Philippines (IBP) found the respondent guilty of grave misconduct, but only recommended his suspension from the practice of law for two months. We hold that the offense committed by the respondent was of a more serious character, and deserved a higher penalty.

But, first, let us review the antecedents.

On March 31, 2008, the Commission on Human Rights (CHR) forwarded the complaint dated March 13, 2008 and signed by complainant Leo Lumbre (Leo) to the Committee on Bar and

Discipline of the IBP (CBD-IBP),[1] the pertinent portion of which reads:

> On 24 May 2007 at around 9:00 o'clock in the morning, while the undersigned was away from his residence, Atty. Erwin Belleza together with Barangay Kagawad Teofilo Balosca, civilian Baloy Paña and a number of persons, came and with the help of his two companions, destroyed the nipa hut in the garden of the undersigned with the use of bolo. Then, together again with the same companions, aimed their firearms towards undersigned's children Rufrex Lumbre and Leo John Lumbre, 16 and 13 years old respectively, chased and attempted to kill them, which abuse on the minors caused them fear and affected their normal development.[2]

Attached to Leo's complaint were affidavits, including that executed by Leojohn and Rufrex, his sons, whereby they rendered their following version of the incident, to wit:

> x x x x x x x x x

> 2. That at around 9:00 o'clock in the morning of May 24, 2007, our parents and my uncle Pablo Lumbre left our residence after being invited by members of the Javier PNP to the Police Station;
>
> 3. That at around 10:30 o'clock of the same morning and while our parents were in the Javier PNP station, we saw several persons came (sic) to our farm and that prompted us to verify their purpose in coming;
>
> 4. That as we went near to them, we personally saw Atty. Erwin Belleza, Barangay Kagawad Teofilo Balosca and Baloy Paña destroying our nipa hut we constructed for our temporary shelter in our garden. These three persons helped one another using their hands and bolo until the hut was totally destroyed;
>
> 5. That we likewise saw that the aforestated persons were carrying firearms. Atty. Belleza has a .45 caliber pistol in his hand, Baloy Paña has an armalite rifle while Teofilo Balosca has firearm we failed to distinguish its name. Balosca and Paña were carrying a bolo tucked on their waist;

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[1] *Rollo*, p. 91.

[2] *Id*. at. 92.

6. That when Teofilo Balosca noticed our presence, he instructed his companions to arrest us and same time pointed their guns toward us. He even ordered to kill us;

7. That because of fear we ran back to our house but these Atty. Belleza, Belo Paña and Teofilo Balosca chased us still pointing their guns at us. On our way we met our sister Genevieve Lumbre who also joined to run with us;[3]

x x x x x x x x x

Genevieve Lumbre, the daughter of Leo, also executed an affidavit corroborating the version of Leojohn and Rufrex, and adding that when they reached their house, she saw the respondent checking the surroundings of their house while still holding his gun.[4]

The complainants further submitted the affidavits of Danilo R. Mardoquio and Roland Rodriguez[5] who thereby confirmed that three armed men had chased Leojohn and Rufrex in the morning of May 24, 2007.

On his part, the respondent submitted his answer,[6] whereby he denied going to the farm of the complainants. He thereby insisted that he had not been around the place of the complainants during the incident adverted to by them, as borne out by the sworn statements of Barangay Kagawad Teofilo Balosca and the latter's laborers;[7] that the complaint against him was intended only to impede him from discharging his duties for Teofilo Balosca, his client, and to harass him; and that he would not risk his professional career by doing what the complainants were accusing him of.[8]

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[3] *Id*. at 94.

[4] *Id*. at 97.

[5] *Id*. at 100-101.

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

[7] *Id*. at 114-116.

[8] *Id*. at 112.

Report and Recommendation of the IBP

On November 19, 2013, CBD Commissioner Jose Villanueva Cabrera submitted his Report and Recommendation[9] wherein he opined that the IBP had no jurisdiction over the disbarment complaint, and held thusly:

> PREMISES CONSIDERED, for lack of jurisdiction and lack of authority to conduct preliminary investigation against respondent for attempted homicide or attempted murder, as the case may be or for other appropriate offense and for insufficiency of evidence, this administrative case against Atty. Erwin V. Belleza is hereby DISMISSED.
>
> RESPECTFULLY SUBMITTED.[10]

CBD Commissioner Cabrera stated that aside from determining if the respondent had been guilty of gross misconduct, another issue that the complaint had brought forth related to whether or not the IBP had jurisdiction to conduct an inquiry or proceeding to determine if probable cause existed for holding the respondent liable as to be held for trial.[11] He concluded that the administrative complaint should be dismissed because the IBP had no jurisdiction to conduct the preliminary investigation against the respondent.

On August 10, 2014, the IBP Board of Governors issued Resolution No. XXI-2014-526 reversing the recommendation of CBD Commissioner Cabrera and recommended instead that the respondent be held liable for gross misconduct and be punished with suspension from the practice of law for two months.[12] In

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[9] *Id*. at 209-216.

[10] *Id*. at 216.

[11] The issue was stated as follows: "1. Whether this Commission has jurisdiction or authority to conduct an inquiry or proceeding to determine whether there is sufficient ground to engender a well-grounded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial;" *rollo*, pp. 210-211.

[12] *Rollo*, p. 207.

its extended resolution, the IBP Board of Governors justified the reversal of CBD Commissioner Cabrera's recommendation in this wise:

> Respondent clearly violated Rule 1.01 of the Code of Professional Responsibility ("CPR") in relation to the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act" ("RA 7610") when respondent chased and threatened to kill the two complainants who are both minors, the absence of fired shots notwithstanding.
>
> x x x x x x x x x
>
> Rule 1.01 of the CPR provides that "a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." An unlawful conduct is an act or omission which us against the law. RA 7610 particularly Section 10(a), Article VI (Other Acts of Abuse) provides that "any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development" shall be criminally liable for "Other Acts of Neglect, Abuse, Cruelty or Exploitation and other Conditions Prejudicial to the Child's Development."
>
> The affidavit dated 07 November 2007 executed by the complainants who are minors categorically stated in paragraphs 4-7 (Records, p. 2) and identified respondent as one of the persons who destroyed their nipa hut and who chased and pointed guns at them. The statement of the minors was also affirmed and corroborated by Ms. Genevieve Lumbre in her affidavit dated 07 November 2007 and by Mr. Danilo Mardoquio in his affidavit dated 19 December 2007. The said affiants saw respondent carrying a .45 caliber pistol with armed companions running after and pointing their guns at the two complainants who are minors. Furthermore, the psychiatric evaluation and mental status examination dated 04 September 2007 of complainant Rufrex conducted by Dr. Lyn Y. Veron MD shows that Rufrex was complaining of impaired sleep and nervousness. Clearly, the effect of the incident on the minors was more psychological and mental rather than physical. Thus, it is neither necessary that shots be fired nor for anybody to get physically hurt to bleed in the incident. Respondent's act of chasing and threatening to kill the two complainants who are both minors, therefore, is an act of child abuse, cruelty or exploitation under RA 7610.
>
> Hence, respondent is administratively liable.

The Recommendation of the Board

WHEREFORE, premises considered, the Board resolves to reverse and set aside the Report and Recommendation dated 19 November 2013. Finding respondent guilty of grave misconduct for chasing and threatening to kill two minor respondents (sic) which act amounts to child abuse, respondent Atty. Erwin V. Belleza is hereby SUSPENDED from the practice of law for two (2) months.

SO ORDERED.[13]

Issue

Was the respondent administratively liable for gross misconduct for chasing and threatening the minors Leojohn and Rufrex with his gun?

Ruling of the Court

We find and hold that the respondent transgressed ethical norms of conduct as a lawyer, and was thus guilty of gross misconduct. He should be condignly penalized for violating the letter and spirit of the *Code of Professional Responsibility*.

The complainants' version of the incident deserves credence. Their experience as narrated by Leojohn and Rufrex were consistent with and corroborated by the sworn declarations of the other witnesses. Their common narrative was not the product of a design or a concoction on their part. The respondent did not establish any ill motive that could have moved them to declare affirmatively against him about his actions and physical presence during the incident. His insistence that the complainants had accused him of the misconduct only to harass him and to prevent him from serving the interest of his client would not undercut the fact that such motivation — even assuming the same to be true — did not necessarily mean that he had not threatened and run after the minors while wielding his gun. Indeed, they had nothing to gain in so declaring against him except to assert the truth about the incident.

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[13] *Id*. at 220-221.

The IBP Board of Governors noted that the psychiatric evaluation and mental status examination conducted by Dr. Lyn Y. Veron, M.D. revealed that Rufrex had complained of impaired sleep and nervousness. It observed that such finding showed the psychological and mental effect of the incident on Rufrex. Thereby, the complainants' account about the respondent's act of chasing and threatening to kill the minors was confirmed, for such finding was produced by the respondent's imputed acts.

In contrast, the respondent merely denied his presence at the scene. But it is notable that he did not even explain where he had been exactly to substantiate his denial of physical presence.

The *Code of Professional Responsibility* pertinently provides:

CANON 1 – A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

> Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

x x x x x x x x x

CANON 7 – A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

> Rule 7.03 – A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

We have emphasized in *De Leon v. Atty. Castelo*[14] that the *Code of Professional Responsibility* binds all attorneys to obey the laws of the land and to observe and maintain the rule of law, *viz.*:

The *Code of Professional Responsibility* echoes the *Lawyer's Oath*,

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[14] A.C. No. 8620, January 12, 2011, 639 SCRA 237.

x x x x x x x x x

x x x x x x x x x

The foregoing ordain ethical norms that bind all attorneys, as officers of the Court, to act with the highest standards of honesty, integrity, and trustworthiness. All attorneys are thereby enjoined to obey the laws of the land, to refrain from doing any falsehood in or out of court or from consenting to the doing of any in court, and to conduct themselves according to the best of their knowledge and discretion with all good fidelity as well to the courts as to their clients. Being also servants of the Law, attorneys are expected to observe and maintain the rule of law and to make themselves exemplars worthy of emulation by others. The least they can do in that regard is to refrain from engaging in any form or manner of unlawful conduct (which broadly includes any act or omission contrary to law, but does not necessarily imply the element of criminality even if it is broad enough to include such element).[15]

Evidently, the respondent ignored his sworn duty to uphold the law and to shy away from any conduct that tended to degrade the law profession. He wittingly turned himself into an instrument of terror against the minors. Not even his claim of merely advocating his client's interest justified his doing so. He ought to know that such advocacy of his client's cause was not boundless and that he had clearly exceeded the bounds of propriety by wielding his gun and running after the minors. His acts envinced a desire to menace them. His acts and actuations, which were in breach of our laws, should not now be ignored, least of all tolerated. He was an attorney who ought to have obeyed the laws. Worse, he allowed himself to commit acts that, in the objective view of the IBP Board of Governors, easily came under the classification of *Other Acts of Neglect, Abuse, Cruelty or Exploitation and other Conditions Prejudicial to the Child's Development* as defined and punished under Section 10 of Republic Act No. 7610.[16]

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[15] *Id*. at 243-244.

[16] Entitled *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*.

The respondent's behavior patently transgressed the earlier quoted provisions of the *Code of Professional Responsibility*, and rendered him liable for gross misconduct, defined as "improper or wrong conduct, the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies a wrongful intent and not mere error of judgment."[17] We have been consistent in holding that any gross misconduct by an attorney in a professional or private capacity indicates his unfitness to manage the affairs of others, and is a ground for the imposition of the penalty of suspension or disbarment, because good moral character is an essential qualification for the admission of an attorney and for the continuance of such privilege.[18]

Having determined the respondent to be guilty of gross misconduct, it now behooves us to ascertain if the recommended penalty of suspension from the practice of law for two months was proper and commensurate to the violation.

We find the recommendation deficient in relation to the acts and actuations imputed to the respondent. In *Gonzalez v. Atty. Alcaraz*,[19] we imposed a one-year suspension from the practice of law on the respondent attorney for violating Rule 1.01 of the *Code of Professional Responsibility* because he had wielded his gun and aimlessly fired the same in public. The same penalty is proper because the respondent endangered the lives and mental health of the minors.

WHEREFORE, the Court **FINDS** and **DECLARES** respondent Atty. Erwin V. Belleza **GUILTY** of **GROSS MISCONDUCT** for his violation of Canon 1, Rule 1.01, Canon 7 and Rule 7.03 of the *Code of Professional Responsibility*; and, accordingly, **IMPOSES** on him the penalty of **SUSPENSION FROM THE PRACTICE OF LAW** for a **PERIOD OF ONE (1) YEAR** effective from notice.

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[17] *Whitson v. Atienza*, A.C. No. 5535, August 28, 2003, 410 SCRA 10, 15.

[18] *Id.*

[19] A.C. No. 5321, September 27, 2006.

Let this decision be furnished to the Office of the Bar Confidant to be appended to the respondent's personal record as an attorney; to the Integrated Bar of the Philippines for its information and guidance; and to the Office of the Court Administrator for dissemination to all the courts of the Philippines.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 175727. March 6, 2019]

LORENZO SHIPPING CORPORATION, *petitioner, vs.* **FLORENCIO O. VILLARIN and FIRST CARGOMASTERS CORPORATION, CEBU ARRASTRE & STEVEDORING SERVICES CORPORATION and GUERRERO G. DAJAO,** *respondents.*

[G.R. No. 178713. March 6, 2019]

LORENZO SHIPPING CORPORATION, *petitioner, vs.* **FLORENCIO O. VILLARIN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY ATTACHMENT; THE PROVISIONAL REMEDY OF ATTACHMENT IS AVAILABLE IN ORDER THAT THE DEFENDANT MAY NOT DISPOSE OF HIS PROPERTY ATTACHED, AND THUS SECURE THE SATISFACTION OF ANY JUDGMENT THAT MAY BE SECURED BY PLAINTIFF FROM DEFENDANT; TWO-FOLD PURPOSE AND FUNCTION, CITED.— A writ of preliminary attachment is a

provisional remedy issued upon order of the court where an action is pending to be levied upon the property or properties of the defendant therein, the same to be held thereafter by the Sheriff as security for the satisfaction of whatever judgment might be secured in said action by the attaching creditor against the defendant. It is governed by Rule 57 of the Revised Rules of Court. The provisional remedy of attachment is available in order that the defendant may not dispose of his property attached, and thus secure the satisfaction of any judgment that may be secured by plaintiff from defendant. The purpose and function of an attachment or garnishment is two-fold. First, it seizes upon property of an alleged debtor in advance of final judgment and holds it subject to appropriation thus preventing the loss or dissipation of the property by fraud or otherwise, Second, it subjects .to the payment of a creditor's claim property of the debtor in those cases where personal service cannot be obtained upon the debtor.

2. **ID.; ID.; ID.; THE RULES GOVERNING THE ISSUANCE OF PRELIMINARY ATTACHMENT ARE STRICTLY CONSTRUED AGAINST THE APPLICANT, SUCH THAT IF THE REQUISITES FOR ITS GRANT ARE NOT SHOWN TO BE ALL PRESENT, THE COURT SHALL REFRAIN FROM ISSUING IT.—** The Court, speaking through Associate Justice Antonio Eduardo B. Nachura, reiterated the long-standing doctrine that "[t]he provisional remedy of preliminary attachment is harsh and rigorous for it exposes the debtor to humiliation and annoyance. The rules governing its issuance are, therefore, strictly construed against the applicant, such that if the requisites for its grant are not shown to be all present, the court shall refrain from issuing it, for, otherwise, the court which issues it acts in excess of its jurisdiction." This standard of construction of the rules on preliminary attachment is reiterated in the 2015 case of *Watercraft Venture Corporation v. Wolfe*.

3. **CIVIL LAW; TRUSTS; CONSTRUCTIVE TRUST; A CONSTRUCTIVE TRUST IS A TRUST NOT CREATED BY ANY WORDS, EITHER EXPRESSLY OR IMPLIEDLY, EVINCING A DIRECT INTENTION TO CREATE A TRUST BUT BY THE CONSTRUCTION OF EQUITY IN ORDER TO SATISFY THE DEMAND OF JUSTICE AND PREVENT UNJUST ENRICHMENT; NOT ESTABLISHED IN CASE AT BAR.—** A constructive trust is "a trust not created by any

words, either expressly or impliedly, evincing a direct intention to create a trust but by the construction of equity in order to satisfy the demands of justice and prevent unjust enrichment. It does not arise by agreement or intention but by operation of law against one who, by fraud, duress, or abuse of confidence obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold." In the case at bar, it appears that LSC has a legal justification for refusing to yield to Villarin's demands, based on the law on privity of contract. Thus, it cannot be said that LSC is withholding payment for fraudulent reasons. Nevertheless, assuming without conceding that a constructive trust relation does exist in this case, it has already been held in *Philippine National Bank v. CA* that, "in a constructive trust, there is neither a promise nor any fiduciary relation to speak of and the so-called trustee neither accepts any trust nor intends holding the property for the beneficiary." This takes the case out of the purview of Section l(b), since there would be no fiduciary relation between LSC and Villarin. x x x In other words, a juridical tie is still required, which is not present in the case at bar between Villarin and LSC. LSC's refusal to directly remit its payables to Villarin cannot be considered wrongful, because LSC contracted only with CASSCOR and not with Villarin; and such refusal is justified by the legal principle of privity of contract.

4. REMEDIAL LAW; RULES OF COURT; INHERENT POWERS OF THE COURTS; A DEPOSIT ORDER IS AN EXTRAORDINARY PROVISIONAL REMEDY WHEREBY MONEY OR OTHER PROPERTY IS PLACED IN *CUSTODIAL LEGIS* TO ENSURE RESTITUTION TO WHICHEVER PARTY IS DECLARED ENTITLED THERETO AFTER COURT PROCEEDINGS; SUSTAINED.— While deposit may not be included in the provisional remedies stated in Rules 57 to 61 of the Rules of Court, this does not mean, however, that its concept as a provisional remedy is nonexistent. As correctly pointed out by the appellate court, Rule 135 gives courts wide latitude in employing means to carry their jurisdiction into effect. Thus, this Court has upheld deposit orders issued by trial courts in cases involving actions for partition, recovery of possession, and even annulment of contract. In *The Province of Bataan v. Hon. Villafuerte, Jr.*, the Court sustained an escrow order over the lease rentals of the subject properties therein pending

the resolution of the main action for annulment of sale and reconveyance; while in *Reyes v. Lim*, the Court upheld an order to deposit the down payment for the purchase price of a parcel of land after the buyer sought the rescission of the contract to sell. Based on jurisprudence, a deposit order is an extraordinary provisional remedy whereby money or other property is placed in *custodia legis* to ensure restitution to whichever party is declared entitled thereto after court proceedings. It is extraordinary because its basis is not found in Rules 57 to 61 of the Rules of Court on Provisional Remedies but rather, under Sections 5(g) and 6 of Rule 135 of the same Rules pertaining to the inherent power of every court "[t]o amend and control its process and orders so as to make them conformable to law and justice;" as well as to issue "all auxiliary writs, processes and other means necessary" to carry its jurisdiction into effect. To elucidate further, provisional deposit orders can be seen as falling under two general categories. In the first category, the demandability of the money or other property to be deposited is not, or cannot – because of the nature of the relief sought – be contested by the party-depositor. In the second category, the party-depositor regularly receives money or other property from a non-party during the pendency of the case, and the court deems it proper to place such money or other property in *custodia legis* pending final determination of the party truly entitled to the same.

APPEARANCES OF COUNSEL

Montilla Law Office for petitioner.

Florencio O. Villarin and *Rolindo A. Navarro* for respondents Florencio O. Villarin and First Cargomasters Corporation.

Zosa and Quijano Law Offices for CASSCOR & Guerrero Dajao.

D E C I S I O N

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

These are consolidated petitions for review on *certiorari* under Rule 45 of the Revised Rules of Court assailing the rulings

of the Court of Appeals (CA) in CA-G.R. SP No. 86333, which sustained the Orders dated May 11, 2004[1] and June 16, 2004[2] issued by the Regional Trial Court (RTC) of Cebu City, Branch 6, in Civil Case No. CEB-25283; and in CA-G.R. CEB SP No. 01855, which reversed the Orders dated March 9, 2006[3] and May 30, 2006[4] issued by the RTC of Cebu City, Branch 20 in the same case. Civil Case No. CEB-25283 is a suit for specific performance, accounting, and damages, with prayer for writs of preliminary mandatory injunction and preliminary attachment, filed before the RTC of Cebu City.

The Facts

Lorenzo Shipping Corporation (LSC) is a domestic corporation which operates interisland shipping vessels in the Philippines. On the other hand, Cebu Arrastre and Stevedoring Services Corporation (CASSCOR) provides arrastre and stevedoring services for LSC's ships calling at the Port of Cebu under a Cargo Handling Contract dated March 8, 1997.[5]

On February 20, 1997, Guerrero G. Dajao (Dajao), as President and General Manager of CASSCOR, entered into a Memorandum of Agreement (MOA) with Serafin Cabanlit (Cabanlit) and Florencio Villarin (Villarin).[6]

Under the MOA, Villarin and Cabanlit undertook to operate and manage the arrastre and stevedoring operations of CASSCOR with respect to LSC's vessels. CASSCOR was entitled to 5% of the proceeds of the operation, while Dajao was entitled to a 2% royalty. 10% was allocated for taxes, wages and other necessary expenses; and another 10% was

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[1] Rendered by Judge Anacleto Caminade; *rollo* (G.R. No. 178713), p. 107.

[2] *Id*. at 118-119.

[3] *Rollo* (G.R. No. 175727), p. 149.

[4] *Id*. at 166.

[5] *Rollo* (G.R. No. 175727), pp. 343-344.

[6] *Id*. at 343.

earmarked for the share of the Philippine Ports Authority.[7] Villarin and Cabanlit alleged that the rest of the proceeds, amounting to 73%, were due to them.[8]

The Attachment Case

Alleging failure on the part of CASSCOR and Dajao to remit their shares from July 1999 onwards, Villarin, Cabanlit, and FCC (Villarin, *et al.*) filed a Complaint for specific performance and accounting against CASSCOR and Dajao.[9] The Complaint was subsequently amended on June 20, 2000 to implead LSC as a nominal defendant; to include a prayer for a writ of preliminary attachment against CASSCOR and Dajao; and to include a prayer for mandatory injunction against LSC. The case was docketed as Civil Case No. CEB-25283 and raffled to Branch 5 of the RTC of Cebu City. A writ of preliminary attachment was thereafter issued by the RTC against CASSCOR and Dajao on June 21, 2000.[10]

CASSCOR and Dajao filed their Answer on June 27, 2000, while LSC filed its Answer on August 27, 2001. However, on September 22, 2003, Villarin, *et al.* filed a Second Amended Complaint. The case was then re-raffled to Branch 6 of the RTC of Cebu City.[11]

On January 26, 2004, Villarin, *et al.* filed a motion for issuance of a writ of preliminary attachment. On May 11, 2004, Judge Anacleto Caminade (Judge Caminade) of RTC Branch 6 granted the motion and ordered the issuance of a writ of preliminary attachment upon the posting by Villarin, *et al.* of a Php 150,000.00 bond. On May 17, 2004, LSC filed a Motion for Clarification/ Reconsideration, arguing that it cannot be subjected to the attachment writ. However, before the court can act on LSC's

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

[8] *Id.* at 91.

[9] The original complaint does not appear in the *Rollo*.

[10] *Rollo* (G.R. No. 178713), pp. 70-71.

[11] *Id.* at 84-99.

Motion for Clarification/Reconsideration, a Notice of Garnishment was served on LSC on May 20, 2004, prompting it to file a motion to post a counter-bond. On June 1, 2004, Judge Caminade issued an order granting LSC's motion to post a counter-bond. Hence, LSC and CASSCOR both posted counter-bonds worth Php 150,000.00 each, resulting in the discharge of the writ of attachment.[12]

On June 16, 2004, Judge Caminade, ruling on LSC's Motion for Clarification/Reconsideration, issued an Order[13] clarifying that the writ of attachment issued under the Order dated May 11, 2004 is directed at *all* the defendants, including LSC. The pertinent portion of the order states that:

> It is the opinion of the Court as already stated that all the defendants including the defendant-movant appear to be guilty of fraud in the performance of the obligation. It is not true that the plaintiffs and defendant-movant have no contract. Plaintiff has contract with the shipping corporation in view of the fact that the defendant shipping corporation is a beneficiary of the services of plaintiffs as alleged in the contract between plaintiffs and other defendants. The rule on privity of contract applies.[14]

Aggrieved, LSC filed a petition for *certiorari* with the CA claiming that Judge Caminade committed grave abuse of discretion in subjecting LSC to the attachment writ since it had no contract or juridical relation with Villarin and the other plaintiffs. LSC further argued that it cannot be subjected to the attachment writ because it was only impleaded as a nominal party.

Judge Caminade subsequently inhibited himself from the case, which was then re-raffled to RTC Branch 20.

The Deposit Case

On November 23, 2004, Villarin, *et al*. filed a *Verified Motion to Require Defendant LSC to Deposit in Court Money Held*

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[12] *Id*. at 117.

[13] *Id*. at 118-119.

[14] *Id*. at 119.

in Trust.[15] To support the motion, Villarin, *et al*. presented an audit report[16] and a letter[17] dated January 5, 2004 from LSC Vice-President for Finance Julita Valeros (Valeros) which contains a statement from LSC's external auditor stating that the unpaid account of LSC to CASSCOR amounts to Php 10,297,499.59.

On August 12, 2005, Judge Bienvenido R. Saniel, Jr. (Judge Saniel) of RTC Branch 20 issued an Order[18] (Order to Deposit) granting the November 23, 2004 motion, which reads as follows:

> When this case was called today, Atty. Bernardito Florido and Atty. Florencio Villarin agreed and jointly manifested that the money requested to be deposited in the plaintiffs' motion shall be deposited in court under the joint account/name of the plaintiffs and defendant Cebu Arrastre and Stevedoring Services Corporation. No one shall withdraw the money without the knowledge and conformity of the other, and the approval of the court.
>
> Accordingly, the verified motion to require defendant Lorenzo Shipping Corporation to deposit in court the money held in trust is hereby granted. Defendant [LSC] is directed to deposit the amount of Php10,297,499.59 with the Clerk of Court of this Court in the joint account/name of the plaintiffs and Cebu Arrastre and Stevedoring Services Corporation, the same to be withdrawn only with the knowledge and conformity of the said parties and the approval of the court.
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> SO ORDERED.[19]

The Order noted that the counsels for Villarin, *et al*. and CASSCOR and Dajao have subsequently agreed and jointly manifested that the money requested to be deposited will be so deposited in court.

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[15] *Rollo* (G.R. No. 175727), pp. 113-119.

[16] CA *rollo*, pp. 87-146.

[17] *Id*. at 147. Hereinafter referred to as the Valeros letter.

[18] *Rollo* (G.R. No. 175727), p. 134.

[19] *Id*.

On September 6, 2005, Villarin, *et al.* moved for the issuance of a writ of execution to enforce Judge Saniel's Order to Deposit. On the other hand, LSC moved for reconsideration of the Order to Deposit on October 4, 2005.[20]

On March 9, 2006, Judge Saniel issued an Order[21] granting LSC's motion for reconsideration and denying Villarin's motion for execution. The pertinent portions of the order are as follows:

> The motion to require the deposit was concurred in, with condition, by defendant Cebu Arrastre and Stevedoring Services Corporation (CASSCOR). The apparent purpose of the plaintiffs in securing the deposit of the above-mentioned amount is to have an assurance that the money — which the plaintiff claims to be owing from defendant Lorenzo Shipping and payable to CASSCOR — will be available for payment to the prevailing party when this case shall be finally terminated or disposed of. The court has noted however that earlier the court had issued a writ of preliminary attachment but the same was discharged when the defendants put up a counterbond of ₱300,000.00. In approving the counterbond, the court had thereby determined that the counterbond was sufficient to protect the interests of the plaintiff. To still require the deposit of the amount in court would be unnecessary and oppressive. Besides, whether or not there is privity of contract between the plaintiffs and Lorenzo Shipping is an issue that is yet to be determined and resolved in this case.
>
> WHEREFORE, without needing to discuss the other matters and arguments raised in the motion for reconsideration and other pleadings of the parties, the court resolves to reconsider, as it does hereby reconsider and set aside, the order of August 12, 2005.
>
> The plaintiffs motion for issuance of a writ of execution to enforce the 12 August 2005 order is hereby denied.[22]

Villarin, *et al.* moved for reconsideration but was denied. In denying the motion, the trial court noted that the grant of LSC and CASSCOR's motions to post counterbond was not questioned

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[20] *Id.* at 138-148.

[21] *Id.* at 149.

[22] *Id.* at 149.

by the plaintiffs and that the issue of LSC's liability to Villarin, *et al.* is still in dispute. It also held that the Order to Deposit has no basis in the Rules of Court.[23]

Aggrieved, Villarin, *et al.* filed a petition for *certiorari* with the CA (the Deposit Case), asserting that Judge Saniel committed grave abuse of discretion in granting LSC's motion for reconsideration. They raised the following contentions in their petition: (1) the Order to Deposit is sanctioned by Rule 135, Section 6, which authorizes courts to issue writs and processes to carry their jurisdiction into effect; (2) the Php 300,000.00 counterbond is insufficient to protect their interest; and (3) the letter dated January 5, 2004 amounts to an admission of liability on the part of LSC.[24]

Rulings of the CA

CA Ruling in the Deposit Case

On September 7, 2006, the CA rendered its Decision[25] in favor of Villarin, *et al.*, thusly:

> **WHEREFORE**, in view of the foregoing premises, judgment is hereby rendered by us **GRANTING** the petition filed in this case, **ANNULLING** and **SETTING ASIDE**, as they are hereby annulled and set aside, the Orders dated March 9, 2006 and May 30, 2006 of the respondent judge and **REINSTATING** his Order dated August 12, 2005. Further, the respondent judge is hereby ordered to ENFORCE his Order dated August 12, 2005 which requires the deposit in court the amount of ₱10,297,499.59.
>
> **SO ORDERED.**[26]

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[23] *Id.* at 166.

[24] *Id.* at 175-179.

[25] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Romeo F. Barza and Priscilla Baltazar-Padilla concurring; *rollo* (G.R. No. 175727), pp. 45-52.

[26] *Id.* at 51.

The CA ruled that Judge Saniel committed grave abuse of discretion in granting LSC's motion on the ground that the counterbond was sufficient to protect the interests of the plaintiffs. Taking the Valeros letter as a judicial admission on the part of CASSCOR and Dajao, the appellate court concluded that the Php 300,000.00 counterbond would not suffice to secure a liability of more than Php 10,000,000.00. The appellate court also upheld Villarin, *et al.*'s contention regarding the grounding of the Order to Deposit in Rule 135, Section 6. Finally, it ruled that the Order to Deposit does not amount to a prejudgment of the case because the deposited amount remains in the control of the court as a measure to ensure that LSC will not unjustly benefit from the funds to the prejudice of whoever may be ultimately declared entitled thereto.

LSC filed a motion for reconsideration which was denied by the appellate court in a Resolution[27] dated May 30, 2006. Aggrieved, LSC filed a petition for review on *certiorari*[28] with this Court which was docketed as G.R. No. 175727.

CA Ruling in the Attachment Case

On April 24, 2007, the CA rendered its Decision[29] in favor of Villarin, *et al.*, disposing thus:

WHEREFORE, the present petition is hereby DISMISSED for want of merit.

SO ORDERED.[30]

The CA, in upholding the trial court, ruled that the complaint contained averments which allege fraud on the part of *all the defendants*, including LSC. As regards LSC's assertion of the

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[27] *Id.* at 166.

[28] *Id.* at 9-42.

[29] Penned by Associate Justice Priscilla Baltazar-Padilla, with Associate Justices Pampio A. Abarintos and Stephen C. Cruz concurring; *rollo* (G.R. No. 178713), pp. 29-44.

[30] *Id.* at 43.

absence of privity of contract, the CA ruled that LSC is a beneficiary of the contract between Villarin and CASSCOR; and that Section 1(d) of Rule 57 does not require the existence of a contractual obligation. Citing *Sta. Ines Melale Forest Products Corporation v. Macaraig*,[31] the CA noted that Section 1(d) also contemplates other sources of obligation, such as law, crime, or quasi-delict, without stating the precise nature of the obligation involved in the case at bar. The CA further held that the admission cited by LSC in its petition was not an admission of the absence of privity of contract between LSC and Villarin but is instead an admission by Villarin that LSC has payables to FCC.

LSC sought reconsideration of the decision but was denied by the CA in its Resolution[32] dated July 6, 2007. LSC thus filed a petition for review on *certiorari*[33] with this Court, docketed as G.R. No. 178713. In a Resolution[34] dated September 16, 2009, the Court ordered the consolidation of G.R. No. 178713 with G.R. No. 175727. Thereafter, the parties were directed to file their respective memoranda.

The Issues

G.R. No. 178713

LSC ascribes the following error to the appellate court in G.R. No. 178713:

> THE CA SERIOUSLY ERRED IN AFFIRMING THE ORDER OF THE COURT *A QUO* IN EXTENDING THE WRIT OF PRELIMINARY ATTACHMENT AS TO INCLUDE LSC, WHICH WAS MERELY DESCRIBED AS A NOMINAL DEFENDANT, BY CHARGING IT AS GUILTY OF FRAUD IN CONTRACTING THE OBLIGATION, WHEN THE APPLICATION FOR THE

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[31] 359 Phil. 831 (1998).

[32] *Rollo* (G.R. No. 178713), pp. 46-47.

[33] *Id.* at 7-25.

[34] *Rollo* (G.R. No. 175727), p. 278.

WRIT OF PRELIMINARY ATTACHMENT WAS ONLY DIRECTED TO CO-DEFENDANTS CASSCOR AND DAJAO.[35]

According to LSC, the Order dated May 11, 2004 subjecting it to the attachment writ contravenes jurisprudence which requires the writ to contain concrete and specific grounds to justify the attachment. LSC also points out that the CA did not uphold the trial court's finding with regard to privity of contract; instead it held that an existing contractual relation is not a requirement for the issuance of an attachment writ, without specifying the nature of the obligation of LSC to Villarin. LSC further asserts that the allegations in Villarin, *et al.*'s complaint cited by the CA are not badges of fraud but legal justifications for LSC's refusal to pay Villarin directly. LSC faults the CA for subjecting it to the attachment writ on the basis of the general prayer for relief despite its impleader in the case as a mere nominal party. Lastly, LSC points out that the trial court had already issued a writ of attachment on June 21, 2000, making the writ of attachment issued under the Order dated May 11, 2004 a superfluity.

G.R. No. 175727

LSC ascribes the following errors to the appellate court in G.R. No. 175727:

THE CA SERIOUSLY ERRED IN REVERSING THE ORDERS OF THE COURT *A QUO* AND ORDERING THE IMPLEMENTATION OF THE ORDER DATED AUGUST 12, 2005 REQUIRING LSC, A NOMINAL DEFENDANT AT THAT, TO DEPOSIT TO COURT THE AMOUNT OF PHP 10,297,499.59 UNDER THE JOINT ACCOUNT OF CASSCOR AND VILLARIN, *ET AL.* FOR THE FOLLOWING REASONS, NAMELY:

1. THE ORDER DATED AUGUST 12, 2005, IF ENFORCED, IS TANTAMOUNT TO A

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[35] *Rollo* (G.R. No. 178713), p. 18.

PREJUDGMENT OF THE MAIN CASE AS AGAINST LSC.

2. AFTER TWO (2) WRITS OF ATTACHMENT ISSUED AND COUNTERBONDS POSTED, REQUIRING LSC TO DEPOSIT ITS MONEY IN COURT IS AN OVERKILL AS IT IS TANTAMOUNT TO A THIRD WRIT OF ATTACHMENT.

3. THE ORDER TO DEPOSIT IS NOT SANCTIONED BY THE RULES ON THE PROVISIONAL REMEDIES.

4. THE THEORY OF VILLARIN, *ET AL*. THAT THE MONEY IS HELD IN TRUST IS A LEGAL CONCLUSION WHICH NEEDS TO BE THRESHED OUT IN THE DECISION OF THE MAIN CASE AND CANNOT BE PASSED UPON AS A MERE INCIDENCE OF THE CASE. THERE IS NO TRUST, EXPRESS OR IMPLIED, CREATED UNDER THE FACTS OF THE CASE.

5. THE ORDER TO DEPOSIT IS OVER AND ABOVE THE RELIEFS IN THE COMPLAINT AND IS OUTSIDE THE JURISDICTION OF THE COURT *A QUO* DUE TO NON-PAYMENT OF DOCKET FEES THEREFOR.

6. LSC, BEING A NOMINAL DEFENDANT AS DESCRIBED BY VILLARIN, *ET AL*., CANNOT BE BURDENED MORE THAN THE PRINCIPAL DEFENDANTS WHICH IS THE DAJAO GROUP.

7. THE ORDER SOUGHT TO BE ENFORCED AGAINST LSC IS IN THE NATURE OF A MANDATORY INJUNCTION AND THE VILLARIN AND DAJAO GROUPS MISERABLY FAILED TO PROVE THEIR ENTITLEMENT THERETO.

8. IN LEGAL CONTEMPLATION, NO ADMISSION WAS MADE BY LSC THAT IT OWES DAJAO OR CASSCOR THE AMOUNT OF PHP 10,297,499.59. DEFINITELY, LSC DID NOT ADMIT ANY LIABILITY TO VILLARIN, *ET AL.*[36]

LSC insists that the Order to Deposit amounts to a prejudgment of the case, a third attachment writ, and a mandatory injunction, since it would be compelled to turn over control of the amount deposited. It also claims that the fixing of the amount of the deposit at Php 10,297,499.59 is misleading because it fails to take possible counterclaims and cross-claims into account. LSC likewise assails the CA's application of Rule 135, Section 6 to the case, asserting that there is neither basis nor need for the Order to Deposit because the rules on preliminary attachment adequately govern the case at bar. In the same vein, it submits that the listing of provisional remedies in Rules 57 to 61 of the Revised Rules of Court is exclusive. It also contends that the trial court had no jurisdiction to issue the Order to Deposit in the amount of more than Php 10,000,000.00 considering that Villarin, *et al.* only paid Php 300,000.00 in docket fees. It also maintains that it could not be subjected to the Order to Deposit since it was originally impleaded as a mere nominal party. Finally, LSC challenges the appellate court's acceptance of the Valeros letter as a judicial admission of its liability to CASSCOR.

Ruling of the Court

Both petitions are meritorious.

G.R. No. 178713

The CA, in upholding the trial court's order in favor of Villarin, *et al.*, ruled that *all* the defendants, including LSC, are guilty of fraud in the performance of their obligation. The courts *a quo* anchored the issuance the writ of preliminary attachment prayed for on Sections 1(b) and 1(d) of Rule 57 of the Rules of Court, which state:

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[36] *Rollo* (G.R. No. 175727), pp. 24-26.

SEC. 1. *Grounds upon which attachment may issue*. – At the commencement of the action or at any time before entry of judgment, a plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases: x x x

(b) In an action for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or **by any other person in a fiduciary capacity**, or for a **willful violation of duty**;

x x x x x x x x x

(d) In an action against a party who has been guilty of a **fraud** in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof;

The Court does not agree.

A writ of preliminary attachment is a provisional remedy issued upon order of the court where an action is pending to be levied upon the property or properties of the defendant therein, the same to be held thereafter by the Sheriff as security for the satisfaction of whatever judgment might be secured in said action by the attaching creditor against the defendant.[37] It is governed by Rule 57 of the Revised Rules of Court.

The provisional remedy of attachment is available in order that the defendant may not dispose of his property attached, and thus secure the satisfaction of any judgment that may be secured by plaintiff from defendant. The purpose and function of an attachment or garnishment is two-fold. First, it seizes upon property of an alleged debtor in advance of final judgment and holds it subject to appropriation thus preventing the loss or dissipation of the property by fraud or otherwise. Second, it subjects to the payment of a creditor's claim property of the debtor in those cases where personal service cannot be obtained upon the debtor.[38]

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[37] *Adlawan v. Judge Tomol*, 262 Phil. 893, 904 (1990).

[38] *Id*.

In *Ng Wee v. Tankiansee*,[39] the Court, interpreting Section 1(d), ruled that:

> To sustain an attachment [under this section], it must be shown that the debtor in contracting the debt or incurring the obligation intended to defraud the creditor. The fraud must relate to the execution of the agreement and must have been the reason which induced the other party into giving consent which he would not have otherwise given. To constitute a ground for attachment in Section 1 (d), Rule 57 of the Rules of Court, fraud should be committed upon contracting the obligation sued upon. A debt is fraudulently contracted if at the time of contracting it the debtor has a preconceived plan or intention not to pay, as it is in this case. Fraud is a state of mind and need not be proved by direct evidence but may be inferred from the circumstances attendant in each case.[40] (Underscoring Ours)

The Court, speaking through Associate Justice Antonio Eduardo B. Nachura, reiterated the long-standing doctrine that "[t]he provisional remedy of preliminary attachment is harsh and rigorous for it exposes the debtor to humiliation and annoyance. The rules governing its issuance are, therefore, strictly construed against the applicant, such that if the requisites for its grant are not shown to be all present, the court shall refrain from issuing it, for, otherwise, the court which issues it acts in excess of its jurisdiction."[41] This standard of construction of the rules on preliminary attachment is reiterated in the 2015 case of *Watercraft Venture Corporation v. Wolfe*.[42]

Tested against these jurisprudential standards, the CA's decision upholding Judge Caminade's Order dated June 16, 2004 against LSC must be reversed.

It must be borne in mind that Villarin's action is for specific performance. The main thrust of his complaint is to compel

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[39] 568 Phil. 819 (2008).

[40] *Id*. at 828-829, citing *Liberty Insurance Corporation v. CA*, 294 Phil. 41, 49-50 (1993).

[41] *Ng Wee v. Tankiansee*, *id*. at 830-831.

[42] 769 Phil. 394 (2015).

Dajao and CASSCOR to observe the provisions of the MOA. All the other remedies sought by the complaint are merely ancillary to this primary relief. The MOA, therefore, is the obligation upon which Villarin's action is brought; hence the obligation sought to be upheld in this case is *ex contractu*.

Pertinently, Article 1311 of the New Civil Code provides that "[c]ontracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law." In the case at bar, the MOA was entered into by Dajao (as CASSCOR President) on one hand, and Villarin, *et al.* on the other. LSC cannot be guilty of fraud within the contemplation of Section 1(d), Rule 57 of the Rules of Court because it did not enter into any agreement or contract with Villarin. In the absence of any assignment of rights to LSC, the MOA can only bind the parties thereto. Not being a party to the MOA, LSC cannot be subjected to an attachment writ on the basis of Section 1(d).

Villarin admits that he has no express or written contract with LSC. He nevertheless asserts in his Memorandum the existence of an implied trust relation among himself, LSC, and CASSCOR. He alleges in the Second Amended Complaint that LSC was aware of the arrangement under the MOA for CASSCOR to subcontract its LSC arrastre operations to Villarin.[43] He asserts that the relation between them was "*a business relation that requires them to repose trust and confidence in each other and exercise a corresponding degree of fairness and good faith pursuant to an existing quasi-contract or implied contract created by law*."[44] He then denominates this relation as an implied constructive trust, where LSC holds 73% of the amount payable to CASSCOR in trust for payment to him.

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[43] *Rollo* (G.R. No. 178713), p. 60.

[44] *Rollo* (G.R. No. 175727), p. 322.

At this point, the Court emphasizes that it cannot make an authoritative characterization of the juridical relation between LSC and Villarin, so as to not preempt any ruling of the RTC Branch 20 in Cebu City in the main controversy. Be that as it may, the Court shall make an initial determination herein if only to resolve the issue on the propriety of the issuance of provisional remedies by the trial court.

In this regard, the Court cannot sustain the finding *a quo* that constructive trust relation obtains in this case.

A constructive trust is "a trust not created by any words, either expressly or impliedly, evincing a direct intention to create a trust but by the construction of equity in order to satisfy the demands of justice and prevent unjust enrichment. It does not arise by agreement or intention but by operation of law against one who, by fraud, duress, or abuse of confidence obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold."[45]

In the case at bar, it appears that LSC has a legal justification for refusing to yield to Villarin's demands, based on the law on privity of contract. Thus, it cannot be said that LSC is withholding payment for fraudulent reasons. Nevertheless, assuming without conceding that a constructive trust relation does exist in this case, it has already been held in *Philippine National Bank v. CA*[46] that, "in a constructive trust, there is neither a promise nor any fiduciary relation to speak of and the so-called trustee neither accepts any trust nor intends holding the property for the beneficiary."[47] This takes the case out of the purview of Section l(b), since there would be no fiduciary relation between LSC and Villarin.

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[45] De Leon & De Leon, *Comments and Cases on Partnership, Agency and Trusts*, 2010 ed., p. 639.

[46] 291 Phil. 356 (1993).

[47] *Id.* at 364.

The appellate court's reliance on the ruling in *Sta. Ines*[48] is misplaced. In that case, the Court found that a juridical relation between the attachment plaintiff and the attachment defendant was created by virtue of the attachment defendant's cutting of logs within the attachment plaintiff's timber license area, which amounted to a wrongful act committed by the former causing damage to the latter. The Court then held that the term "creditors" as used in Rule 57 should be construed broadly to contemplate all classes of creditors regardless of the source of obligation. In other words, a juridical tie is still required, which is not present in the case at bar between Villarin and LSC. LSC's refusal to directly remit its payables to Villarin cannot be considered wrongful, because LSC contracted only with CASSCOR and not with Villarin; and such refusal is justified by the legal principle of privity of contract.

G.R. No. 175727

The pivotal issue in this petition is the propriety of the issuance of the Order to Deposit.

Deposit as a provisional remedy

While deposit may not be included in the provisional remedies stated in Rules 57 to 61 of the Rules of Court, this does not mean, however, that its concept as a provisional remedy is nonexistent. As correctly pointed out by the appellate court, Rule 135 gives courts wide latitude in employing means to carry their jurisdiction into effect. Thus, this Court has upheld deposit orders issued by trial courts in cases involving actions for partition,[49] recovery of possession,[50] and even annulment of contract. In *The Province of Bataan v. Hon. Villafuerte, Jr.*,[51] the Court sustained an escrow order over the lease rentals of the subject properties therein pending the resolution of the main action for annulment of sale and reconveyance; while in

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[48] *Supra* note 31.

[49] *Go v. Go*, 616 Phil. 740 (2009).

[50] *Bustamante v. Court of Appeals*, 430 Phil. 797 (2002).

[51] 419 Phil. 907 (2001).

Reyes v. Lim,[52] the Court upheld an order to deposit the down payment for the purchase price of a parcel of land after the buyer sought the rescission of the contract to sell.

Based on jurisprudence, a deposit order is an extraordinary provisional remedy whereby money or other property is placed in *custodia legis* to ensure restitution to whichever party is declared entitled thereto after court proceedings. It is extraordinary because its basis is not found in Rules 57 to 61 of the Rules of Court on Provisional Remedies but rather, under Sections 5(g) and 6 of Rule 135 of the same Rules[53] pertaining to the inherent power of every court "[t]o amend and control its process and orders so as to make them conformable to law and justice;" as well as to issue "all auxiliary writs, processes and other means necessary" to carry its jurisdiction into effect.

To elucidate further, provisional deposit orders can be seen as falling under two general categories. In the first category, the demandability of the money or other property to be deposited is not, or cannot — because of the nature of the relief sought — be contested by the party-depositor. In the second category, the party-depositor regularly receives money or other property from a non-party during the pendency of the case, and the court deems it proper to place such money or other property in *custodia legis* pending final determination of the party truly entitled to the same.

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[52] 456 Phil. 1 (2003).

[53] Rule 135, Sections 5(g) and 6 of the Rules of Court provide:

SEC. 5. *Inherent powers of courts*. – Every court shall have power:

x x x x x x x x x

(g) To amend and control its process and orders so as to make them conformable to law and justice;

x x x x x x x x x

SEC. 6. *Means to carry jurisdiction into effect*. – When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules.

The cases of *Eternal Gardens Memorial Parks Corp. v. First Special Cases Division, Intermediate Appellate Court*[54] and *Reyes v. Lim*[55] fall under the first category. *Eternal Gardens* involved an interpleader case where the plaintiff-buyer (Eternal), who was seeking to compel the litigation of the two conflicting claims to the property in question, refused to comply with an order to deposit in *custodia legis* the installment payments for the disputed property. In upholding the provisional deposit order, the Court ruled that Eternal's disavowal of interest in the disputed property, and the deposit of such disputed money or property with the court, are essential elements of an interpleader suit.[56] Thus, Eternal was ordered to deposit the installment payments with the trial court. In *Reyes*, the Court upheld a provisional deposit order covering the down payment for a parcel of land pending the resolution of the case for annulment of contract, *viz.*:

> [S]ince Reyes is demanding to rescind the Contract to Sell, he cannot refuse to deposit the ₱10 million down payment in court. Such deposit will ensure restitution of the ₱10 million to its rightful owner. Lim, on the other hand, has nothing to refund, as he has not received anything under the Contract to Sell.[57]

In both *Eternal Gardens* and *Reyes*, the nature of the relief sought precluded the depositor-party from contesting the demandability of the amounts sought to be deposited. Stated differently, the depositor-parties effectively resigned their respective interests over the amounts deposited. The most equitable solution to prevent unjust enrichment in such cases, therefore, is a provisional deposit order, so that the amount deposited may easily be turned over to whoever would be adjudged properly entitled thereto.

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[54] 247-A Phil. 518 (1988).

[55] *Supra* note 52.

[56] *Supra* note 54, at 529.

[57] *Supra* note 52, at 12.

The second category of cases involve provisional deposit orders covering sums regularly received from non-parties to the case by the depositor-party during the pendency of the proceedings. These are turned over to the custody of the court since the entitlement of the depositor-party thereto remains disputed, and to ensure the timely transfer of such sums to whoever would be adjudged properly entitled thereto. In *Go v. Go*,[58] *Bustamante v. CA*,[59] and *Province of Bataan*,[60] the Court upheld the trial court's order directing the depositor-parties therein, who regularly received rental payments from the lessees of the disputed properties, to deposit such rental payments with the court pending the resolution of the issue of ownership of the disputed properties.

A common thread running through these cases is the existence of an agreement or a juridical tie, which either binds the depositor-party and the party to be benefited by the deposit; or forms the basis for the regular receipt of payments by the depositor-party. In *Eternal Gardens*, Eternal had a contract of sale with one of the interpleading parties; while in *Reyes*, Reyes had a contact to sell with Lim; and in *Go, Bustamante*, and *Province of Bataan*, the regular payments received by the depositor-parties are based on lease agreements.

Jurisprudence on provisional deposit orders as applied to the case at bar

Shorn of the minor details, the case at bar involves a situation where the creditor seeks to attach properties of his debtor's debtor, without establishing a juridical link between the two debts. The question arises: can the provisional remedy of deposit, as established under the Rules of Court and jurisprudence, be availed of in such a situation? To answer this query, the Court now determines if the case at bar falls under any of the two

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[58] 616 Phil. 740 (2009).

[59] 430 Phil. 797 (2002).

[60] *Supra* note 51.

categories established by the jurisprudence on provisional deposit orders.

The principal relief sought in respondent's complaint is for specific performance to compel CASSCOR and Dajao to observe the provisions of the MOA. The deposit order was applied for by Villarin, *et al.* and directed at LSC as the depositor-party, with Villarin, *et al.* as the beneficiary of the deposit order. Essentially, the situation involves two contracts: the cargo handling contract between LSC and CASSCOR, and the MOA between Dajao (as CASSCOR President) and Villarin, *et al.* – which is the contract sought to be enforced by Villarin, *et al.* It must be pointed out however, that LSC *is not* a party to the MOA entered into by Dajao and Villarin, *et al.* As such, the deposit order cannot be directed at LSC since it is not privy to the contract sought to be enforced. To do so would violate the civil law principle that a contract can only bind the parties who entered into it, and it cannot favor or prejudice a third person, even if he is aware of such contract and has acted with knowledge thereof.[61]

Furthermore, the nature of the relief sought in the case at bar does not preclude the depositor-party, *i.e.*, LSC, from contesting the demandability of the amount deposited. In a specific performance case, the defendant can put in issue the existence of any liability on her part to the plaintiff. In contrast, in provisional deposit orders of the first category, the depositor-party *does not*, or *is precluded*, from contesting the demandability of the money or property sought to be deposited – a situation which presumes some resignation of interest in the money or property deposited on the part of the depositor-party. Here, LSC does not resign any interest in favor of Villarin, *et al.*; but instead asserts that it has no liability whatsoever, there being no juridical tie between them. Moreover, even assuming *arguendo* that LSC did concede the *existence* of any liability on its part in favor of CASSCOR or Villarin, *et al.*,

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[61] *Integrated Packaging Corp. v. CA*, 388 Phil. 835, 845 (2000); *Manila Port Service, et al. v. CA, et al.*, 127 Phil. 692, 694 (1967).

the demandability of the amount covered by the deposit order against LSC is still in dispute since LSC has its own claims against CASSCOR.[62] Such claims can possibly compensate for whatever amounts CASSCOR may be entitled to receive from LSC under their contract, which in turn, may be sought from CASSCOR by Villarin, *et al.* Clearly, the case at bar cannot be subsumed under the first category of provisional deposit orders.

The second category of provisional deposit cases is likewise inapplicable. The amount covered by the deposit order against LSC comes from its own account and is not regularly received from non-parties to the case. There is no regular flow of incoming amounts from non-parties which must be properly received and kept in *custodia legis* in favor of the party who will ultimately be adjudged entitled thereto. Furthermore, it has already been established that the actual liability of LSC to CASSCOR is still in dispute.

At this juncture, it would not be amiss to reiterate that LSC has no juridical tie or agreement with Villarin, *et al.* which would suffice as basis for the issuance of a deposit order against the former in favor of the latter.

It is therefore clear from the foregoing disquisition that a provisional deposit order, while available under our procedural law, cannot be granted in this case; the factual and legal circumstances herein being inconsistent with the parameters established by jurisprudence.

The Court concludes by enjoining courts from indiscriminately resorting to deposit orders when the remedy of preliminary attachment is not available. The Court reiterates our pronouncement in *Province of Bataan*,[63] that the provisional remedy of deposit is a "fair response to the exigencies and equities of the situation," when the factual circumstances of the case call for its application. Thus, when there is no juridical tie between the obligee-plaintiff and the beneficiary of the

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[62] See CA *rollo*, p. 353; *rollo* (G. R. No. 175727), p. 366.

[63] *Supra* note 51, at 918.

services he has rendered; and the obligor-defendant failed to set up a cross-claim to connect the two parties with whom it had separate contracts, a deposit order would only amount to a circumvention of the rules on preliminary attachment and an unjust imposition on the alleged beneficiary who is not a party to the contract sought to be enforced.

WHEREFORE, premises considered, the Court hereby rules as follows:

1. In **G.R. No. 175727**:
    a. The petition is **GRANTED**.
    b. The Decision dated September 7, 2006 and the Resolution dated November 28, 2006 of the Court of Appeals in CA-G.R. CEB-SP No. 01855 are hereby **REVERSED and SET ASIDE**.
    c. The Orders dated March 9, 2006 and May 30, 2006 issued by Judge Bienvenido R. Saniel, Jr. in Civil Case No. CEB-25283 are hereby **REINSTATED**.
    d. The Regional Trial Court of Cebu City is ordered to return any and all amounts deposited to it by petitioner Lorenzo Shipping Corporation pursuant to the aforesaid Decision and Resolution in CA-G.R. CEB-SP No. 01855.
2. In **G.R. No. 178713**:
    a. The petition is **GRANTED**.
    b. The Decision dated April 24, 2007 and the Resolution dated July 6, 2007 of the Court of Appeals in CA-G.R. SP No. 86333 are hereby **REVERSED and SET ASIDE**.
    c. The Order dated June 16, 2004 issued by Judge Anacleto Caminade in Civil Case No. CEB-25283; and the writ of attachment issued thereunder, are hereby **ANNULLED** and **SET ASIDE** insofar as it pertains to petitioner Lorenzo Shipping Corporation.

d. The counter-bond posted by Lorenzo Shipping Corporation in connection with the aforesaid writ of attachment is ordered returned.

3. The Regional Trial Court of Cebu City is hereby ordered to try the merits of Civil Case No. CEB-25283 with utmost dispatch.

SO ORDERED.

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

THIRD DIVISION

[G. R. No. 187225. March 6, 2019]

MELINDA M. MALABANAN, *petitioner, vs.* **FRANCISCO MALABANAN, JR., SPOUSES RAMON and PRESCILA MALABANAN, and SPOUSES DOMINADOR III and GUIA MONTANO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; A QUESTION OF FACT, GENERALLY CANNOT BE RAISED IN A PETITION FOR REVIEW ON *CERTIORARI*, MOREOVER, THE FINDINGS OF THE COURT OF APPEALS ARE GENERALLY BINDING UPON THE

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

SUPREME COURT; EXCEPTIONS.— A question of fact, which, in this case, is the determination of whether the property formerly covered by Transfer Certificate of Title No. T-188590 was conjugal, generally cannot be raised in a petition for review on *certiorari*. A question of fact exists when there is doubt on the truth of the allegations and the issue entails a review of the evidence presented. Moreover, the findings of the Court of Appeals are generally binding on this Court. These rules allow certain exceptions enumerated in *Pascual v. Burgos*: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.

2. **CIVIL LAW; CIVIL CODE; MARRIAGE; PROPERTY ACQUIRED DURING MARRIAGE IS PRESUMED TO BE CONJUGAL; CASE AT BAR.—** Under the Civil Code, property acquired during marriage is presumed to be conjugal. There is no need to prove that the money used to purchase a property came from the conjugal fund. What must be established is that the property was acquired during marriage. Only through "clear, categorical, and convincing" proof to the contrary will it be considered the paraphernal property of one (1) of the spouses. Here, the pieces of evidence presented by respondents, who had the burden of proving that the property was not conjugal, were insufficient to overturn this presumption.

3. **ID.; ID.; OWNERSHIP; CERTIFICATE OF TITLE; A CERTIFICATE OF TITLE IS THE BEST EVIDENCE OF OWNERSHIP OF A PROPERTY; APPLICATION IN CASE AT BAR.—** A certificate of title is the best evidence of

ownership of a property. Respondents neither alleged fraud nor assailed the issuance of the title in Jose's favor. This certificate of title, when taken with the Deed of Absolute Sale between Jose and Rodriguez, as well as the tax declarations in petitioner's name, weigh more heavily than respondents' bare claims in establishing petitioner and Jose's ownership of the property. Respondent Francisco, on the contrary, failed to present any evidence to prove that he paid for the kind and the construction of the house on the property. Moreover, the trial court was in a better position to evaluate the evidence and assess the veracity of the parties' allegations, since it had observed the litigants' demeanors when they took the stand. The totality of evidence adduced during trial leads this Court to sustain the trial court's finding that the property was, indeed, conjugal.

4. **ID.; ID.; MARRIAGE; PROPERTY RELATIONS; THE SALE OF CONJUGAL PROPERTY BY A SPOUSE WITHOUT THE OTHER'S CONSENT IS VOID.—** This Court, applying those Civil Code provisions, ruled in a number of cases that the sale of conjugal property by a spouse without the other's consent is void. All subsequent transferees of the conjugal property acquire no rights whatsoever from the conjugal property's unauthorized sale. A contract conveying conjugal properties entered into by the husband without the wife's consent may be annulled entirely.

5. **ID.; CONTRACTS; SPECIAL POWER OF ATTORNEY; ALL PARTIES TO A SPECIAL POWER OF ATTORNEY MUST PERSONALLY APPEAR BEFORE THE NOTARY PUBLIC TO ENSURE THAT THE SIGNATURE ON THE INSTRUMENT IS GENUINE; VIOLATION IN CASE AT BAR.—** In *Spouses Domingo v. Reed*, this Court nullified the Special Power of Attorney, which granted the wife authority to sell the conjugal property. There, the wife claimed that she transmitted a typewritten Special Power of Attorney to her husband who was then in the Middle East. It was returned to her with her husband's signature already affixed. She then had it notarized. In invalidating the document, this Court ruled that all parties to the Special Power of Attorney must personally appear before the notary public. Personal appearance guards against illegal acts and ensures that the signature on the instrument is genuine.

This Court further held that "even without expert testimony, the questionable circumstances surrounding the execution of the [Special Power of Attorney] already [cast] serious doubt on its genuineness." Here, an expert witness from the National Bureau of Investigation testified during trial that petitioner's signature in the Special Power of Attorney was forged. This was uncontroverted. Considering that petitioner was in Libya when the Special Power of Attorney was executed, and that an expert witness testified on the forgery of petitioner's signature, we rule that the Special Power of Attorney is void.

6. **ID.; PROPERTY; BUYER IN GOOD FAITH OR AN "INNOCENT PURCHASER FOR VALUE"; ELEMENTS WHICH MUST BE PRESENT TO JUSTIFY GOOD FAITH IN MERELY RELYING ON THE CERTIFICATE OF TITLE; ENUMERATED; NOT PRESENT IN CASE AT BAR.—** A person is a buyer in good faith or an "innocent purchaser for value" when he or she purchases and pays the fair price for a property, absent any notice that another has a right over it. If the property is covered by a certificate of title, the buyer may rely on it and is not obliged to go beyond its four (4) corners. *Sigaya v. Mayuga*, however, provides for situations where this rule does not apply: [T]his rule shall not apply when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry or when the purchaser has knowledge of a defect or the lack of title in his vendor or of sufficient facts to induce a reasonably prudent man to inquire into the status of the title of the property in litigation. To justify good faith in merely relying on the certificate of title, the following must be present: [F]irst, the seller is the registered owner of the land; second, the latter is in possession thereof; and third, at the time of the sale, the buyer was not aware of any claim or interest of some other person in the property, or of any defect or restriction in the title of the seller or in his capacity to convey title to the property. Here, the land has always been possessed by petitioner, and not respondent Ramon Malabanan who sold it. Respondent Dominador should have inquired about this before he purchased the property. Verifying the status of the property would not have been difficult for a seasoned businessman like him, who incidentally lives in the same neighborhood where the property is located.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Laysa Aceron-Papa Sayarot & Associates for respondents.

D E C I S I O N

LEONEN, *J.*:

For this Court's resolution is a case that arose from a Complaint[1] involving a 310-square meter property located in Lot 1146-B-2, Psd-04-011785 in Barangay Amaya, Tanza, Cavite and covered by Transfer Certificate of Title No. T-188590.[2]

Melinda Malabanan (Melinda) is the widow of Jose Malabanan (Jose).[3] In a December 18, 1984 Deed of Absolute Sale,[4] they acquired a 310-square meter lot, a portion of a 2,000-square meter land registered under Maria Cristina Rodriguez (Rodriguez).[5] Subsequently, on February 21, 1985, Transfer Certificate of Title No. T-188590 was issued to "Jose[,] married to Melinda[,]"[6] covering the disputed property.[7] The spouses built a house on the lot which the family had possessed since 1984.[8]

On October 13, 1984, Melinda left the Philippines to work in Libya. Unfortunately, Jose was murdered on June 12, 1985 prompting her to return home on June 25, 1985. She then returned to Libya on August 19, 1985, and only came home on November 8, 1990.[9]

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[1] *Rollo*, pp. 27-32.

[2] *Id*. at 108.

[3] *Id*.

[4] *Id*. at 62.

[5] *Id*. at 108.

[6] *Id*. at 109.

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

[8] *Id*. at 109.

[9] *Id*.

Later on, Melinda discovered that Transfer Certificate of Title No. T-188590 had long been canceled through a string of transactions, and that the property was registered under the name of Spouses Dominador III and Guia Montano (the Montano Spouses).[10] The following were executed:

> 1] [A] Special Power of Attorney was allegedly executed on March 20, 1985 by her husband, Jose Malabanan, with her conformity[,] authorizing her father-in-law Francisco Malabanan, Jr. to mortgage, lease or sell their property covered by TCT No. T-188590; 2] on the basis of said Special Power of Attorney, the subject property was sold by Francisco Malabanan, Jr. to Benjamin M. Lopez (Francisco's brother-in-law) via a Deed of Absolute Sale executed on May 29, 1985 and as a result, TCT No. T-188590 was canceled and [in] lieu thereof TCT No. T-195283 was issued on July 18, 1985 in the name of Benjamin Lopez[,] married to Antonia Lopez; 3] within the span of 3 months [,] Francisco Malabanan, Jr. bought back the subject property under a Deed of Absolute Sale dated September 9, 1985 and as a result, TCT No. T-195283 was canceled and a new TCT No. T-198039 was issued in the name of Francisco Malabanan, Jr.[,] married to Adelfina Mendoza on September 18, 1985.[11] (Citations omitted)

When Melinda's mother-in-law, Adelfina Mendoza (Adelfina) died, her family executed an Extrajudicial Settlement of her estate. The property, then covered by Transfer Certificate of Title No. T-198039, was adjudicated to Ramon Malabanan (Ramon), who was Jose's brother.[12]

On June 1, 1994, Melinda filed before the Regional Trial Court a Complaint for Annulment of Title with Damages[13] against Spouses Ramon and Prescila Malabanan (the Malabanan Spouses) and Francisco Malabanan (Francisco).

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[10] *Id*.

[11] *Id*. at 109-110.

[12] *Id*. at 110.

[13] *Id*. at 27-32.

On June 17, 1994, Ramon sold the property to the Montano Spouses, with whom Transfer Certificate of Title No. T-467540 was issued.[14]

Melinda later filed an Amended Complaint[15] to implead the Montano Spouses. She argued that the Special Power of Attorney was void as her signature in it was forged,[16] and that she and Jose remained the real owners of the property.[17] Further, she averred that she spent her earnings as an overseas worker in Libya to remodel their family home, all of which Francisco and the Malabanan Spouses had fully known.[18] She prayed for the nullification of the documents, which she claimed to have been illegally executed to dispossess her of her property.[19]

Francisco and the Malabanan Spouses, in their Amended Answer with Counterclaim,[20] countered that Francisco and Adelfina bought the property for their son, Jose, and Melinda as an advance on Jose's legitime.[21] Francisco, they added, paid for the construction of the house on the property. They contended that Melinda consented when Francisco reacquired the property upon his son's death. He sold the property to his brother-in-law, Benjamin Lopez (Lopez), because he was short on cash; he later bought it back with his hard-earned money.[22]

Francisco and the Malabanan Spouses further claimed that the Extrajudicial Settlement of Adelfina's estate was legally executed. Melinda and her children, they argued, were excluded

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[14] *Id*. at 110.

[15] *Id*. at 35-42.

[16] *Id*. at 37.

[17] *Id*. at 36.

[18] *Id*. at 38.

[19] *Id*. at 39.

[20] *Id*. at 43-49.

[21] *Id*. at 44.

[22] *Id*. at 45.

because they had already received their share of inheritance from Adelfina.[23]

On the other hand, Dominador testified during trial that no adverse claim was annotated on Ramon's title when he decided to buy the property.[24] He discovered only after purchasing the property that the tax declaration on the house was in Melinda's name.[25] When he did, he offered to pay Melinda ₱100,000.00 for the cost of the house, but no longer pursued it when Melinda refused and asked for ₱300,000.00 instead. Through all of this, Melinda allegedly did not inform him that she had a claim over the property against Francisco and the Malabanan Spouses.[26]

In its July 9, 2004 Decision,[27] the Regional Trial Court ruled in favor of Melinda. It found that she has proved her ownership over the property, which was fraudulently transferred through Francisco's clever scheme. The trial court gave credence to the expert witness' testimony that Melinda's signature was forged. It noted that Francisco himself had admitted that Melinda was abroad when the Special Power of Attorney was executed.[28]

The trial court nullified the Special Power of Attorney and the subsequent transactions. The dispositive portion of its Decision read:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff as against all defendants:
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> A. Ordering the nullity of:
>
> 1. The Special Power of Attorney in favor of defendant Francisco Malabanan, Jr.;

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[23] *Id*. at 46-47.

[24] *Id*. at 57.

[25] *Id*. at 58.

[26] *Id*. at 58.

[27] *Id*. at 50-64. The Decision, in Civil Case No. TM-534, was penned by Executive Judge Aurelio G. Icasiano, Jr. of Branch 23, Regional Trial Court, Trece Martires City.

[28] *Id*. at 62.

2. The Deed of Sale executed in favor of Benjamin Lopez and the Counter Deed of Sale in favor of defendant Francisco Malabanan, Jr.;

3. The Extra Judicial Partition in favor of defendant Ramon Malabanan with respect to subject property; and

4. The sale executed by Ramon Malabanan in favor of Sps. Dominador and Guia Montano having acquired the property in bad faith.

B. Ordering the Register of Deeds to CANCEL Transfer Certificate of Title NO. T-467540 and to reinstate the original title, Transfer Certificate of Title No. T-188590 in the name of the plaintiff.

C. Ordering defendants to pay:

1. The amount of Twenty Thousand (₱20,000.00) Pesos as attorney's fees; (*sic*)

2. The amount of Fifty Thousand (₱50,000.00) Pesos as moral damages; (*sic*)

3. The amount of Fifty Thousand (₱50,000.00) Pesos as exemplary damages; and (*sic*)

4. The cost of suit.

SO ORDERED.[29]

On appeal, the Court of Appeals, in a June 17, 2008 Decision,[30] set aside the trial court's ruling and ordered the Complaint's dismissal. It gave weight to Francisco's claim that the property was an advance on Jose's legitime. It found that in the Special Power of Attorney, Jose himself acknowledged executing it as gratitude to his parents "who actually paid for the whole cost of said property and caused the registration of the same in my name."[31] The Court of Appeals ruled that this was a

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

[30] *Id*. at 107-119. The Decision, in CA G.R. CV No. 87400, was penned by Associate Justice Rosmari D. Carandang (now a member of this Court), and concurred in by Associate Justices Portia Aliño- Hormachuelos and Estela M. Perlas-Bernabe (now a member of this Court) of the Second Division, Court of Appeals, Manila.

[31] *Id*. at 116.

declaration against Jose's actual and real interest under Rule 130, Section 38 of the Rules of Court.[32]

The Court of Appeals further held that under Article 1448[33] of the Civil Code, there is a disputable presumption that a gift was in favor of the child when a parent pays for a property but its title is conveyed to the child.[34] Likewise, the Court of Appeals cited Article 153[35] of the Civil Code, in relation to Article 148[36]

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[32] RULES OF COURT, Rule 130, Sec. 38 provides:

SEC. 38. Declaration against interest. — The declaration made by a person deceased, or unable to testify, against the interest of the declarant, if the fact asserted in the declaration was at the time it was made so far contrary to declarant's own interest, that a reasonable man in his position would not have made the declaration unless he believed it to be true, may be received in evidence against himself or his successors in interest and against third persons.

[33] CIVIL CODE, Art. 1448 provides:

ARTICLE 1448. There is an implied trust when property is sold, and the legal estate is granted to one party but the price is paid by another for the purpose of having the beneficial interest of the property. The former is the trustee, while the latter is the beneficiary. However, if the person to whom the title is conveyed is a child, legitimate or illegitimate, of the one paying the price of the sale, no trust is implied by law, it being disputably presumed that there is a gift in favor of the child.

[34] *Rollo*, p. 116.

[35] CIVIL CODE, Art. 153 provides:

ARTICLE 153. The following are conjugal partnership property:

(1) That which is acquired by onerous title during the marriage at the expense of the common fund, whether the acquisition be for the partnership, or for only one of the spouses;

(2) That which is obtained by the industry, or work, or as salary of the spouses, or of either of them;

(3) The fruits, rents or interests received or due during the marriage, coming from the common property or from the exclusive property of each spouse.

[36] CIVIL CODE, Art. 148 provides:

ARTICLE 148. The following shall be the exclusive property of each spouse:

(1) That which is brought to the marriage as his or her own;

of the Civil Code and Article 109,[37] Paragraph 2 of the Family Code. Based on these statutes, it found that since Jose acquired the gift by gratuitous title during marriage, the property was excluded from the conjugal partnership of gains. As it was his exclusive property, Jose can dispose it without Melinda's consent. Hence, Melinda's signature being forged in the Special Power of Attorney did not invalidate the authority Jose had given his father.[38]

The dispositive portion of the Court of Appeals Decision read:

> **WHEREFORE**, premises considered, the Decision dated July 9, 2004 of the Regional Trial Court of Trece Martires City, Cavite, in Civil Case No. TM534, is hereby **SET ASIDE** and a new one is entered DISMISSING the complaint.
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> SO ORDERED.[39] (Emphasis in the original)

In her Motion for Reconsideration,[40] Melinda argued that the Court of Appeals erred in failing to consider that only Jose's name appeared in the Deed of Absolute Sale from Rodriguez,

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(2) That which each acquires, during the marriage, by lucrative title;

(3) That which is acquired by right of redemption or by exchange with other property belonging to only one of the spouses;

(4) That which is purchased with exclusive money of the wife or of the husband.

[37] FAMILY CODE, Art. 109 provides:

ARTICLE 109. The following shall be the exclusive property of each spouse:

(1) That which is brought to the marriage as his or her own;

(2) That which each acquires during the marriage by gratuitous title;

(3) That which is acquired by right of redemption, by barter or by exchange with property belonging to only one of the spouses; and

(4) That which is purchased with exclusive money of the wife or of the husband.

[38] *Rollo*, pp. 117-118.

[39] *Id.* at 118.

[40] *Id.* at 120-126.

and that the title to the property was issued in Jose's and Melinda's names. Further, these transactions transpired during Jose and Melinda's marriage.[41] She averred that Francisco's bare allegations failed to rebut the presumption that the property was, indeed, conjugal.[42] She reiterated that her signature in the Special Power of Attorney had been forged, and thus, no valid act can come from it.[43] Finally, she stressed that as a seasoned businessman, Dominador should have inspected the property, which was near his home.[44]

The Court of Appeals denied Melinda's Motion in a March 23, 2009 Resolution,[45] holding that the arguments raised were extensively discussed in its Decision.[46]

Hence, on May 15, 2009, Melinda filed this Petition for Review on *Certiorari*[47] against Francisco, the Malabanan Spouses, and the Montano Spouses.

Petitioner maintains that she has provided sufficient evidence to support her claim.[48] She argues that respondents failed to rebut the disputable presumption that a property acquired by spouses during their marriage forms part of their community of properties.[49] Furthermore, under Article 156[50] of the Family

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[41] *Id*. at 121.

[42] *Id*. at 122.

[43] *Id*. at 122-123.

[44] *Id*. at 123-124.

[45] *Id*. at 128-129. The Resolution, in CA G.R. CV No. 87400, was penned by Associate Justice Rosmari D. Carandang (now a member of this Court), and concurred in by Associate Justices Portia Aliño-Hormachuelos and Estela M. Perlas-Bernabe (now a member of this Court) of the Former Second Division, Court of Appeals, Manila.

[46] *Id*. at 129.

[47] *Id*. at 10-26.

[48] *Id*. at 17-18.

[49] *Id*. at 18.

[50] FAMILY CODE, Art. 156 provides:

Code, the family home may only be disposed upon the written consent of the family constituting it.[51] Her signature, she avers, must be obtained to sell the house. Finally, she contends that the Montano Spouses were buyers in bad faith for not exercising ordinary prudence as respondent Dominador purchased the property knowing that respondent Ramon did not possess it.[52]

In its January 25, 2016 Resolution,[53] this Court dispensed with respondents' Comment.[54]

For resolution is the lone issue of whether or not the property formerly covered by Transfer Certificate of Title No. T-188590

ARTICLE 156. The family home must be part of the properties of the absolute community or the conjugal partnership, or of the exclusive properties of either spouse with the latter's consent. It may also be constituted by an unmarried head of a family on his or her own property.

Nevertheless, property that is the subject of a conditional sale on installments where ownership is reserved by the vendor only to guarantee payment of the purchase price may be constituted as a family home.

[51] *Rollo*, p. 19.

[52] *Id*. at 21.

[53] *Id*. at 201.

[54] In a July 1, 2009 Resolution, this Court required respondents to comment on the Petition; however, it was unheeded. As the copy of this Resolution sent to the respondent's counsel was returned unserved, this Court ordered that it be sent to respondents themselves in a February 8, 2010 Resolution.

On August 18, 2010, this Court noted a letter from respondent Francisco's daughter, stating that she refuses to be a substitute party-defendant and would not be filing a Comment.

In a December 1, 2010 Resolution, this Court required respondents to send their counsel's complete address. A copy of this Resolution was returned unserved. Thus, this Court required the Integrated Bar of the Philippines to submit the correct and present address of the counsel of record, to which they replied that they had no record of it.

On February 25, 2013, this Court deemed as served by substituted service the returned and unserved copies of the previous Resolutions sent to the respondents and their counsel.

In a January 25, 2016 Resolution, this Court resolved to dispense with the respondents' Comment.

was conjugal, and thus, rendering its sale without the wife's consent void.

This Court grants the Petition.

I

This Court's appellate review is discretionary.[55] A question of fact, which, in this case, is the determination of whether the property formerly covered by Transfer Certificate of Title No. T-188590 was conjugal, generally cannot be raised in a petition for review on *certiorari*.[56] A question of fact exists when there is doubt on the truth of the allegations and the issue entails a review of the evidence presented.[57] Moreover, the findings of the Court of Appeals are generally binding on this Court. These rules allow certain exceptions enumerated in *Pascual v. Burgos*:[58]

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond

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[55] *Pascual v. Burgos*, 776 Phil. 167 (2016) [Per *J*. Leonen, Second Division].

[56] 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, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and *shall raise only questions of law, which must be distinctly set forth*. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency. (Emphasis supplied.)

[57] *Westmont Investment Corp. v. Francia, Jr.*, 678 Phil. 180 (2011) [Per *J*. Mendoza, Third Division].

[58] 776 Phil. 167 (2016) [Per *J*. Leonen, Second Division].

the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[59] (Citation omitted)

Here, while the findings of the Court of Appeals are contrary to those of the trial court, this does not at once permit a factual review, but simply presents a *prima facie* basis for such.[60] In *Pascual*:

> While the factual findings of the Court of Appeals are contrary to those of the trial court, this alone does not automatically warrant a review of factual findings by this court.. . .
>
> . . . . . .
>
> The lower courts' disagreement as to their factual findings, at most, presents only *prima facie* basis for recourse to this court:
>
> > One such exception, of course, is where — as here — the factual findings of the Court of Appeals conflict with those of the Trial Court, but it is one that must be invoked and applied only with great circumspection and upon a clear showing that manifestly correct findings have been unwarrantedly rejected or reversed. On the one hand, the trial court is the beneficiary of the rule that its findings of fact are entitled to great weight and respect; on the other, the Court of Appeals is, as a general proposition, the ultimate judge of the facts in a case appealed to it — a prerogative which is at the same time a duty conferred upon it by law. Thus, while a conflict in their findings may *prima facie* provide basis for a recourse to this Court, only a showing, on the face of the record, of gross or extraordinary

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[59] *Id*. at 182-183 citing *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225, 232 (1990) [Per *J*. Bidin, Third Division].

[60] *Pascual v. Burgos*, 776 Phil. 167 (2016) [Per *J*. Leonen, Second Division].

misperception or manifest bias in the Appellate Court's reading of the evidence will justify this Court's intervention by way of assuming a function usually within the former's exclusive province.[61] (Citation omitted)

Petitioner urges this Court to review the factual findings in this case as "some facts or circumstances that may affect the result of the case have been overlooked[.]"[62] In other words, she alleges that there was a misapprehension of facts. This Court agrees.

II

On one hand, petitioner's claim rests on the Deed of Absolute Sale her husband Jose executed with Rodriguez, as well as Transfer Certificate of Title No. T-188590 issued during their marriage. On the other hand, respondent Francisco maintained that he paid for the land and the house construction on the property. The Court of Appeals' finding that the property was exclusively owned by Jose was premised on: (1) the Deed of Conditional Sale between Jose and Rodriguez, which do not appear on record; and (2) Jose's statement in the Special Power of Attorney.

II (A)

The circumstances here transpired prior to the effectivity of the Family Code on August 3, 1988. Thus, petitioner and Jose's marriage and property relations are governed by the Civil Code.

Under the Civil Code, property acquired during marriage is presumed to be conjugal.[63] There is no need to prove that the

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[61] *Id.* at 188.

[62] *Rollo*, p. 17.

[63] CIVIL CODE, Art. 160 provides:

ARTICLE 160. All property of the marriage is presumed to belong to the conjugal partnership unless it be proved that it pertains exclusively to the husband or to the wife.

money used to purchase a property came from the conjugal fund. What must be established is that the property was acquired during marriage.[64] Only through "clear, categorical, and convincing"[65] proof to the contrary will it be considered the paraphernal property of one (1) of the spouses.[66]

Here, the pieces of evidence presented by respondents, who had the burden of proving that the property was not conjugal,[67] were insufficient to overturn this presumption.

To recall, on September 20, 1984, Jose executed a Deed of Conditional Sale with Rodriguez, where respondent Francisco's down payment was allegedly reflected.[68] The following month, on October 13, 1984, Melinda left for Libya.[69] On December 18, 1984, the Deed of Absolute Sale between Jose and Rodriguez was executed.[70] The house underwent construction while Melinda was in Libya and before Jose's death on June 12, 1985.[71]

These events refute Francisco's claim that petitioner and Jose had no means to purchase the lot as they were jobless. Petitioner was then working in Libya, presumably earning income when the Deed of Absolute Sale was executed and the house was constructed. These circumstances—along with the execution of the Deed of Absolute Sale between Jose and Rodriguez, and the title over the property being in Jose's name ("Jose[,]

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[64] *Spouses Tan v. Court of Appeals*, 339 Phil. 423 (1997) [Per *J*. Kapunan, First Division].

[65] *Spouses Go v. Yamane*, 522 Phil. 653, 656 (2006) [Per *C.J*. Panganiban, First Division].

[66] *Spouses Go v. Yamane*, 522 Phil. 653 (2006) [Per *C.J*. Panganiban, First Division].

[67] *Tan v. Court of Appeals*, 339 Phil. 423 (1997) [Per *J*. Kapunan, First Division].

[68] *Rollo*, pp. 115-116.

[69] *Id*. at 109.

[70] *Id*. at 60.

[71] *Id*. at 61.

married to Melinda Malabanan")—sufficiently show that the property was, indeed, conjugal.

While respondent Francisco did not waver in his claim that he and Adelfina bought the lot for petitioner and Jose, we sustain the trial court in deeming this as self-serving. It does not escape this Court that respondent Francisco's characterization of the property changed throughout trial and on appeal.

Initially, in his Amended Answer with Counterclaim, respondent Francisco claimed that the property was Jose's advance legitime.[72] Later, during trial, he testified that the property was for a joint business, where he was the capitalist and Jose was the industrial partner.[73] On appeal, he contended that he had a right to recover the property because their joint venture did not materialize.[74] When confronted with the assertion that petitioner, Jose, and their children had been excluded in the Extrajudicial Settlement of Adelfina's estate, respondent Francisco claimed that they had already received advances in Jose's legitime.[75] Whatever these advances were—as he failed to mention what they were—did not include the disputed property, contrary to what he suggested. It was in the extrajudicial settlement where the property was transferred to respondent Ramon; it could not have been among the asserted "advances on the legitime."[76]

Furthermore, respondent Francisco argued that the property was sold to his brother-in-law, Lopez, with Jose's consent because the latter needed money. From the proceeds of the sale, he lent ₱20,000.00 to Jose, with the remaining ₱11,000.00 as balance.[77] Not only is this inconsistent with the claim of advanced inheritance, but also with the alleged prospective

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[72] *Id*. at 44.

[73] *Id*. at 61.

[74] *Id*. at 77.

[75] *Id*. at 44.

[76] *Id*.

[77] *Id*. at 45 and 78.

business venture. If the property was Jose's legitime, then the money should have been fully and freely given to him as it was from the sale of his property. Respondent Francisco's participation in the transaction was not needed. If, on the other hand, the property was for a business that did not materialize, then petitioner, Jose, and their children should have been included in the Extrajudicial Settlement.

It would appear that respondent Francisco modified his narrative depending on the allegations to which he responded. This proved detrimental as his testimony, when taken as a whole and weighed against his actions, was self-contradicting.

In *Halili v. Court of Industrial Relations*:[78]

> [T]he best proof of ownership of a piece of land is the Certificate of Title.
>
> . . . . . .
>
> A certificate of title accumulates in one document a precise and correct statement of the exact status of the fee held by its owner. The certificate, in the absence of fraud, is the evidence of title and shows exactly the real interest of its owner. The title once registered, with very few exceptions, should not thereafter be impugned, altered, changed, modified, enlarged, or diminished, except in some direct proceeding permitted by law. Otherwise, all security in registered titles would be lost.[79] (Citations omitted)

A certificate of title is the best evidence of ownership of a property.[80] Respondents neither alleged fraud nor assailed the issuance of the title in Jose's favor. This certificate of title, when taken with the Deed of Absolute Sale between Jose and Rodriguez, as well as the tax declarations in petitioner's name, weigh more heavily than respondents' bare claims in establishing petitioner and Jose's ownership of the property. Respondent Francisco, on the contrary, failed to present any evidence to

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[78] 326 Phil. 982 (1996) [Per J. Hermosisima, Jr., *En Banc*].

[79] *Id*. at 991-992.

[80] *Halili v. Court of Industrial Relations*, 326 Phil. 982 (1996) [Per J. Hermosisima, Jr., *En Banc*].

prove that he paid for the kind and the construction of the house on the property.

Moreover, the trial court was in a better position to evaluate the evidence and assess the veracity of the parties' allegations, since it had observed the litigants' demeanors when they took the stand. The totality of evidence adduced during trial leads this Court to sustain the trial court's finding that the property was, indeed, conjugal.

II (B)

Since this case involves conjugal property, Articles 165 and 166 of the Civil Code are relevant:

> ARTICLE 165. The husband is the administrator of the conjugal partnership.
>
> ARTICLE 166. Unless the wife has been declared a *non compos mentis* or a spendthrift, or is under civil interdiction or is confined in a leprosarium, the husband cannot alienate or encumber any real property of the conjugal partnership without the wife's consent. If she refuses unreasonably to give her consent, the court may compel her to grant the same.
>
> This article shall not apply to property acquired by the conjugal partnership before the effective date of this Code. (Emphasis in the original)

This Court, applying those Civil Code provisions, ruled in a number of cases that the sale of conjugal property by a spouse without the other's consent is void.[81] All subsequent transferees of the conjugal property acquire no rights whatsoever from the conjugal property's unauthorized sale.

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[81] *Tolentino v. Cardenas*, 123 Phil. 517 (1966) [Per J. Barrera, *En Banc*]; *Bucoy v. Paulino*, 131 Phil. 790 (1968) [Per J. Sanchez, *En Banc*]; *Garcia v. Court of Appeals*, 215 Phil. 380 (1984) [Per J. Aquino, Second Division]; and *Spouses Bautista v. Silva*, 533 Phil. 627 (2006) [Per J. Austria-Martinez, First Division].

A contract conveying conjugal properties entered into by the husband without the wife's consent may be annulled entirely. In *Bucoy v. Paulino*:[82]

As the statute now stands, the right of the wife is directed at "the annulment of any contract," referring to real property of the conjugal partnership entered into by the husband "without her consent."

The plain meaning attached to the plain language of the law is that the contract, in its entirety, executed by the husband without the wife's consent, may be annulled by the wife. Had Congress intended to limit such annulment in so far as the contract shall "prejudice" the wife, such limitation should have been spelled out in the statute. It is not the legitimate concern of this Court to recast the law. As Mr. Justice Jose B. L. Reyes of this Court and Judge Ricardo C. Puno of the Court of First Instance correctly stated, "[t]he rule (in the first sentence of Article 173) revokes Baello *vs.* Villanueva, . . . and Coque *vs*. Navas Sioca, . . ." in which cases annulment was held to refer only to the extent of the one-half interest of the wife. . .

The necessity to strike down the contract . . . as a whole, not merely as to the share of the wife, is not without its basis in the common-sense rule. To be underscored here is that upon the provisions of Articles 161, 162 and 163 of the Civil Code, the conjugal partnership is liable for many obligations while the conjugal partnership exists. Not only that. The conjugal property is even subject to the payment of debts contracted by either spouse before the marriage, as those for the payment of fines and indemnities imposed upon them after the responsibilities in Article 161 have been covered (Article 163, par. 3), if it turns out that the spouse who is bound thereby, "should have no exclusive property or if it should be insufficient." These are considerations that go beyond the mere equitable share of the wife in the property. These are reasons enough for the husband to be stopped from disposing of the conjugal property without the consent of the wife. Even more fundamental is the fact that the nullity is decreed by the Code not on the basis of prejudice but lack of consent of an indispensable party to the contract under Article 166.[83] (Citations omitted)

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[82] 131 Phil. 790 (1968) [Per *J*. Sanchez, *En Banc*].

[83] *Id*. at 804-805.

Here, Jose had no right to either unilaterally dispose the conjugal property or grant respondent Francisco this authority through the supposed Special Power of Attorney.

II (C)

The transactions that transferred ownership of the disputed property arose from the March 20, 1985 Special Power of Attorney, which petitioner has consistently assailed.

In his attempt to disavow knowledge of or participation in petitioner's forged signature in the Special Power of Attorney, respondent Francisco claimed that Jose handed him the document with petitioner's signature affixed in it. However, he was resolute in his account that petitioner was in Libya when the house was being constructed.[84] As underscored by the trial court, he knew that petitioner was in Libya when the Special Power of Attorney was executed;[85] yet, he sold the property without question. By itself, this does not inspire confidence in respondents' claims.

In *Spouses Domingo v. Reed*,[86] this Court nullified the Special Power of Attorney, which granted the wife authority to sell the conjugal property. There, the wife claimed that she transmitted a typewritten Special Power of Attorney to her husband who was then in the Middle East. It was returned to her with her husband's signature already affixed. She then had it notarized.

In invalidating the document, this Court ruled that all parties to the Special Power of Attorney must personally appear before the notary public. Personal appearance guards against illegal acts and ensures that the signature on the instrument is genuine.[87] This Court further held that "even without expert testimony, the questionable circumstances surrounding the execution of the [Special Power of Attorney] already [cast] serious doubt on its genuineness."[88]

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[84] *Rollo*, p. 78.

[85] *Id*. at 62.

[86] 513 Phil. 339 (2005) [Per *J*. Panganiban, Third Division].

[87] *Id*.

[88] *Id*. at 351.

Here, an expert witness from the National Bureau of Investigation testified during trial that petitioner's signature in the Special Power of Attorney was forged. This was uncontroverted.

Considering that petitioner was in Libya when the Special Power of Attorney was executed, and that an expert witness testified on the forgery of petitioner's signature, we rule that the Special Power of Attorney is void.

As a final note on this point, in *Lastrilla v. Granda*:[89]

> In the absence of satisfactory explanation, one found in possession of and who used a forged document is the forger of said document. If a person had in his possession a falsified document and he made use of it, taking advantage of it and profiting thereby, the clear presumption is that he is the material author of the falsification.
>
> The presumptions elicited by the evidence on record are not of little significance. The effect of a presumption upon the burden of proof is to create the need of presenting evidence to overcome the *prima facie* case created, thereby which, if no contrary proof is offered, will prevail.[90] (Emphasis in the original, citations omitted)

Here, it was through the Special Power of Attorney, where petitioner's signature was forged, that respondent Fernando was able to sell the property to his brother-in-law. A presumption that he was the author of the falsification arose.[91] Without contrary evidence, which he did not even attempt to adduce, the presumption stands.

This Court cannot allow respondent Fernando, the presumed perpetrator of the forgery in the Special Power of Attorney, to benefit from his nefarious acts.

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[89] 516 Phil. 667 (2006) [Per *J*. Puno, Second Division].

[90] *Id*. at 685-686.

[91] *Id*.

III

Finally, we agree with the trial court's finding that the Montano Spouses were not buyers in good faith.

A person is a buyer in good faith or an "innocent purchaser for value"[92] when he or she purchases and pays the fair price for a property, absent any notice that another has a right over it.[93] If the property is covered by a certificate of title, the buyer may rely on it and is not obliged to go beyond its four (4) corners.[94] *Sigaya v. Mayuga*,[95] however, provides for situations where this rule does not apply:

> [T]his rule shall not apply when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry or when the purchaser has knowledge of a defect or the lack of title in his vendor or of sufficient facts to induce a reasonably prudent man to inquire into the status of the title of the property in litigation.[96] (Citation omitted)

To justify good faith in merely relying on the certificate of title, the following must be present:

> [F]irst, the seller is the registered owner of the land; second, the latter is in possession thereof; and third, at the time of the sale, the buyer was not aware of any claim or interest of some other person in the property, or of any defect or restriction in the title of the seller or in his capacity to convey title to the property.[97] (Citations omitted)

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[92] *Hemedes v. Court of Appeals*, 374 Phil. 692, 718 (1999) [Per J. Gonzaga-Reyes, Third Division].

[93] *Hemedes v. Court of Appeals*, 374 Phil. 692 (1999) [Per J. Gonzaga-Reyes, Third Division].

[94] *Id.*

[95] *Sigaya v. Mayuga,* 504 Phil. 600 (2005) [Per J. Austria-Martinez, Second Division].

[96] *Id.* at 614.

[97] *Spouses Bautista v. Silva,* 533 Phil. 627, 639 (2006) [Per J. Austria-Martinez, First Division].

Here, the land has always been possessed by petitioner, and not respondent Ramon Malabanan who sold it. Respondent Dominador should have inquired about this before he purchased the property. Verifying the status of the property would not have been difficult for a seasoned businessman like him, who incidentally lives in the same neighborhood where the property is located.

WHEREFORE, the Petition for Review on *Certiorari* is **GRANTED**. The Court of Appeals June 17, 2008 Decision and March 23, 2009 Resolution in CA G.R. CV No. 87400 are **REVERSED and SET ASIDE**. The July 9, 2004 Decision of the Regional Trial Court, Branch 23, Trece Martires City in Civil Case No. TM-534 is **REINSTATED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 195215. March 6, 2019]

EMPIRE INSURANCE, INC., MARIO A. REMOROSA (in his capacity as approving officer of Empire Insurance Company), VIRGINIA BELINDA S. OCAMPO, JOSE AUGUSTO G. SANTOS, and KATRINA G. SANTOS, *petitioners, vs.* **ATTY. MARCIANO S. BACALLA, JR., ATTY. EDUARDO M. ABACAN, ERLINDA U. LIM, FELICITO A.**

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[*] Designated additional Member for this case per Special Order No. 2624-P dated February 26, 2019.

MADAMBA, PEPITO M. DELGADO, and THE FEDERATION OF INVESTORS TULUNGAN, INC., *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; FILING FEE; THE COMPUTATION OF THE CORRECT AMOUNT OF FILING FEES TO BE PAID RESTS UPON THE DETERMINATION OF THE NATURE OF THE ACTION.—** The settled rule is that a case is deemed filed only upon the payment of the filing fee. The court acquires jurisdiction over the case only upon full payment of such prescribed filing fee. The computation of the correct amount of filing fees to be paid rests upon a determination of the nature of the action. Thus, in a money claim or a claim involving property, the filing fee is computed in relation to the value of the money or property claimed; while in an action incapable of pecuniary estimation, the Rules prescribe a determinate amount as filing fees.

2. **ID.; ID.; ID.; ID.; JURISPRUDENCE HAS LAID DOWN THE "PRIMARY OBJECTIVE" TEST TO DETERMINE IF AN ACTION IS INCAPABLE OF PECUNIARY ESTIMATION; ESTABLISHED IN CASE AT BAR.—** Jurisprudence has laid down the "primary objective" test to determine if an action is incapable of pecuniary estimation. This test is explained in the 1968 case of *Lapitan v. Scandia, Inc., et al.*, *viz.*: A review of the jurisprudence of this Court indicates that in determining whether an action is one the subject matter of which is not capable of pecuniary estimation, this Court has adopted the **criterion of first ascertaining the nature of the principal action or remedy sought**. x x x In *Lu v. Lu Ym, Sr., et al.*, the Court held that an action for "Declaration of Nullity of Share Issue, Receivership and Dissolution" was incapable of pecuniary estimation, because "*the annulment of the shares, the dissolution of the corporation and the appointment of receivers/management committee are actions which do not consist in the recovery of a sum of money. If, in the end, a sum of money or real property would be recovered, it would simply be the consequence of such principal action;*" and the plaintiffs therein "*do not claim to be the owners thereof entitled to be the transferees of the shares of stock.* x x x The Court

further noted in *Lu* that actions assailing the legality of a conveyance or for annulment of contract have been considered incapable of pecuniary estimation. x x x Seen in light of these doctrines, the Court holds that the action filed by the Bacalla group in the case at bar is incapable of pecuniary estimation. The action has for its primary objective the nullification of the transactions which brought the shares in dispute outside the control of the debtor, *i.e.*, Tibayan Group, and perforce to preserve them for inclusion in the assets to be liquidated. Furthermore, the Bacalla group does not assert direct, personal claims over the shares. Bacalla claims the shares only in his capacity as receiver of the Tibayan Group, while Abacan, *et al.* and FITI claim the shares only for purposes of having them included in the asset pool of the Tibayan Group, out of which their respective claims are to be paid. These circumstances distinguish the case at bar from those obtaining in *National Steel Corporation v. CA*, where the Court upheld the computation of filing fees on the basis of the market value of the shares in dispute, because the plaintiff therein lodged a direct and personal claim over the shares. The Court, therefore, held that the primary objective of the claim in that case was for recovery of property, hence, filing fees must be computed on the basis of the value of the shares as alleged by the claimant. Considering that the Bacalla group paid almost ₱hp 1,100,000.00 in filing fees, they have more than complied with the requirements of the Rules of Court.

3. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; THE PURPOSE OF PRELIMINARY INJUNCTION IS TO PREVENT THREATENED OR CONTINUOUS IRREMEDIABLE INJURY TO SOME OF THE PARTIES BEFORE THEIR CLAIMS CAN BE THOROUGHLY STUDIED AND ADJUDICATED; REQUISITES FOR THE VALID GRANT OF PRELIMINARY INJUNCTIVE RELIEF, ENUMERATED.— Commentators have explained that the purpose of preliminary injunction is "to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated. Its sole aim to preserve the status *quo* until the merits of the case can be heard fully," "by restraining action or interference or by furnishing preventive relief. The status *quo* is the last actual, peaceable, uncontested status which precedes the pending controversy." Jurisprudence has laid down the following requisites for the valid grant of

preliminary injunctive relief: (a) that the right to be protected exists *prima facie*; (b) that the act sought to be enjoined is violative of that right; and (c) that there is an urgent and paramount necessity for the writ to prevent serious damage. Elucidating on these requirements, the Court has held that the evidence required to justify the issuance of the writ need not be conclusive or complete; and only a sampling of evidence intended merely to give the court an idea of the justification for the preliminary injunction is required. There must be proof of an ostensible right to the final relief prayed for in the complaint. Ultimately, the grant of preliminary injunctive relief rests upon the sufficiency, of the allegations made in support thereof.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioners.
Veronica Gutierrez-De Vera for respondents.

D E C I S I O N

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

This is a petition for review on *certiorari*[1] under Rule 45 of the Revised Rules of Court which assails the Decision[2] and Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 95754, respectively, dated September 30, 2010 and January 17, 2011, which, in turn, affirmed the issuance of the assailed Orders by the Regional Trial Court (RTC) of Las Piñas City, Branch 253, in a complaint for securities fraud, annulment, specific performance, and preliminary injunction.

The Facts

This case is an offshoot of the liquidation proceedings of the Tibayan Group of Companies (Tibayan Group), involving the

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[1] *Rollo*, Volume I, pp. 11-29.

[2] Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Sesinando E. Villon and Mario V. Lopez concurring; *id*. at 44-63.

[3] *Id*. at 65.

recovery of 650,225 Prudential Bank common shares allegedly acquired in fraud of the Tibayan Group's investor-creditors, 230,225 shares of which formed part of the assets of TMG Holdings and 420,000 shares formed part of the assets of Cielo Azul Holdings Corporation. Both entities were allegedly dummy corporations used by the Tibayan Group to dispose of assets in fraud of creditors by using illegally transferred assets to buy and sell shares of stock, some of which were acquired by petitioner Empire Insurance, Inc. (EII), Virginia Belinda S. Ocampo, Jose Augusto G. Santos, and Katrina G. Santos.

On September 24, 2004, the RTC of Las Pinas City, Branch 253 granted the petition in Civil Case No. LP-04-0082, entitled *In the matter of the Petition for Involuntary Dissolution with Prayer for the Appointment of a Receiver and Management Committee, Eduardo M. Abacan, et al. v. Tibayan Group of Investment Company, et al.* The dispositive portion of the Decision[4] reads:

> WHEREFORE, premises considered, finding merit to the instant petition for involuntary dissolution, the same is GRANTED.
>
> Accordingly, judgment is rendered declaring the dissolution of the hereunder-named respondent corporations pursuant to the provisions of Sections 121 and 122 of the *Corporation Code of the Philippines*:
>
> Tibayan Group of Investment Company, Inc.
> Tibayan Management Group International Holdings Co. Ltd.
> TG Asset Management Corporation
> MATCOR Holdings Company Ltd.
> JETCOR Equity Company Ltd.
> Sta. Rosa Management and Trading Corporation
> Westar Royalty Management and Trading Corporation
> Starboard Management and Trading Corporation
> United Alpa Management and Trading Corporation
> Global Progress Management and Trading Corporation
> Athon Management and Trading Corporation
> Diamond Star Management and Trading Corporation

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[4] Rendered by Acting Presiding Judge Elizabeth Yu-Guray; *id*. at 453-462.

Likewise, all claims of the petitioners herein and all other creditors shall be paid, as far as practicable, out of the assets and other properties of respondents Jesus V. Tibayan, Palmy B. Tibayan, the above-named corporations and all other officers and directors, nominees and/or dummies.

Furthermore, the Receiver Atty. Marciano S. Bacalla, Jr. is ordered to immediately effect the liquidation process pursuant to Section 122 of the Corporation Code and exercise any and all of the powers enumerated under Section 5, Rule 9 of the *Interim Rules Governing Intra-Corporate Controversies under RA 8799*, and such other powers as may be deemed necessary, just and equitable under the premises and / or circumstances.

Furnish a copy of this Decision to the Securities and Exchange Commission for its information and appropriate action.

SO ORDERED.[5]

On August 25, 2005, Atty. Marciano S. Bacalla, Jr. (Bacalla), in his capacity as the court-appointed receiver of the Tibayan Group, filed a "Very Urgent" application for injunctive relief before the trial court, seeking to enjoin the holders of the Prudential Bank shares from selling or otherwise disposing the same to other parties. The trial court, in its Resolution dated September 15, 2005, granted the application and further authorized Bacalla to prosecute an action to recover the shares.

Bacalla, together with certain Tibayan Group investors who filed the dissolution suit (hereinafter referred to as the Bacalla group), thus filed a case for securities fraud, declaration of nullity, and specific performance with prayer for issuance of writ of preliminary injunction before the RTC of Las Pinas City, impleading the Tibayan Group and its officers,[6] its alleged dummy corporations, the stock brokerage firms

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[5] *Id*. at 346-347.

[6] Of the defendants, Jamcor Holdings Corporation and Cielo Azul Holdings Corporation are either member corporations or alleged dummies of the Tibayan Group; while Jesus V. Tibayan and Liboro E. Elacio are corporate officers of the Tibayan Group.

which brokered the sales,[7] and the subsequent buyers of the Prudential Bank shares,[8] as defendants.[9] The

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[7] Defendants First Orient Securities, Inc. and Trinidad Y. Kalaw.

[8] All defendants other than those listed in footnotes 6 and 7, including herein petitioners EII, *et al*., are the end-buyers of the Prudential Bank shares. They are alleged to "*have related interests with Prudential Bank in sales transactions coursed through the [Philippine Stock Exchange] but in reality were PRIVATELY NEGOTIATED BLOCK SALES and thus considered NON-EXCHANGE TRANSACTIONS*." It is further alleged that the transactions which led to the acquisition of the shares by these defendants are "improper matched orders" which are considered unlawful and manipulative acts under Section 24.1(a)(ii) of the Securities Regulation Code; and that these transactions were committed by the Tibayan Group in conspiracy and collusion with the end-buyers, including the herein petitioners. *See* Complaint, *rollo*, Vol. I, pp. 107-112. The complaint further alleges, in its third cause of action, that petitioner Empire Insurance, Inc. was motivated to buy the shares in dispute to be rid of the embarrassing situation of having an affiliated company (Prudential Bank) whose major stockholders are persons and entities associated with the Tibayan Group, which at that time was under investigation by the Securities and Exchange Commission; and that the payment for the sale of the shares from Cielo Azul to Empire Insurance was tainted with irregularities. *See* Complaint, *rollo*, Vol. I, pp. 142-144. Finally, it was further alleged that the acquisition of Prudential Bank shares by herein petitioners Jose Augusto G. Santos and Katrina G. Santos was attended by irregularities which are indicia of fraudulent disposition of shares. *See* Complaint, *rollo*, Vol. I, pp. 117-130. *In toto*, these circumstances, among others, attendant to the sales of the shares are alleged to be in violation of Sections 24 and 26 of the Securities Regulation Code, hence, the sale transactions are void. *See* Complaint, *rollo*, Vol. I, p. 130.

[9] The Complaint was captioned "*Atty. Marciano S. Bacalla, Jr. in his capacity as court-appointed Receiver and as legal substitute of the Tibayan Group of Companies, Eduardo M. Abacan, Erlinda U. Lim, Felicito A. Madamba, Pepito M. Delgado, in their own behalf and as members of the Federation of Investors Tulungan, Inc., Federation of Investors Tulungan, Inc., plaintiffs, v. Prudential Bank Employees Retirement Fund, Lauro Jocson in his capacity as approving officer of Prudential Bank — Trust Division, Empire Insurance Company, Mario A. Remorosa in his capacity as approving officer of Empire Insurance Company, A.J. Thomas S. Barrera, Bella Aurora S. Barrera, Karla S. Barrera, Virginia Victoria S. Barrera, Ma. Remedios E. Camara, Augusto S. Estrada, Ramon S. Estrada, Augusto Angel S. Gonzales, Clarissa S. Gonzales, Ma. Blanquita S. Gonzales, Renato S. Gonzales, Jr., Susan S. Luk, Virginia Belinda S. Ocampo, Ana Maria G.*

complaint,[10] dated October 14, 2005, alleged that the shares were originally acquired by TMG Holdings and Cielo Azul Holdings Corporation (CAHC) using the Tibayan Group's corporate funds; and were then sold by these dummy corporations to the defendants, in fraud of the investor-creditors of the Tibayan Group. To support the prayer for a writ of preliminary injunction, the complaint further alleged that the shares are in danger of being dissipated because the Securities and Exchange Commission (SEC) has received a tender offer to purchase them from the defendants, which would place them beyond the reach of the Bacalla group. Thus, it was prayed *inter alia* that the trial court issue a writ of preliminary injunction to enjoin and prohibit the defendants from selling or otherwise disposing of the shares in dispute to other persons until the final resolution of the case. In computing the amount of filing fees, the clerk of court used the par value of the shares (Php 100.00) as basis.

In their answer, defendants countered that: 1) the filing fees were deficient because the correct basis of computation should have been the market value of the shares, which was alleged to be at Php 400.00 to 700.00, thus, the trial court did not acquire jurisdiction; 2) the complaint failed to state a cause of action; 3) Bacalla and the Federation of Investors Tulungan, Inc. (FITI)

Santos, Carlos Eduardo G. Santos, Jose Augusto G. Santos, Katrina G. Santos, Ma. Magdalena G. Santos, Ma. Rowena O. Santos, Ma. Virginia Isabel O. Santos, Patricia G. Santos, Raphael O. Santos, Roman O. Santos, Jr., Santiago S. Syjuco III, Sylvia S. Tantuico, Cecilia S. Vergel de Dios, Eric Thomas S. Vergel de Dios, Ernesto S. Vergel de Dios, Felisa S. Vergel de Dios, Francisco Eduardo S. Vergel de Dios, Gloria Lee Carmen S. Vergel de Dios, Jose S. Vergel de Dios, Katherine Gail S. Vergel de Dios, Roman S. Vergel de Dios, First Orient Securities Inc., Trinidad Y. Kalaw in his capacity as President and General Manager of First Orient Securities, Inc., Prudential Bank and Trust Company, Felipe C. Gella in his capacity as Corporate Secretary of Prudential Bank, Jamcor Holdings Corporation, Cielo Azul Holdings Corporation, Jesus V. Tibayan in his capacity as former General Partner of Tibayan Management Group International Holdings Co., Ltd. and as officer and director of Jamcor Holdings Corporation, and Liborio E. Elacio in his capacity as officer and director of Cielo Azul Holdings Corporation, defendants." *See rollo*, Vol. I, pp. 66-68.

[10] *Rollo*, Vol. I, pp. 66-165.

were not real parties-in-interest; and 4) the sales of the shares by the alleged Tibayan Group dummies to the defendants were valid.

On November 29, 2005, the trial court issued an Order[11] granting the Bacalla group's prayer for a writ of preliminary injunction, ruling that they were able to substantiate the bases for the grant of such relief in their favor. The trial court relied mainly on the findings of the SEC, which previously issued a Cease-and-Desist Order directing the Tibayan Group to stop dealing in securities; and the memorandum issued by the Philippine Stock Exchange (PSE) notifying stockbrokers that Prudential Bank shares in the name of the corporations linked with Tibayan Group shall not be traded until further notice. The trial court also took into account the difficulty of the factual and legal issues involved in the case and the need to preserve the *status quo* during the pendency of the main case.

As regards the alleged deficiency in the payment of filing fees, the trial court refused to disturb the clerk of court's computation thereof, invoking the presumption of regularity in the performance of official duties.

Of the 46 defendants before the trial court, only EII, Mario A. Remorosa, Virginia Belinda S. Ocampo, Jose Augusto G. Santos, and Katrina G. Santos (hereinafter referred to the Empire group) filed a motion for reconsideration seeking to have the Order dated November 29, 2005 set aside. However, both the trial court[12] and, on petition for *certiorari*, the CA,[13] refused to do so, essentially ruling that the Bacalla group was able to establish the existence of a material and substantial invasion of a clear and unmistakable right in their favor, which would

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[11] *Id*. at 166-170.

[12] Resolution dated May 30, 2006, penned by Judge Salvador V. Timbang, Jr.

[13] Special Fifth Division, composed of Associate Justices Sesinando E. Villon (Acting Chairperson), Mario V. Lopez, and Amy C. Lazaro-Javier (*ponente*).

cause them serious damage if not stopped through a writ of preliminary injunction.

On the issue of the correct amount of filing fees to be paid, the CA upheld par value as the basis for the computation of the filing fees. It held that the market value of the shares was only mentioned as part of the complaint's narration of facts. In contrast, the par value is the nominal value of the shares as stated in the stock certificates.

On the issue of the propriety of the grant of preliminary injunctive relief, the CA held that the Bacalla group had a clear and unmistakable right stemming from the final and executory decision in the petition for dissolution, under which the Bacalla group were entitled to the return of any and all assets of the Tibayan Group. The CA held that there was a "traceable connection" from the Tibayan Group to TMG Holdings and CAHC; and a "discernible flow of assets" from the Tibayan Group to the defendants, as Tibayan Group member companies transferred some of their assets to the dummy corporations, which then used the assets to buy the shares in dispute, which were in turn sold to the defendants. The CA, therefore, concluded that the further disposition of the shares in dispute would result in further dissipation and dispersal of the assets originally held by the Tibayan Group, which would cause serious damage to the Bacalla group as they would be compelled to trace and pool back the assets.

Aggrieved, the Empire group sought recourse before this Court, still seeking to set aside the Order dated November 29, 2005, on the following grounds:

I. THE CA COMMITTED AN ERROR OF LAW IN UPHOLDING THE TRIAL COURT'S ISSUANCE OF THE WRIT OF PRELIMINARY INJUNCTION, DESPITE THE BACALLA GROUP'S FAILURE TO PAY THE CORRECT FILING FEES; and

II. THE CA COMMITTED AN ERROR OF LAW IN REFUSING TO RECOGNIZE THAT THE EMPIRE GROUP

WAS DENIED DUE PROCESS OF LAW WHEN THE INJUNCTION WAS ISSUED.[14]

Ruling of the Court

The Court affirms the rulings of the lower courts.

Correct amount of filing fees

The settled rule is that a case is deemed filed only upon the payment of the filing fee. The court acquires jurisdiction over the case only upon full payment of such prescribed filing fee. The computation of the correct amount of filing fees to be paid rests upon a determination of the nature of the action. Thus, in a money claim or a claim involving property, the filing fee is computed in relation to the value of the money or property claimed;[15] while in an action incapable of pecuniary estimation, the Rules prescribe a determinate amount as filing fees.[16]

Jurisprudence has laid down the "primary objective" test to determine if an action is incapable of pecuniary estimation. This test is explained in the 1968 case of *Lapitan v. Scandia, Inc., et al.*,[17] *viz.*:

A review of the jurisprudence of this Court indicates that in determining whether an action is one the subject matter of which is not capable of pecuniary estimation, this Court has adopted the **criterion of first ascertaining the nature of the principal action or remedy sought**. If it is *primarily* for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in the courts of first instance would depend on the amount of the claim. However, **where the basic issue is something other than the right to recover a sum of money, or where the money claim is purely incidental to, or a consequence of the principal relief sought** like in suits to have the defendant

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[14] *Rollo*, Vol. I, pp. 166-170.

[15] RULES OF COURT, Rule 141, Section 7(a).

[16] RULES OF COURT, Rule 141, Section 7(b), 8(d).

[17] 133 Phil. 526 (1968).

perform his part of the contract (specific performance) and in actions for support, or for annulment of a judgment or to foreclose a mortgage, this Court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and are cognizable exclusively by courts of first instance. The rationale of the rule is plainly that the second class [of] cases, besides the determination of damages, demand an inquiry into other factors which the law has deemed to be more within the competence of courts of first instance, which were the lowest courts of record at the time that the first organic laws of the Judiciary were enacted allocating jurisdiction.[18] (Citations omitted and emphases Ours)

In *Lu v. Lu Ym, Sr., et al.*,[19] the Court held that an action for "Declaration of Nullity of Share Issue, Receivership and Dissolution" was incapable of pecuniary estimation, because "*the annulment of the shares, the dissolution of the corporation and the appointment of receivers/management committee are actions which do not consist in the recovery of a sum of money. If, in the end, a sum of money or real property would be recovered, it would simply be the consequence of such principal action;*"[20] and the plaintiffs therein "*do not claim to be the owners thereof entitled to be the transferees of the shares of stock. The mention of the real value of the shares of stock, over which* [plaintiffs] *do not, it bears emphasis, interpose a claim of right to recovery, is merely narrative or descriptive in order to emphasize the inequitable price at which the transfer was effected*."[21]

The Court further noted in *Lu* that actions assailing the legality of a conveyance or for annulment of contract have been considered incapable of pecuniary estimation.[22] This ruling, which is further reiterated in a catena of cases,[23] also finds

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[18] *Id.* at 528.

[19] 658 Phil. 156 (2011).

[20] *Id.* at 181.

[21] *Id.* at 180.

[22] *Id.* at 181.

[23] See *Genesis Investment, Inc., et al. v. Heirs of Ceferino Ebarasabal, et al.*, 721 Phil. 798, 801 (2013), and cases cited therein.

mooring in *Lapitan*[24] where the Court, speaking through the eminent jurist J.B.L. Reyes, explained that:

> [N]o cogent reason appears, and none is here advanced by the parties, why an action for rescission (or resolution) should be differently treated, a "rescission" being a counterpart, so to speak, of "specific performance." In both cases, the court would certainly have to undertake an investigation into facts that would justify one act or the other. No award for damages may be had in an action for rescission without first conducting an inquiry into matters which would justify the setting aside of a contract, in the same manner that courts of first instance would have to make findings of fact and law **in actions not capable of pecuniary estimation** expressly held to be so by this Court, **arising from issues like** x x x **the legality or illegality of the conveyance sought for** and the determination of the validity of the money deposit made; x x x validity of a judgment; x x x validity of a mortgage; x x x the relations of the parties, the right to support created by the relation, etc., in actions for support; x x x **the validity or nullity of documents upon which claims are predicated**. Issues of the same nature may be raised by a party against whom an action for rescission has been brought, or by the plaintiff himself. It is, therefore, difficult to see why a prayer for damages in an action for rescission should be taken as the basis for concluding such action as one capable of pecuniary estimation — a prayer which must be included in the main action if plaintiff is to be compensated for what he may have suffered as a result of the breach committed by defendant, and not later on precluded from recovering damages by the rule against splitting a cause of action and discouraging multiplicity of suits.[25] (Emphases Ours)

Seen in light of these doctrines, the Court holds that the action filed by the Bacalla group in the case at bar is incapable of pecuniary estimation. The action has for its primary objective the nullification of the transactions which brought the shares in dispute outside the control of the debtor, *i.e.*, Tibayan Group, and perforce to preserve them for inclusion in the assets to be liquidated. Furthermore, the Bacalla group does not assert direct,

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[24] *Supra* note 17.

[25] *Id*. at 529-530.

personal claims over the shares. Bacalla claims the shares only in his capacity as receiver of the Tibayan Group, while Abacan, *et al.* and FITI claim the shares only for purposes of having them included in the asset pool of the Tibayan Group, out of which their respective claims are to be paid. These circumstances distinguish the case at bar from those obtaining in *National Steel Corporation v. CA*,[26] where the Court upheld the computation of filing fees on the basis of the market value of the shares in dispute, because the plaintiff therein lodged a direct and personal claim over the shares. The Court, therefore, held that the primary objective of the claim in that case was for recovery of property, hence, filing fees must be computed on the basis of the value of the shares as alleged by the claimant. Considering that the Bacalla group paid almost Php 1,100,000.00 in filing fees, they have more than complied with the requirements of the Rules of Court.

Propriety of injunctive relief

The Empire group, in assailing the grant of preliminary injunctive relief to the Bacalla group, essentially assails the courts *a quo*'s appreciation of the evidence presented in support of said relief. They argue that the SEC findings and the PSE memorandum do not constitute sufficient basis for the grant of a preliminary injunctive writ. Very well-settled is the rule that the factual findings of the CA are binding upon this Court, especially when such findings concur with those of the trial court.[27]

At any rate, the Empire group failed to offer cogent reasons to reverse the concurrent rulings of the courts *a quo*.

Commentators have explained that the purpose of preliminary injunction is "to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated. Its sole aim to preserve the status

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[26] 362 Phil. 150 (1999).

[27] *Philippine National Bank v. Spouses Reblando*, 694 Phil. 669, 679 (2012).

quo until the merits of the case can be heard fully," "by restraining action or interference or by furnishing preventive relief. The status *quo* is the last actual, peaceable, uncontested status which precedes the pending controversy."[28] Jurisprudence has laid down the following requisites for the valid grant of preliminary injunctive relief: (a) that the right to be protected exists *prima facie*; (b) that the act sought to be enjoined is violative of that right; and (c) that there is an urgent and paramount necessity for the writ to prevent serious damage.[29] Elucidating on these requirements, the Court has held that the evidence required to justify the issuance of the writ need not be conclusive or complete; and only a sampling of evidence intended merely to give the court an idea of the justification for the preliminary injunction is required. There must be proof of an ostensible right to the final relief prayed for in the complaint.[30] Ultimately, the grant of preliminary injunctive relief rests upon the sufficiency, of the allegations made in support thereof.[31]

The Court has studied the record assiduously and is satisfied that the allegations and evidence set forth by the Bacalla group constitute sufficient bases for the grant of preliminary injunctive relief.

Anent the first requisite, there has been a *prima facie* showing of the existence of a right *in esse* in favor of the Bacalla group. As found by the CA, their right to the shares in dispute is based on the final and executory decision of the trial court in the dissolution proceedings against Tibayan Group. The findings of the SEC which led to the issuance of the Cease-and-Desist Order against the Tibayan Group, and the PSE memorandum

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[28] 3 Oscar M. Herrera, *Remedial Law* 69 (1999); 1 Florenz D. Regalado, *Remedial Law Compendium,* 720 (2005).

[29] *BPI v. Judge Hontanosas, Jr., et al.*, 737 Phil. 38, 54 (2014), citing *City Government of Butuan, et al. v. Consolidated Broadcasting System, Inc., et al.*, 651 Phil. 37, 54 (2010).

[30] *Los Baños Rural Bank, Inc. v. Africa*, 433 Phil. 930, 941 (2002).

[31] Antonio R. Bautista, *Basic Civil Procedure,* 140 (2009).

only serve as further proof of the existence of this clear and unmistakable right, by illustrating the flow of the assets from the Tibayan Group to the dummy corporations to the defendants. The entitlement of the Bacalla Group to the shares in dispute is clearly established by the decision in the dissolution case and the resolution of the trial court authorizing Bacalla to sue for their recovery and inclusion in the asset pool of the Tibayan Group.

Anent the second and third requisites, given that shares of stock are a readily tradable commodity, the Court concurs with the CA that the right of the Bacalla group to the return of the shares to the Tibayan Group's asset pool will be greatly prejudiced if the continued disposition thereof is not enjoined. The Court quotes with approval the findings of the appellate court:

> Private respondents (the Bacalla group) truly have a clear and present right to be protected insofar as the subject shares are concerned. To allow their further disposition would result in the continued dissipation and dispersal of the original assets of the [Tibayan Group]. It would be harder for private respondents to trace and pool them back together again. They would suffer serious damage for the assets sought to be protected may forever get lost if they continue to change hands. By then, any judgment in the case would become ineffectual.[32]

WHEREFORE, premises considered, the petition is hereby **DENIED**. The Decision dated September 30, 2010 and the Resolution dated January 17, 2011 of the Court of Appeals in CA-G.R. SP No. 95754 are hereby **AFFIRMED**.

SO ORDERED.

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

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[32] *Rollo*, Vol. I, p. 62.

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

SECOND DIVISION

[G.R. No. 200487. March 6, 2019]

BIGG'S INC., *petitioner, vs.* **JAY BONCACAS, THELMA DIVINA, ALLAN DY, CHARVIE NEO, RICHARD SABATER, ARACELI ENRIQUEZ, MA. REBECCA SAN JOSE, ALFREDO ODIAMAR, JR., MICHAEL MAPA, DANTE BAYTA, GLEN REBUSI, RACHELLE MEA, ALBERT TINASAS, WILHELMN JARDINERO,[•] JUN LADABAN, ARLENE COMIA, and PURA SABATER,** *respondents.*

[G.R. No. 200636. March 6, 2019]

JUNNIE ARINES,[••] MARY JEAN SAN JUAN-REPUESTO, REYNALDO LIRIA, EMMANUEL STA. ROSA, MENANDRO[•••] RAMOS, ARNOLD SARTE, SHEILA RAYMUNDO-PONTE, MARILYN JANA, MARIANO AYCARDO, ROSENDO CHICA, JOCELYN AYCARDO, JAY ARINES, ANTONIO MONSALVE, JOSELITO ENRIQUEZ, SEGUNDINO CHICA, WINCESLAO LIRAG, LINA BARTOLOME-ODIAMAR, ANA MARIE FRANCISCO-SATUR, CARMEN TEJERO-BAYTA, NORBERTO PASANO, and HEIRS OF EDWIN AYCARDO, represented by MARIA JOSEFA P. AYCARDO, *petitioners, vs.* **BIGG'S INCORPORATED, ARLENE ACABADO, TERESITA AREJOLA, TERESA BUENAFLOR, CONSUELO BICHARA, and MARICAR MANJON,** *respondents.*

[•] Also referred to as "Wilheim Jardinerio" in some parts of the records.

[••] Also referred to as "Junie Arines," and "Junnie Arenas" in some parts of the records.

[•••] Also referred to as "Meynandro" in some parts of the records.

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; REVIEW IS GENERALLY LIMITED TO QUESTIONS OF LAW; WHEN THERE ARE CONFLICTING FINDINGS OF FACTS OF THE COURTS OR TRIBUNALS BELOW, AS EXCEPTION; CASE AT BAR.—** Petitions for review under Rule 45 are generally limited to questions of law as the Court is not a trier of facts. However, in exceptional cases, such as when there are conflicting findings of facts of the courts or tribunals below, the Courts may reevaluate and review the facts of a case. In this case, the Court deems a review of the facts necessary in view of the inconsistent and contrary findings of the CA and the labor tribunals.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; STRIKES; STRIKES MEANS ANY TEMPORARY STOPPAGE OF WORK BY THE CONCERTED ACTION OF EMPLOYEES AS A RESULT OF AN INDUSTRIAL OR LABOR DISPUTE; THE LABOR CODE AND THE IRR LIMIT THE GROUNDS FOR A VALID STRIKE TO (1) A BARGAINING DEADLOCK IN THE COURSE OF COLLECTIVE BARGAINING; OR (2) THE CONDUCT OF UNFAIR LABOR PRACTICES BY THE EMPLOYER.—** As defined under Article 219 (formerly Article 212) (o) of the Labor Code, a *strike* means any temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute. Under Article 278 (formerly Article 263) of the Labor Code, there are different procedural requirements depending on the ground of the strike: x x x This provision was further implemented by Department Order (DO) Order No. 40-03, Amending the Implementing Rules of Book V of the Labor Code of the Philippines (IRR) and DO 40-A-03 which amended Section 5, Rule XXII of the IRR. The Labor Code and the IRR limit the grounds for a valid strike to: (1) a bargaining deadlock in the course of collective bargaining, or (2) the conduct of unfair labor practices by the employer. Only a certified or duly recognized bargaining representative may declare a strike in case of a bargaining deadlock. However, in cases of unfair labor practices, the strike may be declared by

any legitimate labor organization. In both instances, the union must conduct a "strike vote" which requires that the actual strike is approved by majority of the total union membership in the bargaining unit concerned.

3. ID.; ID.; ID.; REQUIREMENTS FOR STRIKES DUE TO BARGAINING DEADLOCKS; AND DUE TO UNFAIR LABOR PRACTICE; DISTINGUISHED.— In a strike due to bargaining deadlocks, the union must file a notice of strike or lockout with the regional branch of the NCMB at least 30 days before the intended date of the strike and serve a copy of the notice on the employer. This is the so-called "cooling-off period" when the parties may enter into compromise agreements to prevent the strike. In case of unfair labor practice, the period of notice is shortened to 15 days; in case of union busting, the "cooling-off period" does not apply and the union may immediately conduct the strike after the strike vote and after submitting the results thereof to the regional arbitration branch of the NCMB at least seven days before the intended strike. Thus, in a strike grounded on unfair labor practice, the following are the requirements: (1) the strike may be declared by the duly certified bargaining agent or legitimate labor organization; (2) the conduct of the strike vote in accordance with the notice and reportorial requirements to the NCMB and subject to the seven-day waiting period; (3) notice of strike filed with the NCMB and copy furnished to the employer, subject to the 15-day cooling-off period. In cases of union busting, the 15-day cooling-off period shall not apply. x x x The cooling-off period is not merely a period during which the union and the employer must simply wait. The purpose of the cooling-off period is to allow the parties to negotiate and seek a peaceful settlement of their dispute to prevent the actual conduct of the strike. In other words, there must be genuine efforts to amicably resolve the dispute.

4. ID.; ID.; TERMINATION OF EMPLOYMENT BY EMPLOYER; ILLEGAL STRIKE, AS GROUND; FOR UNION MEMBERS, WHAT IS REQUIRED IS THAT THEY KNOWINGLY PARTICIPATED IN THE COMMISSION OF ILLEGAL ACTS DURING STRIKE FOR THERE BE

SUFFICIENT GROUND FOR TERMINATION OF EMPLOYMENT, WHILE FOR UNION OFFICERS, IT SUFFICES THAT THEY KNOWINGLY PARTICIPATED IN AN ILLEGAL STRIKE; CASE AT BAR.— The Labor Code provides for a stricter standard on union officers. x x x Thus, for union members, what is required is that they knowing participated in the commission of illegal acts during the strike for there to be sufficient ground for termination of employment. **For union officers, however, it suffices that they knowingly participated in an illegal strike.** It must be noted that Boncacas not only knowingly participated but was the one who principally organized two illegal strikes on February 16, 1996 and March 5, 1996. Thus, the dismissal of Boncacas and the other union officers after the illegal strike on February 16, 1996 as well as the March 5, 1996 strike was valid. However, as to the union members who did not participate in any prohibited act during the strikes, their dismissal was invalid.

5. **ID.; ID.; ID.; ID.; BACKWAGES ARE NOT GRANTED TO DISMISSED EMPLOYEES WHO PARTICIPATED IN AN ILLEGAL STRIKE EVEN IF THEY ARE LATER REINSTATED; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.—** [T]he Court deletes the award of backwages in conformity with jurisprudence that backwages are not granted to dismissed employees who participated in an illegal strike even if they are later reinstated. x x x In *Philippine Diamond Hotel & Resort, Inc. v. Manila Diamond Hotel Employees Union* (*Philippine Diamond Hotel & Resort, Inc.*), the Court laid down the exceptions to this rule: Jurisprudential law, however, recognizes several exceptions to the "no backwages rule," to wit: when the employees were illegally locked to thus compel them to stage a strike; when the employer is guilty of the grossest form of ULP; when the employer committed discrimination in the rehiring of strikers refusing to readmit those against whom there were pending criminal cases while admitting non-strikers who were also criminally charged in court; or when the workers who staged a voluntary ULP strike offered to return to work unconditionally but the employer refused to reinstate them. x x x None of the exceptions mentioned above is existing in these cases and, as found by the Court, both strikes conducted by the union were

illegal. Thus, the listed employees are not entitled to backwages despite the CA's order of reinstatement.

6. ID.; ID.; ID.; ID.; CIRCUMSTANCES WHEN SEPARATION PAY IS AWARDED IN LIEU OF REINSTATEMENT, ENUMERATED; CASE AT BAR.— In certain cases, separation pay is awarded in lieu of reinstatement. The circumstances were enumerated in *Escario*: x x x (*a*) when reinstatement can no longer be effected in view of the passage of a long period of time or because of the realities of the situation; (*b*) reinstatement is inimical to the employer's interest; (*c*) reinstatement is no longer feasible; (*d*) reinstatement does not serve the best interests of the parties involved; (*e*) the employer is prejudiced by the workers' continued employment; (*f*) facts that make execution unjust or inequitable have supervened; or (*g*) strained relations between the employer and employee. As prayed for by Bigg's, considering that 23 years have passed since the dismissal of the union members on February 19, 1996, and bearing in mind Bigg's manifestation that they could no longer trust the striking employees especially as the company is in the food service industry, separation pay may be more appropriate in lieu of reinstatement.

APPEARANCES OF COUNSEL

Carpio Law Office for Bigg's Inc., *et al.*

Sentro Ng Alternatibong Lingap Panlegal (SALIGAN) for petitioners in G.R. No. 200636 & respondents in G.R. No. 200487.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court are consolidated petitions for review on certiorari[1] under Rule 45 of the Rules of Court assailing the

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[1] *Rollo* (G.R. No. 200487), pp. 8-27; *rollo*, (G.R. No. 200636), pp. 13-54.

Decision[2] dated June 10, 2011 and Amended Decision[3] dated January 20, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 78149.

The Facts

The facts, as summarized from the records, are narrated below.

Bigg's, Inc. (Bigg's) was the employer of Jay Boncacas (Boncacas), Junnie Arines, Mary Jean San Juan-Repuesto, Meynardo Ramos, Sheila Raymundo-Ponte, Mariano Aycardo, Jay Arines, Segundino Chica, Ana Marie Francisco-Satur, and Maria Josefa R. Aycardo (collectively, union members). They are represented by their union president Boncacas. Bigg's is represented by Arlene Acabado (Acabado) and Teresita Arejola (Arejola) who were the personnel officer and general manager, respectively, of Bigg's at the time of filing of the petitions.

Bigg's operates a chain of restaurants with principal place of business in Naga City, Camarines Sur. Its employees formed a labor union named Bigg's Employees Union (union) which was issued a Certificate of Registration by the Department of Employment (DOLE) on January 30, 1996.

Both parties have contrasting versions of the incidents leading to the conflict between the Bigg's management and the union members.

Bigg's alleges that on February 16, 1996, around 50 union members staged an illegal "sit-down strike" in Bigg's restaurant. The union did not comply with the requirements of sending Notice of Strike to the National Conciliation and Mediation Board (NCMB). Neither did the union obtain the "strike vote" from its members. According to Bigg's, the union belatedly filed a Notice of Strike with the NCMB on the same day to

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[2] *Rollo* (G.R. No. 200487), pp. 29-47; penned by Associate Justice Stephen C. Cruz with the concurrence of Associate Justices Isaias P. Dicdican and Edwin D. Sorongon.

[3] *Id*. at 50-55.

conceal the illegality of the sit-down strike. Bigg's issued a memorandum to the striking union members placing them under preventive suspension and requiring them to explain their actions within 24 hours from notice. The union members did not comply with the company's order. Thus, they were sent employment termination letters on February 19, 1996.[4]

On the other hand, the union members accuse Bigg's of interfering with union activities. Allegedly, in February 1996, union members were asked to withdraw their membership under threat of losing their employment. In the same month, employees Mariano Aycardo and Marilyn Jana were dismissed from service purportedly due to their union membership. On February 16, 1996, the day of the alleged sit-down strike, union president Boncacas and other union members were prevented from entering the premises of Bigg's. On the same day, they filed a Notice of Strike with the NCMB. They attempted to return to work on February 17, 1996, but they were informed to obtain their respective memoranda from the main office in Naga City. The memoranda informed them of their suspension from work for participating in a sit-down strike. Some union members tried to talk with the Bigg's management, but they were told not to report for work the next day.[5]

The union members filed a complaint before the NCMB for unfair labor practices, illegal dismissal, and damages, docketed as Sub RAB Case No. 05-03-00037-96. Bigg's also filed a complaint before the NCMB for illegal strike against the union members docketed as Sub RAB Case No. 05-03-00034-96. The two complaints were consolidated and the NCMB conducted mediation proceedings. When mediation reached an impasse, the union conducted another strike on March 5, 1996.[6]

Bigg's further alleges that during the strike on March 5, 1996, the union members were disruptive and violent. They

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[4] *Id*. at 33.

[5] *Id*. at 31-32.

[6] *Id*.

prevented ingress and egress of employees and customers to and from the company's premises. They also stopped Bigg's vans from making deliveries by throwing stones at the vans which caused injury to the driver as well as damage to vehicles and to the guardhouse. They shouted at customers using megaphones to prevent them from going to Bigg's Diner. The strike was later stopped when both parties agreed to compulsory arbitration.[7]

Findings of the labor tribunals

After several conferences and hearings, and upon the filing of the parties' respective position papers and memoranda, Labor Arbiter Rolando L. Bobis (LA) issued a Joint Decision[8] dated January 31, 2000.

The LA first noted that some union members manifested that they entered into a settlement with Bigg's and executed Quitclaims and Releases.[9] The LA also found that there were union members who were contractual employees whose contracts with Bigg's had ended prior to the controversy.[10] Thus, said employees were removed as parties.

On the issue of the illegality of the strikes, the LA ruled in favor of Bigg's. Under the provisions of Articles 263 of the Labor Code and its implementing rules, for a strike to enjoy the protection of law, the union must observe the following procedural requirements:

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[7] *Supra* note 4.

[8] *Id*. at 72-93.

[9] Namely, Andy Abellano, Juan Alvaro, Jr., Jay Arines, Glennen Artuz, Edwin Aycardo, Jocelyn Aycardo, Mariano Aycardo, Romeo Batalla, Dante Capistrano, Rosendo Chica, Segundino Chica, Gregorio Come, Joselito Enriquez, Ana Marie Francisco, Johnvy Huelgas, Marilyn Jana, Wenceslao Lirag, Antonio Monsalve, Rogelio Murillo, Eddie Nacario, Daily F. Nobleza, Norberto Pasano, Edgar Regalario, Arnold Sarte, Emmanuel Sta. Rosa, Jose Sonny Sio, Elmer Solsona, Agosto Valenzuela, and Randy Valenzuela.

[10] Namely, Maruja De Vera, Thelma Divina, Allan Dy, Charvie Neo, Willy Oyarde, and Marlon Romero.

1. A notice of strike with the required contents should be filed with the [DOLE], specifically the regional branch of the [NCMB], copy furnished the employer;
2. A cooling-off period must be observed, *i.e.*, a time gap is required to cool off tempers between the filing of the notice and the actual execution of the strike;
3. During the cooling-off period, the NCMB mediates and conciliates the parties. They are not allowed to do any act that may disrupt or impede the early settlement of the dispute;
4. Before a strike may actually be started, a strike vote should be taken by secret balloting, with 24-hour prior notice to NCMB;
5. The result of the strike vote should be reported to the NCMB at least seven (7) days before the intended strike or lockout, subject to the cooling off period.[11]

Thus, the LA ruled that the first strike conducted by the union members on February 16, 1996 was illegal for failure to comply with the above requirements. The union did not furnish Bigg's a Notice of Strike and did not observe the cooling-off period.[12]

The second strike conducted on March 5, 1996, was likewise held illegal by the LA. Although the union complied with the procedural requirements to conduct a valid strike, the union members performed prohibited acts which rendered the strike illegal, such as acts of violence, aggression, and obstruction of the free ingress and egress from company premises. The LA found that union members prevented the ingress and egress of Bigg's delivery vans by forming human barricades and throwing stones at the vans, as well as putting big rocks along the road. It was also established that union members were using

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[11] *Rollo* (G.R. No. 200487), pp. 83-84. See *Grand Boulevard Hotel v. Genuine Labor Organization of Workers in Hotel, Restaurant and Allied Industries*, 454 Phil. 463, 487-488 (2003).

[12] *Rollo* (G.R. No. 200487), p. 84.

megaphones to discourage customers from going to Bigg's, causing fear and fright to its customers.[13]

As to the issue of illegal dismissal, the LA ruled that the dismissal from employment of the union officers, Boncacas (president), Rey Liria (Liria) (vice president), Jean San Juan (San Juan) (treasurer), and Junnie Arines (Arines) (secretary)[14] was valid as it was proven that they instigated and participated in the illegal strikes based on Article 279 (formerly Article 264) (a)[15] of the Labor Code.[16]

While the dismissal of the union officers Boncacas, Liria, San Juan, and Arines was held valid, as to the union members, the LA held that there was no evidence that they knowingly participated in the illegal sit-down strike on February 16, 1996 or that they committed illegal acts during the March 5, 1996 strike. Thus, Bigg's was ordered to reinstate the following employees to their former positions:

1. Alfredo Odiamar, Jr.
2. Albert Tinasas
3. Araceli Enriquez
4. Arlene Comia

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[13] *Id*.

[14] The union members clarified in the petition they submitted to the Court of Appeals that Liria was the union auditor (not vice president); Arines was the treasurer (not secretary); and that San Juan had never been an officer in the union. *Rollo*, [G.R. No. 200636], p. 98.

[15] Art. 279 [264] (a). x x x Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status: Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike.

[16] Presidential Decree No. 442 (Amended and Renumbered), July 21, 2015.

5. Dante Bayta
6. Egino Palmera
7. Glen Rebusi
8. Joseph A. Rull
9. Jun Ladaban
10. Ma. Rebecca San Jose
11. Michael Mapa
12. Michael Valenzuela
13. Pura Sabater
14. Rachelle Mea
15. Richard Sabater
16. Wilheim Jardenario.

On the allegation of unfair labor practice and union busting, the LA held that the union members were unable to prove the same with substantial evidence. The union members' prayer for moral and exemplary damages was consequently denied.[17]

On appeal, the NLRC reversed the LA Decision. In its Decision[18] dated April 30, 2002 (NLRC's First Decision), the NLRC ruled that the strike on February 16,1996 was valid because it was grounded on unfair labor practices committed by Bigg's. As such, the union members were not bound to wait for 15 days from the filing of the Notice of Strike before staging the same. The NLRC also ruled that there was no evidence to establish that the union members displayed violence, coercion, or prevented the free ingress to and egress from Bigg's premises during the March 5, 1996 strike. The dispositive portion of the NLRC's First Decision reads:

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[17] *Rollo* (G.R. No. 200487), pp. 90-91.

[18] *Id*. at 94-116; penned by Presiding Commissioner Raul T. Aquino, and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan.

WHEREFORE, the assailed Decision of January 31, 2000 is REVERSED AND SET ASIDE. Accordingly, respondent-appellee BIGG's is hereby directed to immediately reinstate complainants-appellants to their former positions without loss of seniority rights and to pay them full backwages up to actual reinstatement, damages, of P 100,000.00 each and attorney's fee of 10%.[19]

However, on motion for reconsideration (MR), the NLRC reversed its own ruling and reinstated the LA Decision in its Decision dated October 22, 2002 (NLRC's Amended Decision). The NLRC declared that there were material points which it had unintentionally missed in its First Decision.[20]

The NLRC held that the two strikes staged by the union were illegal. As to the February 16, 1996 strike, there was no notice of strike filed with the NCMB. More significantly, the union had not yet been qualified as the certified bargaining agent of Bigg's employees. Thus, it could not, as a matter of right, stage a strike. The NLRC also held that there was no conclusive proof of union busting or unfair labor practice.[21]

Regarding the March 5, 1996 strike, the NLRC held that audio-video footage was presented showing the acts of violence, aggression, and prevention of ingress to and egress from the premises of Bigg's. As well, during the hearings before the LA, counsel for the union members stated that he was not contesting the allegation that some of the union members had attempted to block the passage of Bigg's delivery vans.[22]

The dispositive portion of the NLRC's Amended Decision reads:

WHEREFORE, prescinding from the foregoing considerations, Our assailed decision of April 30, 2011 is hereby SET ASIDE and the Decision of the Labor Arbiter is hereby REINSTATED. This is,

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[19] *Id*. at 115.

[20] *Id*. at 117-134.

[21] *Id*. at 132.

[22] *Id*. at 124.

however, without prejudice to those employees/complainants who have already opted to be separated by receiving their respective separation benefits.[23]

Ruling of the Court of Appeals

Both parties elevated the case to the CA. In its Decision[24] dated June 10, 2011, the CA partially granted the union's appeal.

The CA overturned the findings of the NLRC as to the finding of a sit-down strike on February 16, 1996. The CA held that Bigg's failed to adduce substantial evidence showing that the union conducted a sit-down strike on February 16, 1996. Only one representative of Bigg's, Carmen Manjon (corporate officer of Bigg's), attested that the union members conducted a sit-down strike. Bigg's did not even bother to present corroborative evidence to substantiate the allegation.[25]

On the other hand, the union clearly established that some of its members were barred from entering the premises or threatened with dismissal by reason of their union membership. This, said the CA, was a clear manifestation of unfair labor practice.[26]

With respect to the March 5, 1996 strike, the Court ruled that it was illegal for having been conducted with violence and aggression. However, the CA clarified that a strike need not always be declared by the duly certified bargaining representative. The implementing rules of the Labor Code recognize the power of a legitimate labor organization to conduct a strike in the absence of a certified or duly recognized bargaining representative, provided that the reason therefor is unfair labor practice. The CA held that a legitimate labor organization may take direct action and forego the usual procedural requirements if the *raison d'etre* is unfair labor

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[23] *Id*. at 134.

[24] *Id*. at 29-47.

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

[26] *Id*.

practice or dismissal of its members which constitutes union busting.[27]

The CA further found that Bigg's was guilty of anti-unionism by preventing Boncacas and other union members from entering the premises and firing other union members on the same day when they opted to retain union membership. As of February 16, 1996, the union had been effectively busted. Thus, the CA held that it was no longer necessary to file the requisite notice of strike.[28]

Nonetheless, the CA held that indeed, the strike held on March 5, 1996 was illegal as it was marred by violence and restraint on the free passage and use of property of Biggs. It was not disputed that the union members formed a human barricade and prevented delivery vehicles from passing through Bigg's gates. They also placed three big stones along the gate entrance to keep the vehicles from exiting the premises and flung stones at another van while it was on its way out of the area.[29]

The dismissal of union officers Liria, San Juan, and Arines was upheld by the CA for their illegal acts during the strike. However, the CA exonerated union president Boncacas as it was not shown that he initiated or participated in any of the illegal acts that characterized the strike as shown in the video evidence of the strike.[30]

The CA also held that Bigg's failed to prove that union members Maruja De Vera, Thelma Divina, Allan Dy, Charvie Neo, Willy Oyarde, and Marlon Romero were contractual employees.

Thus, the CA ordered the reinstatement of the following union members with payment of backwages:

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

[28] *Id*. at 42.

[29] *Id*. at 43.

[30] *Id*. at 44.

1. Alfredo Odiamar, Jr.
2. Albert Tinasas
3. Allan Dy
4. Araceli Enriquez
5. Arlene Comia
6. Charvie Neo
7. Dante Bayta
8. Egino Palmera
9. Glen Rebusi
10. Jay Boncacas
11. Joseph Rull
12. Jun Ladaban
13. Ma. Rebecca San Jose
14. Marlon Romero
15.Maruja De Vera
16. Michael Mapa
17. Michael Valenzuela
18. Pura Sabater
19. Rachelle Mea
20. Richard Sabater
21. Thelma Divina
22. Wilheim Jardenario
23. Willy Oyarde

Both parties filed their respective MRs.[31]

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[31] CA *rollo*, pp. 850-857; 881-892.

The union argued that union members Menandro Ramos, Lina Bartolome, Carmen Tejero, Sheila Raymundo, and Gregorio Come[32] should also be reinstated and their names were just inadvertently omitted from the LA Decision.[33]

For its part, Bigg's alleged that Michael Mapa, Rachelle Mea, Richard Sabater, Albert Tinasas, Alfredo Odiamar, Jr., Dante Bayta, and Glen Rebusi should be excluded in the award as they had already entered into a settlement with Bigg's and signed Quitclaims and Releases. Meanwhile, Maruja De Vera, Willie Oyarde, Marlon Romero, Michael Valenzuela, Egino Palmar, and Joseph Rull should be excluded as well because they were no longer listed as petitioners in the union's petition before the CA.[34]

The CA promulgated an Amended Decision[35] on January 20, 2012. On the matter of the union's assertion that some union members' names had been omitted, the CA held that the exclusion of said names from the LA Decision was not unintentional as they were found to have participated in the illegal strike and as such, ineligible for reinstatement.

On the issue of the Compromise Agreement[36] executed by Michael Mapa, Rachelle Mea, Joseph Rull, Richard Sabater, Araceli Enriquez, Albert Tinasas, Alfredo Odiamar, Jr., Dante Bayta, and Glen Rebusi, the CA held that the same was vague as it merely indicated the payment received by the employees without any indication of whether it constituted backwages or separation pay. Neither did it state that the said employees waived their right to reinstatement if so decided by the court. The document also stated that "this agreement shall be without

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[32] In the LA Decision, Gregorio Come is also listed as among those who had executed Quitclaims and voluntarily accepted their separation pay. See LA Decision, *rollo* (G.R. No. 200487), p. 81.

[33] See CA Amended Decision, *id*. at 51.

[34] *Id*. at 52.

[35] *Id*. at 50-55.

[36] CA *rollo*, pp. 813-814.

prejudice to the case [titled *Biggs, Incorporated v. Bigg's Employees Union*], Sub RAB Case No. 05-03-00034-96 and [the case titled, *Jay Boncacas et al. v. Biggs, Inc. et al.*], Sub RAB Case No. 05-00037-96 now pending before the [NLRC]." Thus, there was no relinquishment of the employees' rights to pursue their case in spite of the agreement.

However, the CA held that it had not acquired jurisdiction over Maruja De Vera, Willie Oyarde, Marlon Romero, Michael Valenzuela, Egino Palmar, and Joseph Rull as they were not named as petitioners in the CA. Thus, they could not lawfully claim any benefit from the decision rendered by the CA. Only the following union members/employees remained entitled to the award:

1. Alfredo Odiamar, Jr.
2. Albert Tinasas
3. Allan Dy
4. Araceli Enriquez
5. Arlene Comia
6. Charvie Neo
7. Dante Bayta
8. Glen Rebusi
9. Jay Boncacas
10. Jun Ladaban
11. Ma. Rebecca San Jose
12. Michael Mapa
13. Pura Sabater
14. Rachelle Mea
15. Richard Sabater
16. Thelma Divina
17. Wilheim Jardenario

The Petitions

Both parties filed their respective petitions for review on certiorari before the Court.[37]

At the outset, the Court notes that only the following persons joined in the petition for the union in G.R. No. 200636 and signed the verification and certification of non-forum shopping: Jay Boncacas, Junnie Arines, Menandro Ramos, Mariano Aycardo, Segundina Chica, Maria Josefa Aycardo, Mary Jean San Juan, Sheila Raymundo, Jay Arines, and Ana Marie Francisco-Satur. Reynaldo Liria, Lina Bartolome, and Rosendo Chica executed Special Powers of Attorney authorizing Jay Boncacas to represent them in the case.[38]

The union members maintain that the strike held on March 5, 1996 was not illegal. They did not commit violence, coercion, or any other prohibited act during the said strike.[39]

Granting *arguendo* that the March 5, 1996 strike was illegal, the union members contend that their dismissal was still illegal because their employment had already been illegally terminated prior thereto. Bigg's had sent them notices of termination on February 19, 1996. Thus, the commission of any alleged prohibited acts during the March 5, 1996 strike cannot be used as a justification for their illegal dismissal on February 19, 1996. The union members thus prayed that its union officers Liria, San Juan, and Junie Arines should also be reinstated, with payment of backwages.[40]

The union members pray for reinstatement of all petitioners without loss of seniority rights and backwages. The union members also reiterate that union members Menandro Ramos, Lina Bartolome, Carmen Tejero, Sheila Raymundo, and Gregorio

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[37] *Rollo* (G.R. No. 200487), pp. 8-27; *rollo* (G.R. No. 200636), pp. 13-54.

[38] *Rollo* (G.R. No. 200363), pp. 615, 619 and 622.

[39] *Id*. at 39.

[40] *Id*. at 40-41.

Come should also be reinstated. They were listed in the body of the LA Decision as entitled to reinstatement, but their names were omitted from the dispositive portion without any explanation. There was also no mention in the LA Decision of their purported participation in any illegal acts, contrary to the ruling of the CA. Additionally, the union members pray for moral and exemplary damages each, and attorney's fees.[41]

On the other hand, Bigg's, in its petition in G.R. No. 200487, alleges that the CA committed reversible error in overturning the findings of the NLRC which had affirmed the findings of fact and law of the LA, who had conducted hearings on the case. Bigg's argues that in a petition for certiorari under Rule 65, it is not for the CA to review again the evidence of the parties. The CA's purview is merely to determine if the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in reaching its decision.[42]

Bigg's also alleges that in reassessing the evidence of the parties, the CA misappreciated the facts when it ruled that no strike was held on February 16, 1996 and gave credence to the union members' testimonies that they were not allowed to enter Bigg's premises. Contrary to their allegations, Bigg's claims that it was the employees who refused to perform their respective jobs during the first shift of the day, such that the Bigg's management had to close its store at 10:00 a.m. and request the second shift employees to come to work earlier.[43]

Bigg's also maintains that union members Marilyn Jana, Jay Arines, Edwin Aycardo, Jocelyn Aycardo, Mariano Aycardo, Rosendo Chica, Segundino Chica, Joselito Enriquez, Ana Marie Francsico, Wenceslao Lirag, Antonio Monsalve, Eddie Nacario, Norberto Antonio Pasano, and Arnold Sarte had already filed a manifestation with the LA that they had voluntarily accepted their separation pay.[44]

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[41] *Id*. at 47-48.

[42] *Rollo* (G.R. No. 200487), p. 12.

[43] *Id*. at 227, 231.

[44] *Id*. at 19.

Granting for the sake of argument, that the union members are entitled to reimbursement, Bigg's argues that they are not entitled to backwages because the strike that they conducted was illegal. Bigg's avers that assuming without admitting that there was illegal dismissal, separation pay should be awarded instead of reinstatement considering the long period of time that has already elapsed form the time of dismissal.[45]

Issues

The issues for the Court's consideration are the following:

1. Whether the strikes held on February 16, 1996 and March 5, 1996 were illegal;
2. Whether the union officers and employees were validly dismissed; and,
3. The proper award and parties to the case.

Ruling

Petitions for review under Rule 45 are generally limited to questions of law as the Court is not a trier of facts. However, in exceptional cases, such as when there are conflicting findings of facts of the courts or tribunals below, the Courts may reevaluate and review the facts of a case.[46] In this case, the Court deems a review of the facts necessary in view of the inconsistent and contrary findings of the CA and the labor tribunals.

Requirements of a valid strike

As defined under Article 219 (formerly Article 212) (o) of the Labor Code, a *strike* means any temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute.

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[45] *Id*. at 23.

[46] *Pascual v. Burgos*, 776 Phil. 167, 182 (2016).

Under Article 278 (formerly Article 263) of the Labor Code, there are different procedural requirements depending on the ground of the strike:

(c) In cases of bargaining deadlocks, the duly certified or recognized bargaining agent may file a notice of strike or the employer may file a notice of lockout with the Ministry at least 30 days before the intended date thereof. In cases of unfair labor practice, the period of notice shall be 15 days and in the absence of a duly certified or recognized bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately.

(d) The notice must be in accordance with such implementing rules and regulations as the Minister of Labor and Employment may promulgate.

(e) During the cooling-off period, it shall be the duty of the Ministry to exert all efforts at mediation and conciliation to effect a voluntary settlement. Should the dispute remain unsettled until the lapse of the requisite number of days from the mandatory filing of the notice, the labor union may strike or the employer may declare a lockout.

(f) A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose. A decision to declare a lockout must be approved by a majority of the board of directors of the corporation or association or of the partners in a partnership, obtained by secret ballot in a meeting called for that purpose. The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken. The Ministry may, at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the Ministry the results of the voting at least seven days before the intended strike or lockout, subject to the cooling-off period herein provided.

This provision was further implemented by Department Order (DO) Order No. 40-03, Amending the Implementing Rules of

Book V of the Labor Code of the Philippines (IRR) and DO 40-A-03[47] which amended Section 5, Rule XXII of the IRR.

The Labor Code and the IRR limit the grounds for a valid strike to: (1) a bargaining deadlock in the course of collective bargaining, or (2) the conduct of unfair labor practices by the employer.[48]

Only a certified or duly recognized bargaining representative may declare a strike in case of a bargaining deadlock. However, in cases of unfair labor practices, the strike may be declared by any legitimate labor organization.[49]

In both instances, the union must conduct a "strike vote" which requires that the actual strike is approved by majority of the total union membership in the bargaining unit concerned. The union is required to notify the regional branch of the NCMB of the conduct of the strike vote at least 24 hours before the conduct of the voting. Thereafter, the union must furnish the

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[47] Amending Section 5, Rule XXII of the Implementing Rules of Book V of the Labor Code of the Philippines (March 12, 2003).

[48] Section 5. *Grounds for strike or lockout.* — A strike or lockout may be declared in cases of bargaining deadlocks and unfair labor practices. Violations of collective bargaining agreements, except flagrant and/or malicious refusal to comply with its economic provisions, shall not be considered unfair labor practice and shall not be strikeable. No strike or lockout may be declared on grounds involving inter-union and intra-union disputes or without first having filed a notice of strike or lockout or without the necessary strike or lockout vote having been obtained and reported to the Board. Neither will a strike be declared after assumption of jurisdiction by the Secretary or after certification of submission of the dispute to compulsory or voluntary arbitration or during the pendency of cases involving the same grounds or the strike or lockout.

[49] Section 6. *Who May Declare a Strike or Lockout.* — Any certified or duly recognized bargaining representative may declare a strike in cases of bargaining deadlocks and unfair labor practices. The employer may declare a lockout in the same cases. In the absence of a certified or duly recognized bargaining representative, any legitimate labor organization in the establishment may declare a strike but only on grounds of unfair labor practices. (DO 40-03: Amending the Implementing Rules of Book V of the Labor Code of the Philippines [February 17, 2003])

NCMB with the results of the voting at least seven days before the intended strike or lockout.[50] This seven-day period has been referred to as the "seven-day strike ban"[51] or "seven-day waiting period."[52]

In *Lapanday Workers Union v. National Labor Relations Commission*,[53] the Court reasoned that the period is intended to give the NCMB an opportunity to verify whether the projected strike really carries the imprimatur of the majority of the union members.[54]

In a strike due to bargaining deadlocks, the union must file a notice of strike or lockout with the regional branch of the NCMB at least 30 days before the intended date of the strike and serve a copy of the notice on the employer. This is the so-called "cooling-off period" when the parties may enter into compromise agreements to prevent the strike. In case of unfair labor practice, the period of notice is shortened to 15 days; in case of union busting, the "cooling-off period" does not apply

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[50] Section 10. *Strike or Lockout Vote.* — A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned obtained by secret ballot in meetings or referenda called for the purpose. A decision to declare a lockout must be approved by a majority of the Board of Directors of the employer, corporation or association or the partners in a partnership obtained by a secret ballot in a meeting called for the purpose.

The regional branch of the Board may, at its own initiative or upon request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the regional branch of the Board and the notice of meetings referred to in the preceding paragraph at least twenty-four (24) hours before such meetings as well as the results of the voting at least seven (7) days before the intended strike or lockout, subject to the cooling-off period provided in this Rule. (DO 40-03) (Emphasis supplied)

[51] *CCBPI Postmix Workers Union v. NLRC*, 359 Phil. 741, 757-758 (1998).

[52] *Lapanday Workers Union v. NLRC*, 318 Phil. 114, 126-127 (1995).

[53] 318 Phil. 114 (1995).

[54] *Id.* at 125.

and the union may immediately conduct the strike after the strike vote and after submitting the results thereof to the regional arbitration branch of the NCMB at least seven days before the intended strike.[55]

Thus, in a strike grounded on unfair labor practice, the following are the requirements: (1) the strike may be declared by the duly certified bargaining agent or legitimate labor organization; (2) the conduct of the strike vote in accordance with the notice and reportorial requirements to the NCMB and subject to the seven-day waiting period; (3) notice of strike filed with the NCMB and copy furnished to the employer, subject to the 15-day cooling-off period. In cases of union busting, the 15-day cooling-off period shall not apply.

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[55] Section 7. *Notice of Strike or Lockout*. — In bargaining deadlocks, a notice of strike or lockout shall be filed with the regional branch of the Board at least thirty (30) days before the intended date thereof, a copy of said notice having been served on the other party concerned. In cases of unfair labor practice, the period of notice shall be fifteen (15) days. However, in case of unfair labor practice involving the dismissal from employment of any union officer duly elected in accordance with the union constitution and by-laws which may constitute union-busting where the existence of the union is threatened, the fifteen-day cooling-off period shall not apply and the union may take action immediately after the strike vote is conducted and the results thereof submitted to the appropriate regional branch of the Board.

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Section 10. *Strike or Lockout Vote*. — A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned obtained by secret ballot in meetings or referenda called for the purpose. A decision to declare a lockout must be approved by a majority of the Board of Directors of the employer, corporation or association or the partners in a partnership obtained by a secret ballot in a meeting called for the purpose.

The regional branch of the Board may, at its own initiative or upon request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the regional branch of the Board and the notice of meetings referred to in the preceding paragraph at least twenty-four (24) hours before such meetings as well as the results of the voting at least seven (7) days before the intended strike or lockout, subject to the cooling-off period provided in this Rule. (DO 40-03)

The union conducted an illegal sit-down strike on February 16, 1996

With regard to the first strike conducted by the union members on February 16, 1996 (first strike), the Court holds that the CA committed reversible error in overturning the findings of the NLRC and LA. The CA held that no substantial evidence was presented to prove that the union staged a "sit-down strike" as only one representative from Bigg's attested to the fact. However, a review of the records proves otherwise.

Several employees of Bigg's executed affidavits deposing that the union members conducted a sit-down strike on February 16, 1996. Ireneo Sumpay, Jr. (Sumpay), security guard, attested that when he arrived at Bigg's restaurant on said date at 6:00 a.m., the union members who were assigned on the first shift refused to do their jobs and declared that they were on strike.[56] Bigg's supervisor, Evelyn Rectin (Rectin) affirmed Sumpay's statement. Rectin averred that on February 16, 1996, she arrived for work at 6:30 a.m. and Sumpay immediately reported to her that some employees had refused to work. Indeed, she saw that employees Jay Boncacas, Willy Oyarde, Jose Sonny Sio, Rosendo Chico, Greg Come, Alfred Odiamar, Eddie Nacario, Marlon Romero, Glen Artuz, and Mano Aycardo were just sitting. She mentioned that other employees were also just sitting on the second floor of the restaurant. Rectin reported the matter to Bigg's Operations Officer, Teresita Arejola (Arejola).[57] The latter also corroborated the affidavits of Sumpay and Rectin. In her affidavit, Arejola confirmed that she received a call from Rectin at around 6:00 a.m. informing her that the employees of Bigg's were staging a sit-down strike. Arejola then reported the matter to corporate officers Teresita Puenaflor and Carmen Manjon (Manjon). Arejola proceeded to Bigg's restaurant and saw that the employees were not working. She ordered them to start their work but they still refused. At around 10:00 a.m. of the same day, the striking employees left and did

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[56] *Rollo* (G.R. No. 200487), pp. 239-240.

[57] *Id*. at 241-242.

not return to work.[58] During the conference before the LA on November 11,1999, Manjon testified that she went to Bigg's restaurant after receiving reports that there was a sit-down strike and upon arriving thereat, she saw that employees were n performing their work.[59]

The consistent and corroborative sworn declarations of Bigg's witnesses constitute substantial evidence to prove that the union members committed a sit-down strike on February 16, 1996. The quantum of proof necessary in labor cases is substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[60] Thus, the CA committed reversible error in overturning the findings of the NLRC and LA based on the CA's incorrect finding that only one representative of Bigg's attested that there was a sit-down strike.

On this score, the Court reinstates and affirms the ruling of the NLRC, which had, for its part, affirmed the findings of the LA that the union conducted an illegal sit-down strike on February 16, 1996, for failure of the union to comply with the pre-requisites for a valid strike.

The union did not file the requisite Notice of Strike and failed to observe the cooling-off period. In an effort to legitimize the strike on February 16, 1996, the union filed a Notice of Strike on the same day. This cannot be considered as compliance with the requirement, as the cooling-off period is mandatory. The cooling-off period is not merely a period during which the union and the employer must simply wait. The purpose of the cooling-off period is to allow the parties to negotiate and seek a peaceful settlement of their dispute to prevent the actual conduct of the strike. In other words, there must be genuine efforts to amicably resolve the dispute.

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[58] *Id*. at 245-247.

[59] *Id*. at 294-304.

[60] *Valencia v. Classique Vinyl Products Corporation*, 804 Phil. 492, 504 (2017).

Moreover, the Court affirms the findings of the labor tribunals that the union failed to prove with substantial evidence that Bigg's was guilty of unfair labor practice as defined under Article 259[61] of the Labor Code to allow the union, a non-

[61] Art. 259. [248] *Unfair Labor Practices of Employers*. — It shall be unlawful for an employer to commit any of the following unfair labor practices:

(a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization;

(b) To require as a condition of employment that a person or an employee shall not join a labor organization or shall withdraw from one to which he belongs;

(c) To contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their right to self-organization;

(d) To initiate, dominate, assist or otherwise interfere with the formation or administration of any labor organization, including the giving of financial or other support to it or its organizers or supporters;

(e) To discriminate in regard to wages, hours of work and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement. Employees of an appropriate bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective bargaining agreement: *Provided*, That the individual authorization required under Article 242, paragraph (o) of this Code shall not apply to the non-members of the recognized collective bargaining agent;

(f) To dismiss, discharge or otherwise prejudice or discriminate against an employee for having given or being about to give testimony under this Code;

(g) To violate the duty to bargain collectively as prescribed by this Code;

(h) To pay negotiation or attorney's fees to the union or its officers or agents as part of the settlement of any issue in collective bargaining or any other dispute; or

(i) To violate a collective bargaining agreement.

certified bargaining agent to initiate the strike. Likewise, the union failed to prove that there was union busting[62] to exempt compliance with the cooling-off period. The union did not present any substantial evidence to prove its allegations that union members were actually dismissed or threatened with dismissal for their union membership.

In fine, the union's failure to comply with the mandatory requirements rendered the strike on February 16, 1996 illegal.

The strike on March 5, 1996 was illegal; dismissal of union president valid

The Court upholds the consistent and uniform findings of the CA, NLRC, and LA on the illegality of the strike on March 5, 1996, despite the compliance with the procedural requirements of a valid strike. It was established that the striking union members committed acts of violence, aggression, vandalism, and blockage of the free passage to and from Bigg's premises.

While the law protects the right of workers to engage in concerted activities for the purpose of collective bargaining or to seek redress for unfair labor practices, this right must be exercised in accordance with the law. Article 279 (formerly 264) (e) of the Labor Code provides:

No person engaged in picketing shall commit any act of violence, coercion or intimidation or obstruct the free ingress to or egress from

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The provisions of the preceding paragraph notwithstanding, only the officers and agents of corporations, associations or partnerships who have actually participated in, authorized or ratified unfair labor practices shall be held criminally liable.

[62] To constitute union busting under Article 263 of the Labor Code, there must be: 1) a dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws; and 2) the existence of the union must be threatened by such dismissal. (*Pilipino Telephone Corp. v. Pilipino Telephone Employees Association*, 552 Phil. 432, 445 [2007]).

the employer's premises for lawful purposes, or obstruct public thoroughfares.

Thus, in this matter, the CA correctly upheld the findings of the labor tribunals.

The Court, however, reverses the CA's findings that the union president Boncacas' dismissal was invalid as he did not commit illegal acts during the March 5, 1996 strike. The Labor Code provides for a stricter standard on union officers. Article 279 (formerly Article 264) (a) provides:

> x x x Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status: *Provided,* That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike.

In *Magdala Multipurpose & Livelihood Cooperative v. Kilusang Manggagawa ng LGS*,[63] the Court summarized the above rule accordingly:

> We now come to the proper sanctions for the conduct of union officers in an illegal strike and for union members who committed illegal acts during a strike. The above-cited Art. 264 of the Code presents a substantial distinction of the consequences of an illegal strike between union officers and mere members of the union. For union officers, knowingly participating in an illegal strike is a valid ground for termination of their employment. But for union members who participated in a strike, their employment may be terminated only if they committed prohibited and illegal acts during the strike and there is substantial evidence or proof of their participation, *i.e.*, that they are clearly identified to have committed such prohibited and illegal acts.[64]

Thus, for union members, what is required is that they knowingly participated in the commission of illegal acts during the strike

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[63] 675 Phil. 861 (2011).

[64] *Id.* at 872.

for there to be sufficient ground for termination of employment. **For union officers, however, it suffices that they knowingly participated in an illegal strike.**

It must be noted that Boncacas not only knowingly participated but was the one who principally organized two illegal strikes on February 16, 1996 and March 5, 1996. Thus, the dismissal of Boncacas and the other union officers after the illegal strike on February 16, 1996 as well as the March 5, 1996 strike was valid. However, as to the union members who did not participate in any prohibited act during the strikes, their dismissal was invalid.

The proper parties and applicability of the Decision

In their petition, the union members maintain that Menandro Ramos, Lina Bartolome, Carmen Tejero, Sheila Raymundo, and Gregorio Come should also be reinstated as their names were merely inadvertently omitted from the dispositive portion of the LA Decision. There was also no finding in the LA Decision of their purported participation in any illegal act, contrary to the ruling of the CA.

On this point, the Court finds for the union. Indeed, the LA Decision names the following union officers as those who participated in the illegal strike on February 16, 1996 and March 5, 1996: Jay Boncacas, Rey Liria, Jean San Juan, and Junnie Arines.[65] The LA Decision also lists union member Gregorio Come as a participant in the March 5, 1996 but did not state whether he knowingly participated in the commission of prohibited acts during the strike. Neither did the LA declare that Menandro Ramos, Lina Bartolome, Carmen Tejero, and Sheila Raymundo as having knowingly participated in any illegal act during the March 5, 1996 strike. However, as pointed out by the union, their names were omitted in the dispositive portion of the LA Decision without any explanation. Absent any definite

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[65] *Rollo* (G.R. No. 200487), p. 87.

finding that said members willingly participated in any illegal act, they should have been included in the award of reinstatement with backwages by the LA.

With regard to the Compromise Agreement[66] executed by Michael Mapa, Rachelle Mea, Joseph Rull, Richard Sabater, Araceli Enriquez, Albert Tinasas, Alfredo Odiamar, Jr., Dante Bayta, and Glen Rebusi, the Court affirms the CA's Amended Decision. As held by the CA, the agreement is vague as it was merely an acknowledgment of the receipt of funds. It did not indicate whether the same constituted backwages or separation pay. More significantly, the Compromise Agreement explicitly stated that "this agreement shall be without prejudice to the case [titled *Biggs, Incorporated v. Bigg's Employees Union*], Sub RAB Case No. 05-03-00034-96 and [the case titled, *Jay Boncacas et al. v. Biggs, Inc. et al.*], Sub RAB Case No. 05-03-00037-96 now pending before the [NLRC]." Thus, the signatories thereto clearly reserved their right to pursue the instant cases.

The CA also correctly ruled that Bigg's failed to prove that union members Maruja De Vera, Thelma Divina, Allan Dy, Charvie Neo, Willy Oyarde, and Marlon Romero were contractual employees. To substantiate its claim, Bigg's merely submitted the memorandum[67] addressed to said employees informing them of the termination of their service contracts. Bigg's failed to submit the contracts themselves, which would have supported its claim that said employees were contractual.

However, the Court also agrees with the CA's removal of the following names in its Amended Decision: Maruja De Vera, Willie Oyarde, Marlon Romero, Michael Valenzuela, Egino Palmar, and Joseph Rull. Their names were not included in the list of petitioners in the union's petition for *certiorari*[68] before the CA and neither were they signatories to the Verification

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[66] CA *rollo*, pp. 813-814.

[67] *Rollo* (G.R. No. 200487), pp. 269-270.

[68] *Id*. at 52.

and Certification of Non-Forum Shopping.[69] Thus, as it stands, the following persons should have been included in the Amended CA Decision as regards its order of reinstatement:

1. Alfredo Odiamar, Jr.
2. Albert Tinasas
3. Allan Dy
4. Araceli Enriquez
5. Arlene Comia
6. Charvie Neo
7. Dante Bayta
8. Glen Rebusi
9. Jun Ladaban
10. Ma. Rebecca San Jose
11. Michael Mapa
12. Pura Sabater
13. Rachelle Mea
14. Richard Sabater
15. Thelma Divina
16. Wilheim Jardenario
17. **Menandro Ramos**
18. **Lina Bartolome**
19. **Carmen Tejero**
20. **Sheila Raymundo**
21. **Gregorio Come**

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[69] *Id.* at 402.

However, the Court notes that of the five union members omitted from the LA Decision, only Sheila Raymundo and Menandro Ramos joined in the instant petition. Thus, the Decision of the Court shall only apply as to them In *Municipality of Orion v. Pereyra*[70] the Court held:

> x x x [A] reversal as to parties appealing does not necessitate a reversal as to parties not appealing, but that the judgment may be affirmed or left undisturbed as to them. An exception to the rule exists, however, where a judgment cannot be reversed as to the party appealing without affecting the rights of his co-debtor.[71]

Thus, as Lina Bartolome, Carmen Tejero, and Gregorio Come no longer participated in the instant petition, they are no longer parties and the Court cannot issue a judgment as to them.

Lastly, the Court deletes the award of backwages in conformity with jurisprudence that backwages are not granted to dismissed employees who participated in an illegal strike even if they are later reinstated. In *Escario v. NLRC*[72] *(Escario)*, the Court held:

> Conformably with the long honored principle of a *fair day's wage for a fair day's labor*, employees dismissed for joining an illegal strike are not entitled to backwages for the period of the strike even if they are reinstated by virtue of their being merely members of the striking union who did not commit any illegal act during the strike.[73]

In *Philippine Diamond Hotel & Resort, Inc. v. Manila Diamond Hotel Employees Union*[74] (*Philippine Diamond Hotel & Resort, Inc.*), the Court laid down the exceptions to this rule:

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[70] *Municipality of Orion v. Pereyra*, 50 Phil. 679 (1927).

[71] *Id.* at 684.

[72] 645 Phil. 503 (2010).

[73] *Id.* at 507.

[74] 526 Phil. 679 (2006).

Jurisprudential law, however, recognizes several exceptions to the "no backwages rule," to wit: when the employees were illegally locked to thus compel them to stage a strike; when the employer is guilty of the grossest form of ULP; when the employer committed discrimination in the rehiring of strikers refusing to readmit those against whom there were pending criminal cases while admitting non-strikers who were also criminally charged in court; or when the workers who staged a voluntary ULP strike offered to return to work unconditionally but the employer refused to reinstate them. Not any of these or analogous instances is, however, present in the instant case.

Respondent urges this Court to apply the exceptional rule enunciated in *Philippine Marine Officers' Guild v. Compañia Maritima* and similar cases where the employees unconditionally offered to return to work, it arguing that there was such an offer on its part to return to work but the Hotel screened the returning strikers and refused to readmit those whom it found to have perpetrated prohibited acts during the strike.

It must be stressed, however, that for the exception in *Philippine Marine Officers' Guild* to apply, it is required that the strike must be **legal**.[75]

None of the exceptions mentioned above is existing in these cases and, as found by the Court, both strikes conducted by the union were illegal. Thus, the listed employees are not entitled to backwages despite the CA's order of reinstatement.

Separation pay in lieu of reinstatement

In certain cases, separation pay is awarded in lieu of reinstatement. The circumstances were enumerated in *Escario*:

x x x (*a*) when reinstatement can no longer be effected in view of the passage of a long period of time or because of the realities of the situation; (*b*) reinstatement is inimical to the employer's interest; (*c*) reinstatement is no longer feasible; (*d*) reinstatement does not serve the best interests of the parties involved; (*e*) the employer is prejudiced by the workers' continued employment; (*f*) facts that make

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[75] *Id*. at 697-699.

execution unjust or inequitable have supervened; or (*g*) strained relations between the employer and employee.[76]

As prayed for by Bigg's, considering that 23 years have passed since the dismissal of the union members on February 19, 1996,[77] and bearing in mind Bigg's manifestation that they could no longer trust the striking employees especially as the company is in the food service industry,[78] separation pay may be more appropriate in lieu of reinstatement.

In *Philippine Diamond Hotel & Resort, Inc*., the Court made the following discussion:

> Reinstatement without backwages of striking members of respondent who did not commit illegal acts would thus suffice under the circumstances of the case. If reinstatement is no longer possible, given the lapse of considerable time from the occurrence of the strike, the award of separation pay of one (1) month salary for each year of service, in lieu of reinstatement, is in order.[79]

Thus, the Court adopts the above disquisition in this case. Finally, the monetary award herein granted shall earn legal interest of 12% per annum from February 19, 1996, the date of termination, until June 30, 2013 in line with the Court's ruling in *Nacar v. Gallery Frames*[80] and from July 1, 2013 until full satisfaction of the award, the interest rate shall be at 6%.[81]

WHEREFORE, premises considered, the petitions in G.R. Nos. 200487 & 200636 are PARTIALLY **GRANTED**. The Court further **RESOLVES** to **MODIFY** the assailed Decision

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[76] *Supra* note 72 at 516.

[77] *Rollo* (G.R. No. 200487), p. 23.

[78] Testimony of Carmen Manjon, CA *rollo*, pp. 130-131.

[79] *Supra* note 74 at 699.

[80] x x x 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*. (716 Phil. 267, 280-281 [2013])

[81] *Id*.

dated June 10, 2011 and Amended Decision dated January 20, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 78149, accordingly:

1. **DECLARE** the strike of February 16, 1996 illegal;
2. **DELETE** the award of backwages;
3. **GRANT** separation pay in lieu of reinstatement at the rate of one (1) month pay for every year of service from the time of dismissal on February 19, 1996 until the finality of this Decision;
4. **INCLUDE** MENANDRO RAMOS and SHEILA RAYMUNDO in the award. The complete list of employees **ENTITLED** to the award follows:

   a. Alfredo Odiamar, Jr.
   b. Albert Tinasas
   c. Allan Dy
   d. Araceli Enriquez
   e. Arlene Comia
   f. Charvie Neo
   g. Dante Bayta
   h. Glen Rebusi
   i. Jun Ladaban
   j. Ma. Rebecca San Jose
   k. Michael Mapa
   l. Pura Sabater
   m. Rachelle Mea
   n. Richard Sabater
   o. Thelma Divina
   p. Wilheim Jardenario
   q. Menandro Ramos
   r. Sheila Raymundo

5. The monetary award shall earn legal interest of 12% per annum from February 19, 1996 until June 30, 2013. From July 1, 2013 until full satisfaction of the award, the interest rate shall be at 6%.
6. **REMAND** THE CASE TO THE LABOR ARBITER FOR EXECUTION OF THE AWARD AND COMPUTATION OF SEPARATION PAY.

SO ORDERED.

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

Perlas-Bernabe, J., on wellness leave.

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

THIRD DIVISION

[G.R. No. 202430. March 6, 2019]

METRO BOTTLED WATER CORPORATION, *petitioner, vs.* **ANDRADA CONSTRUCTION & DEVELOPMENT CORPORATION, INC.,** *respondent.*

SYLLABUS

1. **CIVIL LAW; EXECUTIVE ORDER NO. 1008 (CONSTRUCTION INDUSTRY ARBITRATION LAW); CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC); JURISDICTION; ORIGINAL AND EXCLUSIVE JURISDICTION OVER DISPUTES ARISING FROM OR CONNECTED WITH, CONTRACTS ENTERED INTO BY PARTIES INVOLVED IN CONSTRUCTION IN THE PHILIPPINES, WHETHER THE DISPUTE ARISES BEFORE OR AFTER THE COMPLETION OF THE CONTRACT, OR AFTER THE ABANDONMENT OR BREACH THEREOF.—** The Construction Industry Arbitration Commission was created by Executive Order No. 1008, or the Construction Industry Arbitration Law, to have "original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof." The extent of its jurisdiction is clearly provided for in the law: The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual time and delays; maintenance and defects; payment, default of employer or contractor and changes in contract cost. Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.

2. **ID.; ID.; ID.; APPEALS; APPEALS OF ARBITRAL AWARDS MAY BE BROUGHT TO THE COURT OF APPEALS ON PURE QUESTIONS OF LAW ONLY.—** Due to the highly technical

nature of proceedings before the Construction Industry Arbitration Commission, as well as its emphasis on the parties' willingness to submit to the proceedings, the Construction Industry Arbitration Law provides for a narrow ground by which the arbitral award can be questioned in a higher tribunal. x x x The Construction Industry Arbitration Commission has since been categorized as a quasi-judicial agency in *Metro Construction, Inc. v. Chatham Properties, Inc.* x x x To standardize appeals from quasi-judicial agencies, Rule 43 of the 1997 Rules of Civil Procedure provides that appeals "may be taken to the Court of Appeals within the period and in the manner herein provided, whether the appeal involves questions of fact, of law, or mixed questions of fact and law." The Construction Industry Arbitration Commission is among the quasi-judicial agencies explicitly listed in the rule. x x x In *CE Construction v. Araneta Center*, however, this Court emphasized that Rule 43 must be read together with the Construction Industry Arbitration Law, which provides that appeals of arbitral awards must only raise questions of law. Thus, even if Rule 43 now provides that appeals may be brought before the Court of Appeals, these appeals must still be confined to questions of law: This is not to say that factual findings of CIAC arbitral tribunals may now be assailed before the Court of Appeals. Section 3's statement "whether the appeal involves questions of fact, of law, or mixed questions of fact and law" merely recognizes variances in the disparate modes of appeal that Rule 43 standardizes: there were those that enabled questions of fact; there were those that enabled questions of law, and there were those that enabled mixed questions [of] fact and law. Rule 43 emphasizes that though there may have been variances, all appeals under its scope are to be brought before the Court of Appeals. However, in keeping with the Construction Industry Arbitration Law, *any appeal from CIAC arbitral tribunals must remain limited to questions of law.*

3. REMEDIAL LAW; APPEALS; RULE 43 OF THE RULES OF COURT; DOES NOT AUTOMATICALLY APPLY TO ALL APPEALS OF ARBITRAL AWARDS; COMMERCIAL ARBITRATION, CONSTRUCTION ARBITRATION, AND VOLUNTARY ARBITRATION, DISTINGUISHED.— While there is uniformity between appeals of the different quasi-judicial agencies, Rule 43 does not automatically apply to all appeals

of arbitral awards. *Fruehauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific Corporation* has since distinguished between commercial arbitration, construction arbitration, and voluntary arbitration under Article 219(n) of the Labor Code. *Fruehauf Electronics Philippines Corporation* declared that commercial arbitration tribunals are not quasi-judicial agencies, but "purely *ad hoc* bodies operating through contractual consent and as they intend to serve private, proprietary interests." A commercial arbitration tribunal is a "creature of contract" that becomes *functus officio* once the arbitral award attains finality. However, the jurisdiction of construction arbitration tribunals and voluntary arbitrators is vested by statute. This jurisdiction exists independently of the will of the contracting parties due to the public interest inherent in their respective spheres, thus: Voluntary Arbitrators resolve labor disputes and grievances arising from the interpretation of Collective Bargaining Agreements. These disputes were specifically excluded from the coverage of both the Arbitration Law and the ADR Law. Unlike purely commercial relationships, the relationship between capital and labor [is] heavily impressed with public interest. Because of this, Voluntary Arbitrators authorized to resolve labor disputes have been clothed with quasi-judicial authority. On the other hand, commercial relationships covered by our commercial arbitration laws are purely private and contractual in nature. Unlike labor relationships, they do not possess the same competing state interest that would justify state interference into the autonomy of contracts. Hence, commercial arbitration is a purely private system of adjudication facilitated by private citizens instead of government instrumentalities wielding quasi-judicial powers. Moreover, judicial or quasi-judicial jurisdiction cannot be conferred upon a tribunal by the parties alone. The Labor Code itself confers subject-matter jurisdiction to Voluntary Arbitrators.

4. POLITICAL LAW; REPUBLIC ACT NO. 876 (ARBITRATION LAW); FACTUAL FINDINGS OF CONSTRUCTION ARBITRATORS ARE FINAL AND CONCLUSIVE AND NOT REVIEWABLE BY THE SUPREME COURT; EXCEPTIONS.— [T]he general rule is that appeals of arbitral awards by the Construction Industry Arbitration Commission may only be allowed on pure questions of law. Even the Construction

Industry Arbitration Law does not provide for any instance when an arbitral award may be vacated. *Spouses David v. Construction Industry and Arbitration Commission* recognized this gap, and thus, applied the provisions of Republic Act No. 876, or the Arbitration Law: [F]actual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal, except when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or of any of them; (3) the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made. Notably, these exceptions refer to the *conduct* of the arbitral tribunal and the *qualifications* of the arbitrator. They do not refer to the arbitral tribunal's errors of fact and law, misappreciation of evidence, or conflicting findings of fact. Hence, *CE Construction*, in recognizing the nature of these exceptions, held that questions of law may be allowed "only in instances when the integrity of the arbitral tribunal itself has been put in jeopardy." This Court further mandated that "factual findings may be reviewed only in cases where the CIAC arbitral tribunals conducted their affairs in a haphazard, immodest manner that the most basic integrity of the arbitral process was imperiled."

5. REMEDIAL LAW; APPEALS; QUESTION OF LAW DISTINGUISHED FROM QUESTION OF FACT; CASE AT BAR.— Petitioner raised issues that are questions of fact in the guise of questions of law. As such, they are not proper for this Court's review. The difference between a question of law and a question of fact is settled. In *Spouses David*: There is a question of law when the doubt or difference in a given case arises as to what the law is on a certain set of facts, and there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. Thus, for a question to be one of law, it must not involve an examination of the probative value

of the evidence presented by the parties and there must be no doubt as to the veracity or falsehood of the facts alleged. Petitioner alleges that it is not liable to respondent for the costs incurred in Change Order Nos. 39 to 109 since the Construction Agreement clearly required a written agreement by both parties of the change orders, which petitioner alleges it did not provide. At first glance, petitioner appears to be raising a question of law, *i.e.*, whether respondent complied with the provisions of the Construction Agreement as to be entitled to compensation, which, in turn, would require the proper interpretation of the contract between the parties. This would be a question of law since it requires the courts to determine the parties' rights under the contract.

6. CIVIL LAW; DAMAGES; LIQUIDATED DAMAGES; MAY BE AWARDED IF THE CONTRACT PROVIDES FOR MONETARY COMPENSATION IN CASE OF BREACH; NOT PROPER IN CASE AT BAR.— Liquidated damages may be awarded if the contract provides for a monetary compensation in case of breach. The contractor must agree to pay the owner in case there is delay. Thus, this provision must be embodied in the contract. A perusal of the Construction Agreement, however, shows that no such stipulation was provided. x x x Under the contract, respondent must first be found in default, after which it was only required to pay if the enforcement of petitioner's rights exceeded the unpaid balance of the purchase price. No specific provision holds respondent liable for liquidated damages in case of delay. Even assuming that liquidated damages could be awarded in case of delay, petitioner's right to receive liquidated damages *must first be anchored on a factual finding that respondent incurred delay*. This, again, is a question of fact since it requires a review of the findings of the Construction Industry Arbitration Commission. The arbitral tribunal, however, found that *there was no delay in the completion of the project*.

7. ID.; CONTRACTS; THE CONTRACT IS THE LAW BETWEEN THE PARTIES; ABSENT ANY AMBIGUITY IN THE CONTRACT, RESORT TO OTHER AIDS IN INTERPRETATION IS NOT NECESSARY; CASE AT BAR.— Petitioner submits that the Construction Industry Arbitration Commission and the Court of Appeals erred in applying the equitable principle of unjust enrichment, since applying Article 1724 of the Civil Code was more appropriate under the

circumstances. x x x Petitioner contends that the arbitral tribunal should first apply Article 1724 when resolving the issue of whether respondent should be compensated for costs incurred in Change Order Nos. 39 to 109. Petitioner, however, fails to recognize that there was no need to apply Article 1724, since salient points of the provision had already been embodied in the Construction Agreement. x x x It is settled that the contract is the law between the parties. Without any ambiguity in Item No. 8 of the Construction Agreement, there was no need to resort to other aids in interpretation, such as Article 1724 of the Civil Code, to resolve the issue. As previously discussed, petitioner was found to have waived its right to strictly enforce the provisions of Item No. 8 of the Construction Agreement, when respondent undertook Change Order Nos. 39 to 109. Petitioner should now reckon with the consequences of that waiver.

8. ID.; ID.; PRINCIPLE OF UNJUST ENRICHMENT; APPLICABLE TO THE CASE AT BAR.— The Construction Industry Arbitration Commission, however, cannot be faulted for applying the equitable principle of unjust enrichment in determining petitioner's liability to respondent. *CE Construction* discusses two (2) main principles that guide the Construction Industry Arbitration Commission in accomplishing its tasks. First is the basic principle of fairness. The second is that of "effective dispute resolution or the overarching principle of arbitration as a mechanism relieved of the encumbrances of litigation." x x x Here, services were rendered for which compensation was demanded. The contract between the parties, however, inadequately provides for the mechanism by which compensation may be due. The *fair* and *expeditious* resolution of the issue requires the arbitral tribunal to instead apply equitable principles to arrive at a just conclusion. In *CE Construction*: Jurisprudence has settled that even in cases where parties enter into contracts which do not strictly conform to standard formalities or to the typifying provisions of nominate contracts, when one renders services to another, the latter must compensate the former for the reasonable value of the services rendered. This amount shall be fixed by a court. This is a matter so basic, this Court has once characterized it as one that "springs from the fountain of good conscience": As early as 1903, in *Perez v. Pomar*, this Court ruled that where one has rendered services to another, and these services are accepted by the latter, in the absence

of proof that the service was rendered gratuitously, it is but just that he should pay a reasonable remuneration therefore because "it is a well-known principle of law, that no one should be permitted to enrich himself to the damage of another." Similarly in 1914, this Court declared that in this jurisdiction, even in the absence of statute, ". . . under the general principle that one person may not enrich himself at the expense of another, a judgment creditor would not be permitted to retain the purchase price of land sold as the property of the judgment debtor after it has been made to appear that the judgment debtor had no title to the land and that the purchaser had failed to secure title thereto . . ." The foregoing equitable principle which springs from the fountain of good conscience are applicable to the case at bar.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioner.
Solo V. Tibe for respondent.

D E C I S I O N

LEONEN, *J.*:

Generally, judicial review of arbitral awards is permitted only on very narrow grounds. Republic Act No. 876, or the Arbitration Law, does not allow an arbitral award to be revisited without a showing of specified conditions,[1] which must be proven

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[1] Rep. Act No. 876 (1953), Sec. 24 provides:

SECTION 24. Grounds for vacating award. — In any one of the following cases, the court must make an order vacating the award upon the petition of any party to the controversy when such party proves affirmatively that in the arbitration proceedings:

(a) The award was procured by corruption, fraud, or other undue means; or
(b) That there was evident partiality or corruption in the arbitrators or any of them; or
(c) That the arbitrators were guilty of misconduct in refusing to postpone the hearing upon, sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; that one or more of the arbitrators was disqualified to act as such under

affirmatively by the party seeking its review. The Special Rules of Court on Alternative Dispute Resolution,[2] implementing the Alternative Dispute Resolution Act of 2004,[3] mandate that arbitral awards will not be vacated "merely on the ground that the arbitral tribunal committed errors of fact, or of law, or of fact and law, as the court cannot substitute its judgment for that of the arbitral tribunal."[4] Parties are even "precluded from filing an appeal or a petition for *certiorari* questioning the merits of an arbitral award."[5]

On the other hand, arbitral awards by the Construction Industry Arbitration Commission may only be appealed on pure questions of law,[6] though not all will justify an appeal. Consistent with the strict standards for judicial review of arbitral awards, only those appeals which involve egregious errors of law may be entertained.

Given its technical expertise, the Construction Industry Arbitration Commission is given a wide latitude of discretion so that it may resolve all issues before it in a fair and expeditious manner. Included within the bounds of its discretion are situations

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section nine hereof, and wilfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or

(d) That the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.

[2] A.M. No. 07-11 -08-SC (2009).

[3] Rep. Act No. 9285 (2004), Ch. 7, Sec. 41 provides:

SECTION 41. Vacation Award. — A party to a domestic arbitration may question the arbitral award with the appropriate Regional Trial Court in accordance with rules of procedure to be promulgated by the Supreme Court only on those grounds enumerated in Section 25 of Republic Act No. 876. Any other ground raised against a domestic arbitral award shall be disregarded by the regional trial court.

[4] SPECIAL ADR RULES, Rule 19.10.

[5] SPECIAL ADR RULES, Rule 19.7.

[6] Exec. Order No. 1008 (1985), Sec. 19.

where it resolves, on the basis of equity, to order a party to compensate a contractor for any unpaid work done.

For this Court's resolution is a Petition for Review on *Certiorari*[7] assailing the March 21, 2012 Decision[8] and June 25, 2012 Resolution[9] of the Court of Appeals, which upheld the April 11, 2002 Arbitral Award[10] of the Construction Industry Arbitration Commission. The arbitral tribunal had ordered Metro Bottled Water Corporation (Metro Bottled Water) to pay Andrada Construction & Development Corporation, Inc. (Andrada Construction) the amount of ₱4,607,523.40 with legal interest from November 24, 2000 as unpaid work accomplishment in the construction of its manufacturing plant.

On April 28, 1995, Metro Bottled Water and Andrada Construction entered into a Construction Agreement[11] for the construction of a reinforced concrete manufacturing plant in Gateway Business Park, General Trias, Cavite for the contract price of ₱45,570,237.90. The Construction Agreement covered all materials, labor, equipment, and tools, including any other works required.[12] It provided:

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[7] *Rollo*, pp. 13-70.

[8] *Id*. at 73-88. The Decision, in CA-G.R. SP No. 70562, was penned by Associate Justice Sesinando E. Villon, and concurred in by Presiding Justice Andres B. Reyes, Jr. (now a member of this Court) and Associate Justice Amy C. Lazaro-Javier (now a member of this Court) of the First Division, Court of Appeals, Manila.

[9] *Id*. at 91. The Resolution, in CA-G.R. SP No. 70562, was penned by Associate Justice Sesinando E. Villon, and concurred in by Presiding Justice Andres B. Reyes, Jr. (now a member of this Court) and Associate Justice Amy C. Lazaro-Javier (now a member of this Court) of the First Division, Court of Appeals, Manila.

[10] *Id*. at 94-115. The Arbitral Award, in CIAC Case No. 30-2001, was signed by Arbitrators Beda G. Fajardo, Wenfredo A. Firme, and Rosauro S. Paderon of the Construction Industry Arbitration Commission.

[11] *Id*. at 124-136.

[12] *Id*. at 94.

8. Change Order

a. Without invalidating this Agreement, the OWNER may, at any time, order additions, deletions or revisions in the Work by means of a Change Order. The CONTRACTOR shall determine whether the Change Order causes a decrease or increase in the Purchase Price or shortening or extension of the Contract Period. Within three (3) days from receipt of the Change Order, CONTRACTOR shall give written notice to the OWNER of the value of the works required under the Change Order which will increase the Contract Price and of the extension in the Contract Period necessary to complete such works. On the other hand, if the Change Order involves deletions of some works required in the original Contract Documents, the value of the works deleted shall be deducted from the Contract Price and the Contract Period shortened accordingly.

In either case, any addition or reduction in the Contract Price or extension or shortening of the Contract Period shall be mutually agreed in writing by the OWNER and the CONTRACTOR prior to the execution of the works covered by the Change Order.[13]

The project was to be completed within 150 calendar days or by October 10, 1995, to be reckoned from Andrada Construction's posting of a Performance Bond to answer for liquidated damages, costs to complete the project, and third party claims. The Performance Bond was issued by Intra Strata Assurance Corporation (Intra Strata).[14]

On May 10, 1995, Metro Bottled Water extended the period of completion to November 30, 1995 upon Andrada Construction's request, due to the movement of one (1) bay of the plant building, weather conditions, and change orders.[15]

On November 14, 1995, E.S. De Castro and Associates, Metro Bottled Water's consultant for the project, recommended

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[13] *Id*. at 132

[14] *Id*. at 74.

[15] *Id*. at 94-95.

the forfeiture of the Performance Bond to answer for the completion and correction of the project, as well as liquidated damages for delay.[16]

On May 2, 1996, Metro Bottled Water filed a claim against the Performance Bond issued by Intra Strata.[17] Andrada Construction opposed the claim for lack of legal and factual basis.[18]

On September 6, 1996, Andrada Construction wrote to Metro Bottled Water contesting E.S. De Castro and Associates' Special Report.[19] The works performed by Andrada Construction were inspected by Metro Bottled Water and E.S. De Castro and Associates. Punch lists were prepared to monitor Andrada Construction's rectifications.[20]

Andrada Construction sent letters to Metro Bottled Water requesting for payment of unpaid work accomplishments amounting to ₱7,292,721.27.[21] Metro Bottled Water refused to pay.[22]

On August 6, 2001, Andrada Construction filed a Request for Arbitration[23] before the Construction Industry Arbitration Commission, alleging that Metro Bottled Water refused to pay its unpaid work accomplishment amounting to ₱7,954,961.10, with interest of ₱494,297.31.[24]

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[16] *Id*. at 137-138.

[17] *Id*. at 150.

[18] *Id*. at 95.

[19] *Id*. at 163.

[20] *Id*. at 95.

[21] *Id*. at 228-240.

[22] *Id*. at 95.

[23] *Id*. at 118-123.

[24] *Id*. at 95.

In its Answer,[25] Metro Bottled Water denied the allegations and counterclaimed for cost to complete and correct the project in the amount of ₱5,231,452.03 and liquidated damages in the amount of ₱1,663,884.36, among others.

A preliminary conference was held. On February 16, 2002, the arbitral tribunal conducted an ocular inspection of the construction site. The parties subsequently filed their respective Memoranda.[26]

In its April 24, 2002 Decision,[27] the Construction Industry Arbitration Commission found that Andrada Construction was entitled to unpaid work accomplishment in the amount of ₱4,607,523.40, with legal interest from November 24, 2000. It, however, denied Metro Bottled Water's counterclaims.[28]

According to the Construction Industry Arbitration Commission, Andrada Construction was entitled to the claims from the change orders since Metro Bottled Water did not strictly enforce its procedures in approving Change Orders 1 to 38 and impliedly approved Change Orders 39 to 109 by funding the payrolls and materials. However, it deducted: (1) ₱648,773.63, as this was already included in the claim for change orders; (2) ₱2,474,647.28, as costs for completion; and (3) ₱2,756,804.75, as corrective costs for the cracks on the concrete slabs in the production plant building.[29]

The Construction Industry Arbitration Commission also found that there was no delay in the completion since Metro Bottled Water validly granted an extension until November 30, 1995. It denied Metro Bottled Water's claim for corrective costs since any advance made by Metro Bottled Water for labor and

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[25] *Id*. at 242-272.

[26] *Id*. at 96.

[27] *Id*. at 94-115.

[28] *Id*. at 104-105.

[29] *Id*. at 98-100.

materials was charged against Andrada Construction's 10% retention[30] money.[31]

The Construction Industry Arbitration Commission also clarified that there were no valid factual and legal grounds for Metro Bottled Water's termination of agreement. This was because Andrada Construction completed the project within the extended period, and Metro Bottled Water failed to substantiate its allegation of payroll padding. The arbitral tribunal concluded that Metro Bottled Water could not have taken over the project from November 15, 1995, since there was no notice of termination and Andrada Construction remained in full control of the original contract and change orders during the extended period.[32] The Arbitral Award read:

> WHEREFORE, premises considered we hold that:
>
> A. Claimant's claims
>
> | | | |
> |---|---|---|
> | Unpaid work accomplishment | - | ₱4,607,523.40 |
> | Interest on the unpaid work Accomplishment | - | 6% per annum on ₱4,607,523.40 reckoned from November 24, 2000 date of receipt of the letter dated October 24, 2000 by Respondent and 12% per annum from the time the judgment becomes final and executory until the entire sum including interest is fully paid. |

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[30] "In the construction industry, the 10 percent retention money is portion of the contract price automatically deducted from the contractor's billings, as security for the execution of corrective work—if any—becomes necessary. This amount is to be released one year after the completion of the project, minus the cost of corrective work." *H.L. Carlos Construction v. Marina Properties Corporation*, 466 Phil. 182, 199-200 (2004) [Per J. Panganiban, First Division].

[31] *Rollo*, pp. 100-102.

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

B. Respondent's Counterclaims

Cost to complete and correct the projects - none
Liquidated damages - none

All other claims and counterclaims are dismissed for lack of merit.

The costs of arbitration shall be shared equally by the parties.

Accordingly, judgment is hereby rendered ordering Metro Bottled Water Corporation to pay Andrada Construction and Development Inc. the amount of ₱4,607,523.40 with interest at 6% per annum reckoned from November 24, 2000 date of receipt of the letter dated October 24, 2000 by Respondent and 12% per annum from the time this judgment becomes final and executory until the entire sum including interest is fully paid.

SO ORDERED, April 11, 2002.[33]

Metro Bottled Water filed before the Court of Appeals a Petition for Review[34] assailing the Arbitral Award.

In its March 21, 2012 Decision,[35] the Court of Appeals dismissed the Petition for lack of merit[36] and upheld the factual findings of the Construction Industry Arbitration Commission.[37] It agreed with the arbitral tribunal's evaluation that Metro Bottled Water confirmed the completed works, and thus, Andrada Construction was entitled to compensation. To deny the payment would be to permit unjust enrichment at Andrada Construction's expense.[38]

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[33] *Id*. at 104-105.

[34] *Id*. at 1773-1828.

[35] *Id*. at 73-88.

[36] *Id*. at 87.

[37] *Id*. at 86.

[38] *Id*. at 77-80.

The Court of Appeals found no error in the entitlement of legal interest since demand could be reasonably established from Andrada Construction's October 24, 2000 Letter, which stated that payment was being requested as a formal claim.[39] It held that it could not pass upon Metro Bottled Water's allegation that the claims were barred by laches since it was not among the issues for resolution in the parties' Terms of Reference.[40]

Metro Bottled Water filed a Motion for Reconsideration, but it was denied by the Court of Appeals in its June 25, 2012 Resolution.[41] Hence, this Petition[42] was filed.

Petitioner argues that the Court of Appeals erred in applying the principle of unjust enrichment, considering that Article 1724 of the Civil Code[43] provides the requisites for the recovery of the costs of additional work. It contends that Article 1724 requires both the written authority of the owner allowing the changes and a written agreement by the parties as to the increase in costs, neither of which were present in this case.[44] Even the Construction Agreement, it asserts, requires a written order to the contractor signed by the owner, authorizing work changes

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[39] *Id*. at 80-83.

[40] *Id*. at 86-87.

[41] *Id*. at 91.

[42] *Id*. at 13-70. Comment (*rollo*, pp. 2136-2258) was filed on November 20, 2012 while Reply (*rollo*, pp. 2265-2284) was filed on February 28, 2013. A Rejoinder (*rollo*, pp. 2286-2371) was submitted but was expunged in a June 3, 2013 Resolution (*rollo*, p. 2373) for being a prohibited pleading

[43] CIVIL CODE, Art. 1724 provides:

ARTICLE 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the land-owner, can neither withdraw from the contract nor demand an increase in the price on account of the higher cost of labor or materials, save when there has been a change in the plans and specifications, provided:

(1) Such change has been authorized by the proprietor in writing; and

(2) The additional price to be paid to the contractor has been determined in writing by both parties.

[44] *Rollo*, pp. 32-35.

or adjustments on the contract price or contract period—to which respondent did not comply.[45]

Petitioner explains that there was no evidence to conclude that it did not observe the contractual provisions on Change Order Nos. 1 to 38 since respondent admitted that Change Order Nos. 1 to 38 were submitted to petitioner for approval. At any rate, it argues, the Construction Agreement provides that any non-enforcement under the contract cannot be construed as a waiver of its rights. Hence, its non-enforcement of the contractual provisions on Change Order Nos. 1 to 38 should not be construed as a waiver of its rights to enforce the contractual provisions on Change Order Nos. 39 to 109.[46]

Petitioner asserts that it was entitled to the payment of liquidated damages since respondent was unable to complete the project within the contract period. Respondent had no valid reasons to extend the contract period or execute change orders. It points out that its October 11, 1995 Letter did not grant a time extension, but merely provided a new schedule of completion; hence, respondent's completion of the project nine (9) days after the contract period constituted delay.[47]

Petitioner submits that the Court of Appeals and the Construction Industry Arbitration Commission erred in not finding that there were no factual and legal grounds for terminating the Construction Agreement and petitioner taking over the project. It argues that respondent not only failed to complete the project on time, but also engaged in payroll padding, as proven by documentary evidence. It points out that it needed no notice to take over the project if, upon notice of default, respondent could not complete it within 10 days, per the Construction Agreement.[48] Thus, petitioner, on November 15,

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

[46] *Id*. at 36-37.

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

[48] *Id*. at 52-57.

1995, assumed the payment of labor and supervision of manpower, as proven by its consultant's testimony and the Progress Reports submitted during the period.[49]

Respondent counters that petitioner assails the competence of the Construction Industry Arbitration Commission on its findings of fact. This, it points outs, is not among the grounds for which petitioner may appeal the arbitral award. It argues that petitioner agreed to be bound by arbitration proceedings in an administrative agency "vested with special powers to determine issues in construction contracts, agreements[,] and projects."[50] It maintains that this Court may only entertain questions of law and that the arbitral tribunal's factual findings are "regarded with full respect, if not finality."[51]

Respondent contends that E.S. De Castro and Associates' engineers and architects gave instructions on change orders that would later be endorsed to petitioner for approval.[52] For Change Order Nos. 1 to 109, the practice was that respondent would receive "[a]dvise, directive or instruction and orders"[53] from E.S. De Castro and Associates, after which respondent would draft a written quotation or proposal to be reviewed and evaluated by E.S. De Castro and Associates and endorsed to petitioner for approval. Thus, respondent proceeded with the changes advised and directed by E.S. De Castro and Associates, without need of petitioner's written authority.[54]

Respondent further argues that petitioner was not entitled to liquidated damages considering its requested extension was thoroughly reviewed by E.S. De Castro and Associates, which later approved it.[55] Since there was no delay, it asserts, petitioner

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[49] *Id*. at 57-62.

[50] *Id*. at 2177.

[51] *Id*. at 2170-2177. Exact quote at 2173.

[52] *Id*. at 2189.

[53] *Id*. at 2201.

[54] *Id*. at 2201-2202.

[55] *Id*. at 2209-2215.

would have no valid reason to terminate the Construction Agreement.[56] It argues that the Construction Industry Arbitration Commission and the Court of Appeals correctly found that petitioner did not take over the project from November 15, 1995 since no evidence presented proved this allegation.[57] Further, it raises the presence of a "domino effect"[58] in that the contract period was validly extended; hence, there could be no delay. Without delay, there could be no reason for the award of damages, termination of contract, or take-over of the project.[59]

Respondent submits that there was no error in the application of unjust enrichment considering that petitioner "has already reaped enormous benefits out of the use of the construction project" and has "continued to profit [from the] unhampered commercial operations of the plant[.]"[60] It asserts that equity and law are "applied distinctly based on the antecedents of each case" and that the factual circumstances of this case necessarily require the application of equity rather than "strict legalism or form."[61]

In rebuttal, petitioner argues that it indeed raised questions of law when it questioned respondent's entitlement to recover its claims despite its admission that there was no written approval by petitioner, as required by the Construction Agreement and the Civil Code.[62] It also points out that while the arbitral tribunal's factual findings are entitled to great respect, they may still be reviewed by the Court of Appeals and this Court when there is a conflict in the application of law, jurisprudence, or the contract between the parties.[63] It reiterates its arguments in the

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[56] *Id*. at 2223-2224.

[57] *Id*. at 2250-2251.

[58] *Id*. at 2251.

[59] *Id*. at 2251-2252.

[60] *Id*. at 2255.

[61] *Id*. at 2255-2256.

[62] *Id*. at 2266-2267.

[63] *Id*. at 2267-2268.

Petition[64] and asserts that respondent "erroneously raised arguments on equity"[65] when the provisions of law are clear.[66]

The main issue raised before this Court is whether or not the Construction Industry Arbitration Commission and the Court of Appeals erred in finding that petitioner Metro Bottled Water Corporation was liable to respondent Andrada Consumption & Development Corporation, Inc. for unpaid work accomplishment.

To resolve this issue, this Court must pass upon the issue of whether the Court of Appeals erred in affirming the arbitral tribunal's findings that: (1) petitioner agreed to the Change Orders; (2) respondent did not commit delay in the project completion; and (3) petitioner did not terminate the contract or take over the project. However, considering the limited scope of review of arbitral awards by the Construction Industry Arbitration Commission, this Court must first determine whether petitioner raises questions of law.

I

The Construction Industry Arbitration Commission was created by Executive Order No. 1008,[67] or the Construction Industry Arbitration Law, to have "original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof."[68] The extent of its jurisdiction is clearly provided for in the law:

> The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of

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[64] *Id*. at 2269-2279.

[65] *Id*. at 2279.

[66] *Id*.

[67] Enacted February 4, 1985.

[68] Exec. Order No. 1008 (1985), Sec. 4.

contractual time and delays; maintenance and defects; payment, default of employer or contractor and changes in contract cost.

Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines.[69]

Considering that the law covers a specific field of industry and the arbitral tribunal's jurisdiction is well defined, several provisions of the law emphasize the technical nature of the proceedings before it, and provide for the particular expertise required of the arbitrators:

SECTION 14. Arbitrators. — A sole arbitrator or three arbitrators may settle a dispute.

. . . . . .

Arbitrators shall be men of distinction in whom the business sector and the government can have confidence. They shall not be permanently employed with the CIAC. Instead, they shall render services only when called to arbitrate. For each dispute they settle, they shall be given fees.[70]

The Revised Rules of Procedure Governing Construction Arbitration provides more stringent qualifications for arbitrators and enumerate specific professions that they may hold, such as "engineers, architects, construction managers, engineering consultants, and businessmen familiar with the construction industry":[71]

SECTION 8.1 General qualification of Arbitrators. — The Arbitrators shall be men of distinction in whom the business sector and the government can have confidence. They shall be technically qualified to resolve any construction dispute expeditiously and equitably. The Arbitrators shall come from different professions. They may include engineers, architects, construction managers, engineering

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[69] Exec. Order No. 1008 (1985), Sec. 4.

[70] Exec. Order No. 1008 (1985), Sec. 14.

[71] CIAC Revised Rules of Procedure Governing Construction Arbitration (2011), Rule 8, Sec. 8.1.

consultants, and businessmen familiar with the construction industry and lawyers who are experienced in construction disputes.

The Construction Industry Arbitration Law even allows the appointment of experts if requested by the parties or by the arbitral tribunal:

SECTION 15. Appointment of Experts. — The services of technical or legal experts may be utilized in the settlement of disputes if requested by any of the parties or by the Arbitral Tribunal. If the request for an expert is done by either or by both of the parties, it is necessary that the appointment of the expert be confirmed by the Arbitral Tribunal.

Whenever the parties request for the services of an expert, they shall equally shoulder the expert's fees and expenses, half of which shall be deposited with the Secretariat before the expert renders service. When only one party makes the request, it shall deposit the whole amount required.[72]

Likewise, the law mandates that any resort to arbitration must be voluntary.[73]

Under the Revised Rules, a party's refusal to submit to arbitration may result in the dismissal of the complaint without prejudice to its refiling:

Respondent's refusal to Answer the Complaint or the filing of a Motion to Dismiss for lack of jurisdiction shall be deemed a refusal to submit to arbitration. In either case, the Commission (CIAC) shall

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[72] Exec. Order No. 1008 (1985), Sec. 15.

[73] Exec. Order No. 1008 (1985), Sec. 4 provides:

SECTION 4. Jurisdiction. — The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. *For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.* (Emphasis supplied)

dismiss the Complaint without prejudice to its refiling upon a subsequent submission.[74] (Citation omitted)

Due to the highly technical nature of proceedings before the Construction Industry Arbitration Commission, as well as its emphasis on the parties' willingness to submit to the proceedings, the Construction Industry Arbitration Law provides for a narrow ground by which the arbitral award can be questioned in a higher tribunal. Section 19 states:

SECTION 19. Finality of Awards. — The arbitral award shall be binding upon the parties. It shall be final and inappealable except on questions of law which shall be appealable to the Supreme Court.

The Construction Industry Arbitration Commission has since been categorized as a quasi-judicial agency in *Metro Construction, Inc. v. Chatham Properties, Inc.*:[75]

[The Construction Industry Arbitration Commission] is a quasi-judicial agency. A quasi-judicial agency or body has been defined as an organ of government other than a court and other than a legislature, which affects the rights of private parties through either adjudication or rule-making. The very definition of an administrative agency includes its being vested with quasi-judicial powers. The ever increasing variety of powers and functions given to administrative agencies recognizes the need for the active intervention of administrative agencies in matters calling for technical knowledge and speed in countless controversies which cannot possibly be handled by regular courts. The CIAC's primary function is that of a quasi-judicial agency, which is to adjudicate claims and/or determine rights in accordance with procedures set forth in E.O. No. 1008.[76]

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[74] Revised Rules of Procedure Governing Construction Arbitration (2011), Rule 2, Sec. 2.3(2.3.3).

[75] 418 Phil. 176 (2001) [Per *C.J.* Davide Jr., First Division].

[76] *Id*. at 202-203 citing *The Presidential Anti-Dollar Salting Task Force v. Court of Appeals*, 253 Phil. 344 (1989) [Per *J.* Sarmiento, *En Banc*]; *Tropical Homes v. National Housing Authority*, 236 Phil. 580 (1987) [Per *J.* Gutierrez, Jr., *En Banc*]; *Antipolo Realty Corp. v. NHA*, 237 Phil. 389 (1987) [Per *J.* Feliciano, *En Banc*]; and *Solid Homes, Inc. v. Payawal*, 257 Phil. 914 (1989) [Per *J.* Cruz, First Division].

To standardize appeals from quasi-judicial agencies, Rule 43 of the 1997 Rules of Civil Procedure provides that appeals "may be taken to the Court of Appeals within the period and in the manner herein provided, whether the appeal involves questions of fact, of law, or mixed questions of fact and law."[77] The Construction Industry Arbitration Commission is among the quasi-judicial agencies explicitly listed in the rule.

While there is uniformity between appeals of the different quasi-judicial agencies, Rule 43 does not automatically apply to all appeals of arbitral awards. *Fruehauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific Corporation*[78] has since distinguished between commercial arbitration, construction arbitration, and voluntary arbitration under Article 219(n) of the Labor Code.[79] *Fruehauf Electronics Philippines Corporation* declared that commercial arbitration tribunals are not quasi-judicial agencies, but "purely *ad hoc* bodies operating through contractual consent and as they intend to serve private, proprietary interests."[80] A commercial arbitration tribunal is a "creature of contract"[81]

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[77] RULES OF COURT, Rule 43, Sec. 3.

[78] 800 Phil. 721 (2016) [Per J. Brion, Second Division].

[79] LABOR CODE, Art. 219.

ARTICLE 219. [212] Definitions. — . . .

. . . . . .

(n) "Voluntary Arbitrator" means any person accredited by the Board as such, or any person named or designated in the Collective Bargaining Agreement by the parties to act as their Voluntary Arbitrator, or one chosen with or without the assistance of the National Conciliation and Mediation Board, pursuant to a selection procedure agreed upon in the Collective Bargaining Agreement, or any official that may be authorized by the Secretary of Labor and Employment to act as Voluntary Arbitrator upon the written request and agreement of the parties to a labor dispute.

[80] *CE Construction v. Araneta Center*, G.R. No. 192725, August 9, 2017, 836 SCRA 181, 214 [Per J. Leonen, Second Division] citing *Fruehauf Electronics v. Technology Electronics Assembly and Management Pacific*, 800 Phil. 721 (2016) [Per J. Brion, Second Division].

[81] *Fruehauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific Corporation*, 800 Phil. 721, 744 (2016) [Per J. Brion, Second Division].

that becomes *functus officio* once the arbitral award attains finality.[82]

However, the jurisdiction of construction arbitration tribunals and voluntary arbitrators is vested by statute. This jurisdiction exists independently of the will of the contracting parties due to the public interest inherent in their respective spheres,[83] thus:

> Voluntary Arbitrators resolve labor disputes and grievances arising from the interpretation of Collective Bargaining Agreements. These disputes were specifically excluded from the coverage of both the Arbitration Law and the ADR Law.
>
> Unlike purely commercial relationships, the relationship between capital and labor [is] heavily impressed with public interest. Because of this, Voluntary Arbitrators authorized to resolve labor disputes have been clothed with quasi-judicial authority.
>
> On the other hand, commercial relationships covered by our commercial arbitration laws are purely private and contractual in nature. Unlike labor relationships, they do not possess the same competing state interest that would justify state interference into the autonomy of contracts. Hence, commercial arbitration is a purely private system of adjudication facilitated by private citizens instead of government instrumentalities wielding quasi-judicial powers.
>
> Moreover, judicial or quasi-judicial jurisdiction cannot be conferred upon a tribunal by the parties alone. The Labor Code itself confers subject-matter jurisdiction to Voluntary Arbitrators.
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> Notably, the other arbitration body listed in Rule 43 — the Construction Industry Arbitration Commission (CIAC) — is also a government agency attached to the Department of Trade and Industry. Its jurisdiction is likewise conferred by statute. By contrast, the subject-matter jurisdiction of commercial arbitrators is stipulated by the parties.[84] (Citation omitted)

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[82] See *Fruehauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific Corporation*, 800 Phil. 721 (2016) [Per J. Brion, Second Division].

[83] See *CE Construction v. Araneta Center*, G.R. No. 192725, August 9, 2017, 836 SCRA 181, 215 [Per J. Leonen, Second Division].

[84] *Id*. at 215-216.

In *CE Construction v. Araneta Center*,[85] however, this Court emphasized that Rule 43 must be read together with the Construction Industry Arbitration Law, which provides that appeals of arbitral awards must only raise questions of law. Thus, even if Rule 43 now provides that appeals may be brought before the Court of Appeals, these appeals must still be confined to questions of law:

> This is not to say that factual findings of CIAC arbitral tribunals may now be assailed before the Court of Appeals. Section 3's statement "whether the appeal involves questions of fact, of law, or mixed questions of fact and law" merely recognizes variances in the disparate modes of appeal that Rule 43 standardizes: there were those that enabled questions of fact; there were those that enabled questions of law, and there were those that enabled mixed questions [of] fact and law. Rule 43 emphasizes that though there may have been variances, all appeals under its scope are to be brought before the Court of Appeals. However, in keeping with the Construction Industry Arbitration Law, *any appeal from CIAC arbitral tribunals must remain limited to questions of law*.[86] (Emphasis supplied)

The rationale for this limitation has already been thoroughly explained in *Hi-Precision Steel Center, Inc. v. Lim Kim Steel Builders, Inc.*:[87]

> Section 19 [of Executive Order No. 1008] makes it crystal clear that questions of fact cannot be raised in proceedings before the Supreme Court — which is not a trier of facts — in respect of an arbitral award rendered under the aegis of the CIAC. Consideration of the animating purpose of voluntary arbitration in general, and arbitration under the aegis of the CIAC in particular, requires us to apply rigorously the above principle embodied in Section 19 that the Arbitral Tribunal's findings of fact shall be final and unappealable.
>
> Voluntary arbitration involves the reference of a dispute to an impartial body, the members of which are chosen by the parties

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[85] G.R. No. 192725, August 9, 2017, 836 SCRA 181 [Per *J*. Leonen, Second Division].

[86] *Id*. at 219.

[87] 298-A Phil. 361 (1993) [Per *J*. Feliciano, Third Division].

themselves, which parties freely consent in advance to abide by the arbitral award issued after proceedings where both parties had the opportunity to be heard. The basic objective is to provide a speedy and inexpensive method of settling disputes by allowing the parties to avoid the formalities, delay, expense and aggravation which commonly accompany ordinary litigation, especially litigation which goes through the entire hierarchy of courts. Executive Order No. 1008 created an arbitration facility to which the construction industry in the Philippines can have recourse. The Executive Order was enacted to encourage the early and expeditious settlement of disputes in the construction industry, a public policy the implementation of which is necessary and important for the realization of national development goals.[88]

CE Construction further provides that even exceptions that may be allowed in the review of Rule 45 petitions,[89] such as the lower court's misapprehension of facts or a conflict in the factual findings, will not apply to reviews of the arbitral tribunal's decisions. *Hi-Precision Steel Center, Inc.* sufficiently explains the rationale of why courts are duty bound to uphold the factual findings of the tribunal:

> Aware of the objective of voluntary arbitration in the labor field, in the construction industry, and in any other area for that matter, the Court will not assist one or the other or even both parties in any effort to subvert or defeat that objective for their private purposes. The Court will not review the factual findings of an arbitral tribunal upon the artful allegation that such body had "misapprehended the facts" and will not pass upon issues which are, at bottom, issues of fact, no matter how cleverly disguised they might be as "legal questions." The parties here had recourse to arbitration and chose the arbitrators themselves; they must have had confidence in such arbitrators. The Court will not, therefore, permit the parties to relitigate before it the issues of facts previously presented and argued before the Arbitral Tribunal, save only where a very clear

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[88] *Id*. at 372 *citing* the first three (3) Whereas clauses and Sec. 2 of Exec. Order No. 1008 (1985), as amended.

[89] See *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225, 232 (1990) [Per *J.* Bidin, Third Division] for the complete list of exceptions to the prohibition of questions of fact in Rule 45 petitions.

showing is made that, in reaching its factual conclusions, the Arbitral Tribunal committed an error so egregious and hurtful to one party as to constitute a grave abuse of discretion resulting in lack or loss of jurisdiction. Prototypical examples would be factual conclusions of the Tribunal which resulted in deprivation of one or the other party of a fair opportunity to present its position before the Arbitral Tribunal, and an award obtained through fraud or the corruption of arbitrators. Any other, more relaxed, rule would result in setting at naught the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile institution.[90]

Thus, the general rule is that appeals of arbitral awards by the Construction Industry Arbitration Commission may only be allowed on pure questions of law. Even the Construction Industry Arbitration Law does not provide for any instance when an arbitral award may be vacated. *Spouses David v. Construction Industry and Arbitration Commission*[91] recognized this gap, and thus, applied the provisions of Republic Act No. 876, or the Arbitration Law:[92]

[F]actual findings of construction arbitrators are final and conclusive and not reviewable by this Court on appeal, except when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or of any of them; (3) the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were

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[90] *Hi-Precision Steel Center v. Lim Kim Steel Builders*, 298-A Phil. 361, 373-374 (1993) [Per J. Feliciano, Third Division] citing *Asian Construction and Development Corporation v. Construction Industry Arbitration Commission*, 291-A Phil. 576 (1993) [Per J. Padilla, First Division]; *Chung Fu Industries (Phil.) Inc. v. Court of Appeals*, 283 Phil. 474 (1992) [Per J. Romero, Third Division]; *Primary Structures Corporation v. Victor P. Lazatin, etc.*, G.R. No. 101258, July 13, 1992 (Unsigned Resolution); *A.C. Enterprises, Inc. v. Construction Industry Arbitration Commission, et al.*, 313 Phil. 745 (1995) [Per J. Quiason, *En Banc*]; and *Sime Darby Pilipinas, Inc. v. Magsalin*, 259 Phil. 658 (1989) [Per J. Feliciano, Third Division].

[91] 479 Phil. 578 (2004) [Per J. Puno, Second Division].

[92] Approved June 19, 1953.

disqualified to act as such under section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.[93]

Notably, these exceptions refer to the *conduct* of the arbitral tribunal and the *qualifications* of the arbitrator.[94] They do not refer to the arbitral tribunal's errors of fact and law, misappreciation of evidence, or conflicting findings of fact. Hence, *CE Construction*, in recognizing the nature of these exceptions, held that questions of law may be allowed "only in instances when the integrity of the arbitral tribunal itself has been put in jeopardy."[95] This Court further mandated that "factual findings may be reviewed only in cases where the CIAC arbitral tribunals conducted their affairs in a haphazard, immodest manner that the most basic integrity of the arbitral process was imperiled."[96]

Thus, parties seeking to appeal an arbitral award of a construction tribunal must raise an *egregious* error of law to warrant the exercise of this Court's appellate jurisdiction. Absent any allegation and proof of these exceptions, the factual findings of the Construction Industry Arbitration Commission will be treated by the courts with great respect and even finality.

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[93] *Spouses David v. Construction Industry Arbitration Commission*, 479 Phil. 578, 590-591 (2004) [Per J. Puno, Second Division] citing Rep. Act No. 876, Sec. 24.

[94] See also *Fruehauf Electronics v. Technology Electronics Assembly and Management Pacific*, 800 Phil. 721 (2016) [Per J. Brion, Second Division].

[95] *CE Construction v. Araneta Center*, G.R. No. 192725, August 9, 2017, 836 SCRA 181, 186 [Per J. Leonen, Second Division].

[96] *Id.* at 222.

II

Petitioner raised issues that are questions of fact in the guise of questions of law. As such, they are not proper for this Court's review.

The difference between a question of law and a question of fact is settled. In *Spouses David*:

> There is a question of law when the doubt or difference in a given case arises as to what the law is on a certain set of facts, and there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. Thus, for a question to be one of law, it must not involve an examination of the probative value of the evidence presented by the parties and there must be no doubt as to the veracity or falsehood of the facts alleged.[97]

Petitioner alleges that it is not liable to respondent for the costs incurred in Change Order Nos. 39 to 109 since the Construction Agreement clearly required a written agreement by both parties of the change orders, which petitioner alleges it did not provide. At first glance, petitioner appears to be raising a question of law, *i.e.*, whether respondent complied with the provisions of the Construction Agreement as to be entitled to compensation, which, in turn, would require the proper interpretation of the contract between the parties. This would be a question of law since it requires the courts to determine the parties' rights under the contract. The Construction Agreement provided:

> 8. Change Order
>
> a. Without invalidating this Agreement, the OWNER may, at any time, order additions, deletions or revisions in the Work by means of a Change Order. The CONTRACTOR shall determine whether the Change Order causes a decrease or increase in the Purchase Price or shortening or extension

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[97] 479 Phil. 578, 584 (2004) [Per J. Puno, Second Division] citing *Serna v. Court of Appeals*, 368 Phil. 1 (1999) [J. Pardo, First Division] and *Palon v. Nino*, 405 Phil. 670 (2001) [Per J. Pardo, First Division].

> of the Contract Period. Within three (3) days from receipt of the Change Order, CONTRACTOR shall give written notice to the OWNER of the value of the works required under the Change Order which will increase the Contract Price and of the extension in the Contract Period necessary to complete such works. On the other hand, if the Change Order involves deletions of some works required in the original Contract Documents, the value of the works deleted shall be deducted from the Contract Price and the Contract Period shortened accordingly.
>
> In either case, any addition or reduction in the Contract Price or extension or shortening of the Contract Period shall be mutually agreed in writing by the OWNER and the CONTRACTOR prior to the execution of the works covered by the Change Order.[98]

To resolve this issue, however, this Court would have to accept the factual premise alleged by petitioner: that Change Order Nos. 39 to 109 *were not* authorized by petitioner. This runs counter to the factual finding established by the Construction Industry Arbitration Commission that petitioner *did indeed agree* to the change orders, thus:

> We are not convinced by Respondent's argument that Claimant is not entitled to its claim for change orders for not following the procedure prescribed by the contract for change orders because it did not strictly enforce the same procedure in approving Change Order 1-38 and impliedly allowed Change Orders 39-109 by funding the payrolls and some materials. . . . Claimant was able to present sketches plans and cost estimates and receipts supporting them (*sic*). . . . Upon the other hand respondent was not able to produce contrary evidence that they were not additional and extra works to the original plans and specifications or that they spent for them.[99]

Petitioner further argues that even if it waived its right to strictly enforce the provisions of the Construction Agreement on Change Order Nos. 1 to 38, it should not have been considered

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[98] *Rollo*, p. 132.

[99] *Id*. at 99.

to have waived the same right with regard to Change Order Nos. 38 to 109, citing Item No. 14 of the Construction Agreement:

> 14. Waiver
>
> Any forebearance or extension that the OWNER may grant to the CONTRACTOR or any non-exercise or non-enforcement by the OWNER of its rights or remedies under this Agreement shall not in any manner be construed as a waiver of such right or remedies of the OWNER.[100]

Again, at first glance, this appears to be a legal issue, since it requires a recognition of whether the waiver of petitioner's rights in Change Order Nos. 1 to 38 carried with it a waiver of its rights in Change Order Nos. 39 to 109. However, to fully discuss the extent of the waiver under the contract, this Court would be required to accept the factual premise that petitioner *did not* waive its rights with regard to Change Order Nos. 39 to 109. This clearly runs counter to the factual finding of the Construction Industry Arbitration Commission that petitioner *did* waive its right to strictly enforce the provisions of the contract with regard to Change Order Nos. 39 to 109. Even the Court of Appeals was inclined to affirm the arbitral tribunal's finding on this matter, summarizing the latter's findings as follows:

> 1. Change Order Nos. 39 to 64 — Within the period from October 30 to November 30, 1995, respondent was still working on the project. During this period petitioner provided respondent financial assistance by paying the payroll. This financial assistance was deducted from the billing of respondent;
>
> 2. Change Order Nos. 65 to 86 — petitioner confirms that the work is "completed and can be seen at site", and it was not able to disprove the claim. The respondent is therefore entitled to its claim.
>
> 3. Change Order Nos. 87 to 89 — it was verified during the ocular inspection that they had been completed. Petitioner was not able to disprove the claim. Respondent is therefore entitled to its claim.
>
> 4. Change Order No. 90 — petitioner confirms that the work is "completed and can be seen at site", and it was not able to disprove the claim. The respondent is therefore entitled to its claim.

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[100] *Id.* at 134.

5. Change Order No. 91 — it was verified during the ocular inspection that they had been completed. Petitioner was not able to disprove the claims. Respondent is therefore entitled to its claim.

6. Change Order No. 92 — was inspected during the ocular inspection and found to have been completed. Petitioner was not able to disprove the claim. Respondent is therefore entitled to its claim.

7. Change Order Nos. 93 to 99 — it was verified during the ocular inspection that they had been completed. Petitioner was not able to disprove the claim. Respondent is therefore entitled to its claim.

8. Change Order Nos. 100 to 101 — petitioner confirms that the work is "completed and can be seen at site," and it was not able to disprove the claim. The respondent is therefore entitled to its claim.

9. Change Order Nos. 102 to 104 — it was verified during the ocular inspection that they had been completed. Petitioner was not able to disprove the claim. Respondent is therefore entitled to it[s] claim.

10. Change Order Nos. 105 to 106 — petitioner confirms that the work is "completed and can be seen at site", and it was not able to disprove the claim. The respondent is therefore entitled to its claim.

11. Change Order No. 107 — it was verified during the ocular inspection that they had been completed. Petitioner was not able to disprove the claim. Respondent is therefore entitled to its claim.

12. Change Order Nos. 108 to 109 — petitioner confirms that the work is "completed and can be seen at site," and it was not able to disprove the claim. The respondent is therefore entitled to its claim.[101]

Petitioner further argues that the Court of Appeals erred in not finding that it was entitled to liquidated damages since respondent allegedly committed delay in completing the project.

Liquidated damages[102] may be awarded if the contract provides for a monetary compensation in case of breach. The contractor

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[101] *Id.* at 78-80.

[102] CIVIL CODE, Art. 2226. Liquidated damages are those agreed upon by the parties to a contract, to be paid in case of breach thereof.

must agree to pay the owner in case there is delay.[103] Thus, this provision must be embodied in the contract. A perusal of the Construction Agreement, however, shows that no such stipulation was provided. In case of default, the contract provided:

> 10. / Termination
>
> The OWNER shall have the right to terminate this Agreement, without prejudice to any other remedies it may have, in case the CONTRACTOR defaults in the performance of any of its obligations herein and fails to remedy such default within ten (10) days from receipt of written notice of default given by the OWNER.
>
> Upon such termination, the OWNER shall have the right to exclude the CONTRACTOR from the Work Site, take possession of what has so far been completed and all materials, equipment and tools at the Work Site, and finish the Work in whatever manner the OWNER deems expedient including the engagement of another contractor. The CONTRACTOR shall lose its right to be paid the unpaid balance of the Contract Price and if the costs and expenses for completing the works and enforcing OWNER'S aforementioned right exceed the unpaid balance of the Purchase Price, the CONTRACTOR shall pay the OWNER the difference upon the written demand of the OWNER.[104]

Under the contract, respondent must first be found in default, after which it was only required to pay if the enforcement of petitioner's rights exceeded the unpaid balance of the purchase price. No specific provision holds respondent liable for liquidated damages in case of delay.

Even assuming that liquidated damages could be awarded in case of delay, petitioner's right to receive liquidated damages *must first be anchored on a factual finding that respondent incurred delay*. This, again, is a question of fact since it requires a review of the findings of the Construction Industry Arbitration Commission. The arbitral tribunal, however, found that *there was no delay in the completion of the project*:

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[103] See *H.L. Carlos Construction v. Marina Properties Corporation*, 466 Phil. 182 (2004) [Per J. Panganiban, First Division].

[104] *Rollo*, p. 133.

There was no failure on the part of Claimant to complete the project within the contractual period because Respondent extended the period up to November 30, 1995 on valid grounds which are the (1) change orders (Change Order Nos. 1-109) (2) error in the building set back (Exh. II, Annex A) and rainy weather condition (Exh. M39C-1). The value of Change Order Nos. 39-109 (Evaluation of Change Orders by Tribunal) of ₱4,607,523.40 would justify the extension of the contract to even beyond November 30, 1995 while the error in the building set back and rainy weather would require an extension of more than twenty five days. And Claimant completed the original contract and the change orders within the extension period.[105]

Even the arbitral tribunal could not be swayed by petitioner's argument that it did not grant an "extension" but merely provided for a "new schedule of completion":

The attempt by Respondent [petitioner here] to distinguish between a "time extension" and "new schedule of completion" in order to consider the letter of ESCA dated October 10, 1995 as not a notice of extension does not convince the tribunal because the two phrases have the same meaning and effect of extending the period of work from the original or prior period of work in order to complete the construction.[106]

This Court cannot pass upon petitioner's arguments that it terminated the Construction Agreement and took over the project on November 15, 1995. These are questions of fact already resolved by the arbitral tribunal. It found that since no notice of termination was served on respondent, there was no contract termination.[107] Consequently, there was no takeover. Any costs for labor and materials advanced to respondent during the extension period were actually deducted by petitioner from respondent's 10% retention. Thus, no new costs for the alleged project takeover were actually incurred.[108]

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[105] *Id.* at 102.

[106] *Id.* at 103.

[107] *Id.*

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

The arbitral tribunal arrived at these findings after an ocular inspection of the construction site conducted by proven experts in the field. Any review by this Court of their findings would require conducting its own ocular inspection, hiring its own experts in the construction industry to provide amicus briefs, and attempting to provide its own interpretations of the findings of a highly technical agency. Review of these factual findings, therefore, requires no less than proof that the integrity of the arbitral tribunal has been compromised.

Petitioner has neither alleged that the arbitral tribunal arrived at its findings "in a haphazard, immodest manner"[109] nor questioned the integrity of the arbitrators. Absent any proof to the contrary, this Court will not disturb its factual findings.

III

The Construction Industry Arbitration Commission may employ aids in interpretation when there is ambiguity in the contractual provisions, or when there is no written instrument that can define what was agreed upon by the parties.[110] Otherwise, it need not do so when the provisions of the contract on the matter in dispute are already provided.

Petitioner submits that the Construction Industry Arbitration Commission and the Court of Appeals erred in applying the equitable principle of unjust enrichment, since applying Article 1724 of the Civil Code was more appropriate under the circumstances. Article 1724 provides:

> Article 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the land-owner, can neither withdraw from the contract nor demand an increase in the price on account of the higher cost of labor or materials, save when there has been a change in the plans and specifications, provided:

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[109] *CE Construction v. Araneta Center*, G.R. No. 192725, August 9, 2017, 836 SCRA 181, 222 [Per J. Leonen, Second Division].

[110] See *CE Construction v. Araneta Center*, G.R. No. 192725, August 9, 2017, 836 SCRA 181 [Per J. Leonen, Second Division].

(1) Such change has been authorized by the proprietor in writing; and

(2) The additional price to be paid to the contractor has been determined in writing by both parties.

Petitioner contends that the arbitral tribunal should first apply Article 1724 when resolving the issue of whether respondent should be compensated for costs incurred in Change Order Nos. 39 to 109.

Petitioner, however, fails to recognize that there was no need to apply Article 1724, since salient points of the provision had already been embodied in the Construction Agreement, which provided:

8. Change Order

a. Without invalidating this Agreement, the OWNER may, at any time, order additions, deletions or revisions in the Work by means of a Change Order. The CONTRACTOR shall determine whether the Change Order causes a decrease or increase in the Purchase Price or shortening or extension of the Contract Period. Within three (3) days from receipt of the Change Order, CONTRACTOR shall give written notice to the OWNER of the value of the works required under the Change Order which will increase the Contract Price and of the extension in the Contract Period necessary to complete such works. On the other hand, if the Change Order involves deletions of some works required in the original Contract Documents, the value of the works deleted shall be deducted from the Contract Price and the Contract Period shortened accordingly.

In either case, any addition or reduction in the Contract Price or extension or shortening of the Contract Period shall be mutually agreed in writing by the OWNER and the CONTRACTOR prior to the execution of the works covered by the Change Order.[111]

It is settled that the contract is the law between the parties.[112] Without any ambiguity in Item No. 8 of the Construction

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[111] *Rollo*, p. 132.

[112] *Alcantara v. Alinea*, 8 Phil. 111 (1907) [Per J. Torres, *En Banc*].

Agreement, there was no need to resort to other aids in interpretation, such as Article 1724 of the Civil Code, to resolve the issue.

As previously discussed, petitioner was found to have waived its right to strictly enforce the provisions of Item No. 8 of the Construction Agreement, when respondent undertook Change Order Nos. 39 to 109. Petitioner should now reckon with the consequences of that waiver.

The Construction Industry Arbitration Commission, however, cannot be faulted for applying the equitable principle of unjust enrichment in determining petitioner's liability to respondent.

CE Construction[113] discusses two (2) main principles that guide the Construction Industry Arbitration Commission in accomplishing its tasks. First is the basic principle of fairness. The second is that of "effective dispute resolution or the overarching principle of arbitration as a mechanism relieved of the encumbrances of litigation."[114] Section 1.1 of the Revised Rules of Procedure Governing Construction Arbitration provides foremost:

> SECTION 1.1 Statement of Policy and Objectives. — It is the policy and objective of these Rules to provide a fair and expeditious resolution of construction disputes as an alternative to judicial proceedings, which may restore the disrupted harmonious and friendly relationships between or among the parties.

Here, services were rendered for which compensation was demanded. The contract between the parties, however, inadequately provides for the mechanism by which compensation may be due. The *fair* and *expeditious* resolution of the issue requires the arbitral tribunal to instead apply equitable principles to arrive at a just conclusion. In *CE Construction*:[115]

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[113] G.R. No. 192725, August 9, 2017, 836 SCRA 181 [Per *J*. Leonen, Second Division].

[114] *Id.* at 234.

[115] G.R. No. 192725, August 9, 2017, 836 SCRA 181 [Per *J*. Leonen, Second Division].

Jurisprudence has settled that even in cases where parties enter into contracts which do not strictly conform to standard formalities or to the typifying provisions of nominate contracts, when one renders services to another, the latter must compensate the former for the reasonable value of the services rendered. This amount shall be fixed by a court. This is a matter so basic, this Court has once characterized it as one that "springs from the fountain of good conscience":

> As early as 1903, in *Perez v. Pomar*, this Court ruled that where one has rendered services to another, and these services are accepted by the latter, in the absence of proof that the service was rendered gratuitously, it is but just that he should pay a reasonable remuneration therefore because "it is a well-known principle of law, that no one should be permitted to enrich himself to the damage of another." Similarly in 1914, this Court declared that in this jurisdiction, even in the absence of statute, ". . . under the general principle that one person may not enrich himself at the expense of another, a judgment creditor would not be permitted to retain the purchase price of land sold as the property of the judgment debtor after it has been made to appear that the judgment debtor had no title to the land and that the purchaser had failed to secure title thereto . . ." The foregoing equitable principle which springs from the fountain of good conscience are applicable to the case at bar.[116]

Here, the arbitral tribunal computed the entire cost of Change Order Nos. 1 to 109 at ₱5,242,697.76.[117] This includes that of Change Order Nos. 1 to 38, which petitioner categorically admitted were authorized changes. Upon subtracting the contract price and other costs chargeable to respondent, the arbitral tribunal found that there was still an unpaid amount of ₱4,607,523.40,[118] resulting from the costs of the change orders, which petitioner

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[116] *Id*. at 235 citing *Pacific Merchandising Corp. v. Consolation Insurance & Surety Co., Inc.*, 165 Phil. 543, 553-554 (1976) [Per *J*. Antonio, Second Division]; *Perez v. Pomar*, 2 Phil. 682 (1903) [Per *J*. Torres, *En Banc*]; and *Bonzon v. Standard Oil Co. and Osorio*, 27 Phil. 141 (1914) [Per *J*. Carson, First Division].

[117] *Rollo*, pp. 99-100. In the cited pages, the Decision erroneously indicated Change Order Nos. 1 to 108.

[118] *Id*.

refuses to pay. There was, therefore, no error in the arbitral tribunal's finding and the Court of Appeals' affirmation that petitioner is still liable to respondent for that amount.

WHEREFORE, the Petition is **DENIED**. The March 21, 2012 Decision and June 25, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 70562, as well as the April 24, 2002 Arbitral Award of the Construction Industry Arbitration Commission in CIAC Case No. 30-2001, are **AFFIRMED**. Petitioner Metro Bottled Water Corporation is ordered to pay respondent Andrada Construction & Development Corporation, Inc. the amount of ₱4,607,523.40, with legal interest of twelve percent (12%) to be computed from November 24, 2000 to June 30, 2013, and six percent (6%) from July 1, 2013 until its full satisfaction. The total amount payable shall also be subject to interest at the rate of six percent (6%) per annum from the finality of this Decision until its full satisfaction.[119]

SO ORDERED.

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

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

[*] Designated additional Member per Raffle dated February 27, 2019.

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

THIRD DIVISION

[G.R. No. 205068. March 6, 2019]

HEIRS OF RENATO P. DRAGON, represented by PATRICIA ANGELI D. NUBLA, *petitioners, vs.* **THE MANILA BANKING CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE EXISTENCE OF NOVATION AND PRESCRIPTION OF ACTION IS A QUESTION OF FACT NOT COGNIZABLE UNDER A PETITION FOR REVIEW ON *CERTIORARI*; CASE AT BAR.— The existence of novation and prescription of an action is a question of fact not cognizable under a petition for review on *certiorari* under Rule 45 of the Rules of Court. To determine if there was novation, the facts on record must be examined to show if the elements are present. Here, the Regional Trial Court and the Court of Appeals did not err in finding that there was no novation of the Promissory Notes. x x x The Court of Appeals is correct that the April 22, 1991 Decision does not mention the Promissory Notes included in the loans Kalilid Wood had assumed from Dragon. What Kalilid Wood had assumed were Dragon's obligations as surety for Builders Wood Products, Inc. It did not include his personal loans to respondent. x x x Novation must be clear and unequivocal, and is never presumed. It is the burden of the party asserting that novation has taken place to prove that all the elements exist. Likewise, the question of prescription of an action is a factual matter. The Court of Appeals did not err when it held: In addition, it cannot be said that appellant-bank's cause of action based on such promissory notes had prescribed. Actions based upon a written contract should be brought within ten (10) years from the time the right of action accrues. Indubitably, such right of action accrue from the moment the breach of right or duty occurs. Prescription of actions is, nevertheless, interrupted when they are filed before the courts, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgement of the debt

by the debtor. In the present case, the ten-year (10) prescriptive period on the enforcement of said promissory notes that matured in 1982-1983, was timely interrupted by appellant-bank's demand letters to defendant-appellant in November 1988, October 1991, February 1993, November 1994, January 1996 and August 1998. Verily, every time the defendant-appellant receives said demand letters, a new ten-year (10) period is added, and the elapsed period is, thereby, eliminated. Indeed, a written extrajudicial demand wipes out the period which has already elapsed, and it starts anew the prescriptive period.

2. **ID.; ID.; ID.; THE ISSUE OF JURISDICTION MAY BE RAISED AT ANY STAGE OF THE PROCEEDINGS, EVEN ON APPEAL; A PARTY IS ONLY ESTOPPED FROM RAISING THE ISSUE WHEN IT WAS RAISED IN AN UNJUSTLY BELATED MANNER AND THE PARTY RAISING ACTIVELY PARTICIPATED DURING TRIAL.—** The general rule is that the issue of jurisdiction may be raised at any stage of the proceedings, even on appeal, and is not lost by waiver or by estoppel. A party is only estopped from raising the issue when it does so "in an unjustly belated manner especially when it actively participated during trial." x x x In this regard, this Court has consistently held that a party may be estopped from questioning the lack of jurisdiction due to insufficient payment of filing or docket fees, if the objection is not timely raised.

3. **ID.; CIVIL PROCEDURE; ACTIONS; DOCKET FEES; THE PAYMENT OF FILING FEES IN FULL AT THE TIME THE INITIATORY PLEADING OR APPLICATION IS FILED IS THE GENERAL RULE, EXCEPTIONS THAT GRANT LIBERALITY FOR INSUFFICIENT PAYMENT ARE STRICTLY CONSTRUED AGAINST THE FILING PARTY.—** Under Rule 141, Section 1 of the Rules of Court, filing fees must be paid in full at the time an initiatory pleading or application is filed. Payment is indispensable for jurisdiction to vest in a court. The amount must be paid in full. Nonetheless, in *Magaspi v. Ramolete* despite insufficient payment of filing fees, a complaint for recovery of ownership and possession was deemed docketed as there had been an "honest difference of opinion as to the correct amount to be paid[.]" However, this Court declined to apply *Magaspi in Manchester Development Corporation v. Court of Appeals*. There, the counsel

deliberately did not specify the amount of damages in the complaint's prayer even though at least ₱78 million was alleged in the body. It later even amended the same complaint to remove all mentions of damages in the body. x x x Later, in *Sun Insurance Office*, this Court laid down the rules concerning the payment of filing fees, taking into consideration *Magaspi, Manchester Development Corporation*, and other earlier rulings: x x x Notwithstanding *Sun Insurance Office*, it must be emphasized that payment of filing fees in full at the time the initiatory pleading or application is filed is still the general rule. Exceptions that grant liberality for insufficient payment are strictly construed against the filing party.

4. ID.; ID.; ID.; ID.; FOR ACTIONS INVOLVING RECOVERY OF MONEY OR DAMAGES, THE AGGREGATE AMOUNT CLAIMED SHOULD BE THE BASIS FOR ASSESSMENT OF DOCKET FEES, THE PAYMENT OF WHICH CANNOT BE MADE CONTINGENT ON THE RESULT OF THE CASE; VIOLATION IN CASE AT BAR.— For actions involving recovery of money or damages, the aggregate amount claimed should be the basis for assessment of docket fees. x x x Thus, the basis for the assessment of the filing fees for respondent's Complaint should not have been only the principal amounts due on the loans, but also the accrued interests, penalties, and attorney's fees. These amounts should have all been specified in both the Complaint's body and prayer. x x x Respondent itself, in multiple pleadings, stated that as of April 3, 2002, it had computed the outstanding interests, penalties, and attorney's fees owed it in the amount of ₱41,082,626.98. Clearly, respondent is perfectly capable of estimating the accrued interests, penalties, and charges it demanded as of the date it filed its Complaint. But despite respondent's demand letters containing computations of accrued interests, penalties, and attorney's fees, none of these computations were mentioned in the Complaint, either in its body or prayer. x x x In multiple pleadings, respondent reasons that it has not defrauded the government because the court may simply recoup the filing fees in the form of a lien over the judgment award in the event that it be awarded all the amounts it is allegedly owed. x x x What respondent forgets is that the payment of correct docket fees cannot be made contingent on the result of the case. Otherwise,

> the government and the judiciary would sustain tremendous losses, as these fees "take care of court expenses in the handling of cases in terms of cost of supplies, use of equipmen[t], salaries and fringe benefits of personnel, *etc*., computed as to man hours used in handling of each case." Concededly, Rule 141, Section 2 of the Rules of Court states: SEC. 2. *Fees in lien*. — Where the court in its final judgment awards a claim not alleged, or a relief different from, or more than that claimed in the pleading, the party concerned shall pay the additional fees which shall constitute a lien on the judgment in satisfaction of said lien. The clerk of court shall assess and collect the corresponding fees. However, the rule on after-judgment liens applies to instances of incorrectly assessed or paid filing fees, or where the court has discretion to fix the amount to be awarded. x x x Under the circumstances, a liberal application of the rules on payment of filing fees is unwarranted. In accordance with *Manchester Development Corporation*, the Regional Trial Court did not acquire jurisdiction over the Complaint due to respondent's insufficient payment of filing fees.

APPEARANCES OF COUNSEL

Morales Rojas & Risos-Vidal for petitioners.
Puyat Jacinto & Santos for respondent.

D E C I S I O N

LEONEN, *J.*:

Payment of the correct amount of filing fees should not be made contingent on the result of a case.

This is a Petition for Review on *Certiorari*[1] assailing the June 27, 2012 Decision[2] and December 5, 2012

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[1] *Rollo*, pp. 18-56. The Petition was filed under Rule 45 of the Rules of Court.

[2] *Id*. at 57-68. The Decision was penned by Associate Justice Manuel M. Barrios, and concurred in by Associate Justices Sesinando E. Villon

Resolution[3] of the Court of Appeals in CA-G.R. CV No. 92266. The Court of Appeals upheld the September 26, 2007 Decision[4] of the Regional Trial Court, which ordered Renato P. Dragon (Dragon) to pay The Manila Banking Corporation (Manila Banking) ₱6,945,642.00, plus interest and penalties, as well as attorney's fees. The amount corresponded to several loans Dragon obtained from Manila Banking from 1976 to 1983.

From 1976 to 1982, Dragon obtained several loans from Manila Banking, which were evidenced by four (4) Promissory Notes: (1) Promissory Note No. 20669 dated March 30, 1976;[5] (2) Promissory Note No. 20670 dated March 30, 1976;[6] (3) Promissory Note No. 7426 dated June 28, 1979;[7] an (4) Promissory Note No. 10973 dated February 26, 1982.[8] The total principal amount of his loans was ₱6,945,642.00.[9] Each Promissory Note stipulated a rate of interest, penalty interest in case of default, and attorney's fees, and due dates from 1976 to 1983.

In 1987, Manila Banking was placed under receivership by the Bangko Sentral ng Pilipinas. The bank's receiver sent Dragon several demand letters[10] requiring him to pay his outstanding

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and Apolinario D. Bruselas, Jr. of the Special Fourth Division, Court of Appeals, Manila.

[3] *Id*. at 69-72. The Resolution was penned by Associate Justice Manuel M. Barrios, and concurred in by Associate Justices Sesinando E. Villon and Apolinario D. Bruselas, Jr. of the Former Special Fourth Division, Court of Appeals, Manila.

[4] *Id*. at 225-248. The Decision was penned by Judge Elmo M. Alameda of Branch 150, Regional Trial Court, Makati City.

[5] *Id*. at 264.

[6] *Id*. at 265-266.

[7] *Id*. at 267.

[8] *Id*. at 268.

[9] *Id*. at 270.

[10] *Id*. at 514-523.

loans, the final letter being dated August 12, 1998.[11] In a Statement of Account attached to the final letter, Manila Banking computed the amount Dragon owed as ₱44,038,995.00, consisting of the principal amount of ₱6,945,642.00, plus accrued interest, penalties, and attorney's fees as of July 31, 1998.[12]

Dragon failed to pay his outstanding obligation. Thus, on January 7, 1999, Manila Banking filed before the Regional Trial Court a Complaint for collection of sum of money.[13] The prayer of the Complaint read:

> WHEREFORE, premises considered, it is most respectfully prayed that, after hearing, judgment be rendered ordering the defendant to pay plaintiff the above principal sum of ₱6,945,642, plus interests, penalties, and attorney's fees computed up to the date of actual payment pursuant to the corresponding Promissory Notes. Plaintiff further prays for such other reliefs and remedies as may be deemed just and equitable in the premises.[14]

In his Answer with Compulsory Counterclaim,[15] Dragon claimed that he had already partially paid his debts to Manila Banking,[16] and that his loans with the bank had been extinguished by novation. Allegedly, in 1984, Kalilid Wood Industries Corporation (Kalilid Wood), of which he was an officer and stockholder, wrote to Manila Banking requesting that Kalilid Wood's loans and the accounts of other persons, including that of Dragon's, be restructured. Manila Banking allegedly agreed to the restructuring, allowing Kalilid Wood to assume Dragon's loan obligations, including those covered by the four (4) Promissory Notes. Supposedly, this novation was confirmed in an April 22, 1991 Decision of the Regional Trial Court,

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[11] *Id*. at 522.

[12] *Id*.

[13] *Id*. at 524-527.

[14] *Id*. at 526.

[15] *Id*. at 256-259.

[16] *Id*. at 256-257.

Branch 58 of Makati City in Civil Case No. 46961 titled, "*The Manila Banking Corporation v. Builders Wood Products, Inc., Claudio J. Sanchez, Horacio Abrantes, and Renato P. Dragon*" which had become final and executory.[17]

Dragon further claimed that Manila Banking's cause of action had prescribed, since it failed to demand payment on the Promissory Notes within 10 years from their due date. He alleged that he never received the demand letters sent by Manila Banking, which would have otherwise interrupted the prescriptive period.[18]

He prayed that he be awarded ₱2,000,000.00 as moral damages for Manila Banking's act of dispossessing him of his properties for the settlement of accounts that could not be established, which allegedly caused him emotional trauma.[19]

On September 26, 2007, the Regional Trial Court issued its Decision[20] in favor of Manila Banking. The dispositive portion of the Decision read:

> WHEREFORE, plaintiff having proved its claim by preponderance of evidence against defendant Renato P. Dragon, judgment is hereby rendered ordering defendant to pay plaintiff the following:
>
> 1. The amount of Php6,945,642.00 plus interest and penalties, the rates of which are indicated in the [preceding] paragraphs starting August 12, 1998 until the obligation is fully paid;
> 2. Attorney's fees equivalent to 5% of the total amount due;
> 3. Costs of suit.
>
> SO ORDERED.[21]

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[17] *Id*. at 233-235 and 272-273. Abrantes is at times spelled as "Abantes."

[18] *Id*. at 239-240.

[19] *Id*. at 257-258.

[20] *Id*. at 225-248.

[21] *Id*. at 248.

The Regional Trial Court noted that Dragon's defenses of prescription and novation were neither pleaded in his Answer nor raised in a motion to dismiss.[22] Even if it could have taken cognizance of these defenses, the Regional Trial Court found that Manila Banking's cause of action had not prescribed and that the obligations were not novated. It held that Manila Banking's cause of action began to accrue only on August 12, 1998, when Dragon refused to pay, and not on the maturity dates stated in the promissory notes.[23]

Further, the Regional Trial Court found that Dragon could not prove that the obligations had been novated. It ruled that the April 22, 1991 Decision of the Regional Trial Court in Civil Case No. 46961 could not be proof of the alleged novation since the facts and subject matter of that case were different from this case.[24]

Nonetheless, the Regional Trial Court held that it could only order Dragon to pay the amount of ₱6,945.642.00, representing his principal obligation, plus the interest and penalty charges, as stipulated in the Promissory Notes, and not ₱48,028,268.98, per the Statement of Account submitted by Manila Banking. During trial, Manila Banking failed to submit documents to justify or support the computation in the Statement of Account.[25]

Both parties filed Motions for Reconsideration of the Regional Trial Court September 26, 2007 Decision.[26] Notably, in his Reply and Supplemental Opposition to Manila Banking's Motion for Partial Reconsideration,[27] Dragon raised for the first time the issue of the trial court's lack of jurisdiction over the Complaint. He alleged that Manila Banking willfully and deliberately

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[22] *Id*. at 240.

[23] *Id*. at 240-241.

[24] *Id*. at 245-246.

[25] *Id*. at 246-247.

[26] *Id*. at 249.

[27] *Id*. at 311-332.

evaded payment of the correct docket fees for the amounts it claimed.[28]

In its April 3, 2008 Order,[29] the Regional Trial Court denied both parties' Motions. As to the issue of docket fees, it held that this Court's ruling in *Sun Insurance Office, Ltd. v. Asuncion*[30] applied; hence, there was no need to resolve it.[31]

Upon appeal by both parties, the Court of Appeals, in its June 27, 2012 Decision,[32] affirmed the Regional Trial Court September 26, 2007 Decision and April 3, 2008 Order.

As to Manila Banking, the Court of Appeals affirmed the trial court's finding that since the Statement of Account was not substantiated, the amount to be considered should only be ₱6,945.642.00, plus the stipulated interest and penalty charges.[33]

As to Dragon, the Court of Appeals held that he proved neither novation nor prescription. By failing to raise these defenses in his Answer and before the termination of pre-trial, Dragon waived them in accordance with Rule 9, Section 1 of the Rules of Court.[34]

Moreover, the Court of Appeals found that the correspondence between Manila Banking and Kalilid Wood could not serve as basis for Dragon's claim of novation. Manila Banking's reply to Kalilid Wood's request to restructure the loans did not expressly state that Dragon had been released from his obligations under the Promissory Notes, or that there was an agreement that Kalilid Wood would assume Dragon's obligations under the Promissory Notes. Since novation is never presumed, but must

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[28] *Id*. at 312-314.

[29] *Id*. at 249-250.

[30] 252 Phil. 280 (1989) [Per J. Gancayco, *En Banc*].

[31] *Rollo*, p. 250.

[32] *Id*. at 57-68.

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

[34] *Id*. at 64.

be shown through an express agreement or by the parties' intent, the Court of Appeals held that Dragon failed to prove that novation had extinguished his obligations to Manila Banking.[35]

Similarly, the Court of Appeals ruled that the April 22, 1991 Decision of the Regional Trial Court in Civil Case No. 46961 could not serve as the "law of the case"[36] for this case. That Decision, it held, never mentioned or alluded to the Promissory Notes for which Manila Banking was now demanding payment. The transaction in that case involved a different transaction that Kalilid Wood and Dragon had entered into.[37]

Dragon's defense of prescription was, likewise, not given credence by the Court of Appeals. It found that the 10-year prescriptive period on the enforcement of the Promissory Notes, which matured from 1982 to 1983, was interrupted by Manila Banking's demand letters to Dragon in November 1988, October 1991, February 1993, November 1994, January 1996, and August 1998. It did not give credence to Dragon's claim that he never received the demand letters, as he admitted in his Answer that they had been sent to him. Dragon also failed to specifically deny Manila Banking's allegation that he received the demand letters.[38]

In its December 5, 2012 Resolution,[39] the Court of Appeals denied both parties' Motions for Reconsideration. In addition to its earlier ruling, the Court of Appeals found that the deficient payment of docket fees did not automatically result in the case's dismissal as the trial court may still allow payment of the difference within a reasonable period, but before the expiry of the reglementary period. The deficiency could also be a lien on the judgment award. It ruled that the claimed interests, penalties,

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

[36] *Id*. at 65.

[37] *Id*. at 66.

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

[39] *Id*. at 69-72.

and attorney's fees could not be determined with certainty until the resolution of the case.[40]

On January 22, 2013, the Heirs of Dragon, represented by Patricia Angeli D. Nubla (Heirs of Dragon), filed before this Court a Notice of Death with Motion for Substitution of Petitioner and a Motion for Extension of Time to File Petition for Review under Rule 45.[41] The Heirs of Dragon stated that Dragon died on October 22, 2012 and under Rule 3, Section 16 of the Rules of Court, his counsel informed this Court of this fact and moved for the substitution of parties. They further prayed for an additional 30 days within which to file their Petition for Review.

In its February 18, 2013 Resolution,[42] this Court granted the Motion for Substitution and Motion for Extension of Time.

On February 21, 2013, the Heirs of Dragon filed their Petition for Review on *Certiorari*,[43] assailing the June 27, 2012 Decision and December 5, 2012 Resolution of the Court of Appeals.

Petitioners argue that the Regional Trial Court had no jurisdiction to award Manila Banking's claims due to insufficient payment of docket fees. Manila Banking only paid ₱34,975.75 corresponding to its ₱6,945,642.00 claim in its Complaint. However, as shown by the Statement of Account attached to the Complaint, the true amount it claimed was ₱44,038,995.00. Petitioners claim that Manila Banking concealed the true amount it claimed to mislead the trial court's clerk of court and, thus, avoid paying the correct docket fees.[44]

For petitioners, *Sun Insurance Office* is inapplicable to this case. In *Sun Insurance Office*, the amount of damages could be inferred from the body of the complaint, and the plaintiff

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[40] *Id*. at 71.

[41] *Id*. at 3-7.

[42] *Id*. at 16-A-16-C.

[43] *Id*. at 18-56.

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

indicated willingness to abide by the rules by paying the additional fees when he amended his complaint, even without an order from the court. Here, Manila Banking knew the exact amount that it wanted to collect by way of interest, penalties, and attorney's fees; yet, it did not state these in its Complaint's prayer.[45]

They argue that the applicable case is *Tacay v. Regional Trial Court of Tagum, Davao del Norte*,[46] where this Court held that the phrase "awards of claims not specified in the pleading" should only refer to "damages arising after the filing of the complaint or similar pleading."[47]

Further, petitioners claim that the April 22, 1991 Decision of the Regional Trial Court in Civil Case No. 46961 settled the novation of Dragon's obligations to Manila Banking. They point out that in the proceedings in Civil Case No. 46961, Dragon presented two (2) letters, dated November 14, 1984 and September 19, 1984, which the trial court found to be proof that Builders Wood Products, Inc. and Dragon as guarantor were replaced by Kalilid Wood, the new debtor. Here, Dragon again offered these letters before the Regional Trial Court to prove that there was a consolidation of his loan accounts to Kalilid Wood's loan accounts.[48]

Petitioners argue that the Court of Appeals was incorrect in finding that the April 22, 1991 Decision of the Regional Trial Court in Civil Case No. 46961 did not cover the Promissory Notes. They claim that the Promissory Notes were part of the obligations that Kalilid Wood assumed when it proposed the loan restructuring in 1984 even though they were not specifically stated in Civil Case No. 46961. For them, since the Promissory Notes all bore dates prior to 1984, they were necessarily included in the loan restructuring.[49]

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[45] *Id*. at 34-35.

[46] 259 Phil. 927 (1989) [Per *J*. Narvasa, *En Banc*].

[47] *Rollo*, p. 35.

[48] *Id*. at 36-42.

[49] *Id*. at 42-44.

Finally, petitioners argue that Manila Banking's cause of action had prescribed, claiming that Dragon never admitted to receiving the demand letters allegedly sent by Manila Banking, which would have interrupted the prescriptive period.[50]

On April 3, 2013, this Court ordered Manila Banking to comment on the Petition.[51]

In its Comment filed on June 10, 2013,[52] respondent claims that the Petition raises issues which constitute questions of fact, namely: (1) whether respondent paid the correct docket fees; (2) whether novation took place; and (3) whether its cause of action had prescribed. These issues, it avers, are improper in a Rule 45 petition, which only involves questions of law. Moreover, petitioners failed to prove that any of the exceptions, which would allow this Court to resolve a question of fact, exist.[53]

Respondent points out that the issues raised in the Petition were never raised during pre-trial in the Regional Trial Court. For being belatedly raised, these defenses should be waived. In particular, petitioners were estopped from questioning the non-payment of correct docket fees since they only raised this issue after the Regional Trial Court rendered its September 26, 2007 Decision against Dragon.[54]

Respondent further claims that it paid the correct amount of docket fees for the Complaint based on the principal amount of ₱6,945,642.00. It argues that it was impossible to compute the interests, penalties, and attorney's fees it should claim because the date of actual payment by Dragon was uncertain at the time of the filing of the Complaint. However, even if the trial court rendered a judgment award more than the ₱6,945,642.00

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[50] *Id*. at 48-52.

[51] *Id*. at 455.

[52] *Id*. at 461-508.

[53] *Id*. at 470-481.

[54] *Id*. at 481-485.

it claimed, respondent argues that *Sun Insurance Office* should apply, and the additional docket fees shall be a lien on the judgment.[55]

Respondent further argues that: (1) the April 22, 1991 Decision of the Regional Trial Court in Civil Case No. 46961 was not the law of the case; (2) petitioners failed to prove novation; and (3) Dragon had failed to specifically deny receipt of Manila Banking's demand letters.[56]

On July 31, 2013,[57] this Court required petitioners to file their reply to respondent's Comment.

In their Reply filed on October 29, 2013,[58] petitioners argue that their Petition raises questions of law cognizable by this Court, namely: (1) whether the Regional Trial Court had jurisdiction over Manila Banking's claims for interests, penalties, and attorney's fees despite its failure to pay the correct docket fees; (2) whether the April 22, 1991 Decision served as *res judicata* for this case; and (3) whether the prescriptive period began to run only upon alleged service of the demand letter, or upon maturity of the Promissory Notes.[59]

In its March 3, 2014 Resolution,[60] this Court gave due course to the Petition and required the parties to submit their Memoranda. Respondent and petitioners filed their Memoranda on May 8, 2014[61] and May 12, 2014,[62] respectively.

The issues to be resolved are:

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[55] *Id*. at 495-499.

[56] *Id*. at 499-505.

[57] *Id*. at 872.

[58] *Id*. at 877-886.

[59] *Id*. at 877-883.

[60] *Id*. at 890-890-A.

[61] *Id*. at 891-935.

[62] *Id*. at 936-975.

First, whether or not the Petition for Review on *Certiorari* raises questions of fact not cognizable under Rule 45 of the Rules of Court; and

Second, whether or not the trial court acquired jurisdiction over the Complaint of respondent The Manila Banking Corporation in view of the insufficient payment of docket fees.

I

The existence of novation and prescription of an action is a question of fact not cognizable under a petition for review on *certiorari* under Rule 45 of the Rules of Court.

To determine if there was novation, the facts on record must be examined to show if the elements are present.[63] Here, the Regional Trial Court and the Court of Appeals did not err in finding that there was no novation of the Promissory Notes.

Petitioners claim that Kalilid Wood had agreed to assume Dragon's personal loans to respondent, including those arising from the Promissory Notes, an agreement given judicial recognition in the April 22, 1991 Decision of the Regional Trial Court, Branch 58 of Makati City in Civil Case No. 46961.[64]

Based on the April 22, 1991 Decision of the Regional Trial Court in Civil Case No. 46961, Builders Wood Products, Inc. obtained a loan from respondent, with Dragon as surety, in 1980.[65] When Builders Wood Products, Inc. defaulted, respondent filed an action for sum of money against it and its sureties.[66] In 1983, while the action was pending, Builders Wood Products, Inc. ceded its timber concession to Kalilid Wood, of which Dragon was an officer. Thus, Kalilid Wood assumed all the existing obligations of Builders Wood Products, Inc. and, later on, the obligations of Dragon as part of its repayment schedule.[67]

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[63] *David v. David*, 724 Phil. 239 (2014) [Per J. Bersamin, First Division].

[64] *Rollo*, pp. 36-43.

[65] *Id*. at 294-295.

[66] *Id*. at 294.

[67] *Id*. at 295-296.

The Court of Appeals is correct that the April 22, 1991 Decision does not mention the Promissory Notes included in the loans Kalilid Wood had assumed from Dragon. What Kalilid Wood had assumed were Dragon's obligations as surety for Builders Wood Products, Inc. It did not include his personal loans to respondent.[68]

Further, it is telling that petitioners cannot substantiate their claim that the Promissory Notes are included in the April 22, 1991 Decision.

The April 22, 1991 Decision declares that "the proposed repayment plan by [Kalilid Wood] regarding the various accounts mentioned in the letter (Exh. 1-Dragon) and the letter dated September 19, 1984 (Exhs. 2-Dragon, 2-A-Dragon), including that of Builders and Dragon were accepted by plaintiff Manila Banking Corporation."[69] Yet, petitioners were unable to prove or even claim that the Promissory Notes were included in these "various accounts." These exhibits should have been easy to present, as they should be extant judicial records, but they have not been presented by petitioners.

Novation must be clear and unequivocal, and is never presumed.[70] It is the burden of the party asserting that novation has taken place to prove that all the elements exist.

Likewise, the question of prescription of an action is a factual matter.[71] The Court of Appeals did not err when it held:

> In addition, it cannot be said that appellant-bank's cause of action based on such promissory notes had prescribed. Actions based upon a written contract should be brought within ten (10) years from the time the right of action accrues. Indubitably, such right of action

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[68] *Id.*

[69] *Id.* at 298.

[70] *Arco Pulp and Paper Company, Inc. v. Lim*, 737 Phil. 133 (2014) [Per J. Leonen, Third Division].

[71] *Crisostomo v. Garcia, Jr.*, 516 Phil. 743 (2006) [Per J. Chico-Nazario, First Division].

accrue from the moment the breach of right or duty occurs. Prescription of actions is, nevertheless, interrupted when they are filed before the courts, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgement of the debt by the debtor. In the present case, the ten-year (10) prescriptive period on the enforcement of said promissory notes that matured in 1982 - 1983, was timely interrupted by appellant-bank's demand letters to defendant-appellant in November 1988, October 1991, February 1993, November 1994, January 1996 and August 1998. Verily, every time the defendant-appellant receives said demand letters, a new ten-year (10) period is added, and the elapsed period is, thereby, eliminated. Indeed, a written extrajudicial demand wipes out the period which has already elapsed, and it starts anew the prescriptive period.[72] (Citations omitted)

II

The general rule is that the issue of jurisdiction may be raised at any stage of the proceedings, even on appeal, and is not lost by waiver or by estoppel.[73] A party is only estopped from raising the issue when it does so "in an unjustly belated manner especially when it actively participated during trial."[74] In *Villagracia v. Fifth Shari'a District Court*:[75]

In [*Tijam v. Sibonghanoy*], it took Manila Surety and Fidelity Co., Inc. 15 years before assailing the jurisdiction of the Court of First Instance. As early as 1948, the surety company became a party to the case when it issued the counter-bond to the writ of attachment. During trial, it invoked the jurisdiction of the Court of First Instance by seeking several affirmative reliefs, including a motion to quash the writ of execution. The surety company only assailed the jurisdiction

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[72] *Rollo*, pp. 66-67.

[73] *Cacho v. Balagtas*, G.R. No. 202974, February 7, 2018, <elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64051> [Per J. Leonardo-De Castro, First Division]; *Cabrera v. Clarin*, G.R. No. 215640, November 28, 2016 [Per J. Peralta, Third Division]; and *Adlawan v. Joaquino*, G.R. No. 203152, June 20, 2016 [Per J. Brion, Second Division].

[74] *Amoguis v. Ballado*, G.R. No. 189626, August 20, 2018, elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64639> 15 [Per J. Leonen, Third Division].

[75] 734 Phil. 239 (2014) [Per J. Leonen, Third Division].

of the Court of First Instance in 1963 when the Court of Appeals affirmed the lower court's decision. This court said:

> . . . Were we to sanction such conduct on [Manila Surety and Fidelity, Co. Inc.'s] part, We would in effect be declaring as useless all the proceedings had in the present case since it was commenced on July 19, 1948 and compel [the spouses Tijam] to go up their Calvary once more. The inequity and unfairness of this is not only patent but revolting.

After this court had rendered the decision in Tijam, this court observed that the "non-waivability of objection to jurisdiction" has been ignored, and the Tijam doctrine has become more the general rule than the exception. In *Calimlim v. Ramirez*, this court said:

> A rule that had been settled by unquestioned acceptance and upheld in decisions so numerous to cite is that the jurisdiction of a court over the subject-matter of the action is a matter of law and may not be conferred by consent or agreement of the parties. The lack of jurisdiction of a court may be raised at any stage of the proceedings, even on appeal. This doctrine has been qualified by recent pronouncements which stemmed principally from the ruling in the cited case of [Tijam v. Sibonghanoy]. It is to be regretted, however, that the holding in said case had been applied to situations which were obviously not contemplated therein. . . .

Thus, the court reiterated the "unquestionably accepted" rule that objections to a court's jurisdiction over the subject matter may be raised at any stage of the proceedings, even on appeal. This is because jurisdiction over the subject matter is a "matter of law" and "may not be conferred by consent or agreement of the parties."

In *Figueroa*, this court ruled that the *Tijam* doctrine "must be applied with great care;" otherwise, the doctrine "may be a most effective weapon for the accomplishment of injustice":

> . . . estoppel, being in the nature of a forfeiture, is not favored by law. It is to be applied rarely — only from necessity, and only in extraordinary circumstances. The doctrine must be applied with great care and the equity must be strong in its favor. When misapplied, the doctrine of estoppel may be a most effective weapon for the accomplishment of injustice. . . a judgment rendered without jurisdiction over the subject matter

> is void. . . No laches will even attach when the judgment is null and void for want of jurisdiction[.][76] (Citations omitted)

In this regard, this Court has consistently held that a party may be estopped from questioning the lack of jurisdiction due to insufficient payment of filing or docket fees, if the objection is not timely raised.[77]

The records show that Dragon raised the defense of prematurity, and no other, in his Answer with Compulsory Counterclaim dated January 31, 2000.[78] Dragon later actively participated in the proceedings of the case, including trial on the merits. Respondent's insufficient payment of docket fees was raised for the first time before the trial court in Dragon's Reply (To: Plaintiffs Opposition to Defendant's Motion for Reconsideration) and Supplemental Opposition (To: Plaintiffs Motion for Partial Reconsideration),[79] filed on February 26, 2008, following the September 26, 2007 Decision. The jurisdictional objection had been available to petitioners long before then, but they failed to timely raise it.

Nonetheless, the circumstances of this case warrant an examination of the rules and principles on payment of docket fees.

Under Rule 141, Section 1 of the Rules of Court, filing fees must be paid in full at the time an initiatory pleading or application is filed.[80]

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[76] *Id*. at 259-261.

[77] *Pantranco North Express, Inc. v. Court of Appeals*, 296 Phil. 335 (1993) [Per J. Davide, Jr., Third Division]; *National Steel Corporation v. Court of Appeals*, 362 Phil. 150 (1999) [Per J. Mendoza, Second Division]; and *International Container Terminal Services, Inc. v. City of Manila*, G.R. No. 185622, October 17, 2018, elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64632> [Per J. Leonen, Third Division].

[78] *Rollo*, pp. 256-259.

[79] *Id*. at 311-332.

[80] RULES OF COURT, Rule 141, Sec. 1 states:

SECTION 1. Payment of fees. — Upon the filing of the pleading or other application which initiates an action or proceeding, the fees prescribed therefor shall be paid in full.

Payment is indispensable for jurisdiction to vest in a court.[81]

The amount must be paid in full. Nonetheless, in *Magaspi v. Ramolete*[82] despite insufficient payment of filing fees, a complaint for recovery of ownership and possession was deemed docketed as there had been an "honest difference of opinion as to the correct amount to be paid[.]"[83] However, this Court declined to apply *Magaspi in Manchester Development Corporation v. Court of Appeals*.[84] There, the counsel deliberately did not specify the amount of damages in the complaint's prayer even though at least ₱78 million was alleged in the body. It later even amended the same complaint to remove all mentions of damages in the body. Thus:

> The Court cannot close this case without making the observation that it frowns at the practice of counsel who filed the original complaint in this case of omitting any specification of the amount of damages in the prayer although the amount of over ₱78 million is alleged in the body of the complaint. This is clearly intended for no other purpose than to evade the payment of the correct filing fees if not to mislead the docket clerk in the assessment of the filing fee. This fraudulent practice was compounded when, even as this Court had taken cognizance of the anomaly and ordered an investigation, petitioner through another counsel filed an amended complaint, deleting all mention of the amount of damages being asked for in the body of the complaint. It was only when in obedience to the order of this Court of October 18, 1985, the trial court directed that the amount of damages be specified in the amended complaint, that petitioners' counsel wrote the damages sought in the much reduced amount of ₱10,000,000.00 in the body of the complaint but not in

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[81] *Lazaro v. Endencia*, 57 Phil. 552 (1932) [Per *J*. Hull, *En Banc*]; *Malimit v. Degamo*, 120 Phil. 1247 (1964) [Per *J*. Dizon, Second Division]; *Mercado v. Court of Appeals*, 484 Phil. 438 (2004) [Per *J*. Quisimbing, First Division]; and *Montañer v. Shari'a District Court*, 596 Phil. 815 (2009) [Per *C.J*. Puno, First Division].

[82] 200 Phil. 583 (1982) [Per *J*. Abad Santos, Second Division].

[83] *Id*. at 595.

[84] 233 Phil. 579 (1987) [Per *J*. Gancayco, *En Banc*].

the prayer thereof. The design to avoid payment of the required docket fee is obvious.

The Court serves warning that it will take drastic action upon a repetition of this unethical practice.

To put a stop to this irregularity, henceforth all complaints, petitions, answers and other similar pleadings should specify the amount of damages being prayed for not only in the body of the pleading but also in the prayer, and said damages shall be considered in the assessment of the filing fees in any case. Any pleading that fails to comply with this requirement shall not be accepted nor admitted, or shall otherwise be expunged from the record.

The Court acquires jurisdiction over any case only upon the payment of the prescribed docket fee. An amendment of the complaint or similar pleading will not thereby vest jurisdiction in the Court, much less the payment of the docket fee based on the amounts sought in the amended pleading. The ruling in the Magaspi case in so far as it is inconsistent with this pronouncement is overturned and reversed.[85] (Citation omitted)

Later, in *Sun Insurance Office*,[86] this Court laid down the rules concerning the payment of filing fees, taking into consideration *Magaspi, Manchester Development Corporation*, and other earlier rulings:

Thus, the Court rules as follows:

1. It is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the subject matter or nature of the action. Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period.

2. The same rule applies to permissive counterclaims, third-party claims and similar pleadings, which shall not be considered filed until and unless the filing fee prescribed therefor is paid. The court may

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[85] *Id.* at 585.

[86] 252 Phil. 280 (1989) [Per J. Gancayco, *En Banc*].

also allow payment of said fee within a reasonable time but also in no case beyond its applicable prescriptive or reglementary period.

3. Where the trial court acquires jurisdiction over a claim by the filing of the appropriate pleading and payment of the prescribed filing fee but, subsequently, the judgment awards a claim not specified in the pleading, or if specified the same has been left for determination by the court, the additional filing fee therefor shall constitute a lien on the judgment. It shall be the responsibility of the Clerk of Court or his duly authorized deputy to enforce said lien and assess and collect the additional fee.[87]

Notwithstanding *Sun Insurance Office*, it must be emphasized that payment of filing fees in full at the time the initiatory pleading or application is filed is still the general rule. Exceptions that grant liberality for insufficient payment are strictly construed against the filing party. In *Colarina v. Court of Appeals*:[88]

While the payment of docket fees, like other procedural rules, may have been liberally construed in certain cases if only to secure a just and speedy disposition of every action and proceeding, it should not be ignored or belittled lest it scathes and prejudices the other party's substantive rights. The payment of the docket fee in the proper amount should be followed subject only to certain exceptions which should be strictly construed.[89]

Moreover, the filing party must show that there was no intention to defraud the government of the appropriate filing fees due it.[90] In *Manchester Development Corporation*, this Court found that the filing party, in repeatedly omitting the amount of damages it was asking for, aimed to evade payment of docket fees.

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[87] *Id*. at 291-292.

[88] 363 Phil. 271 (1999) [Per J. Bellosillo, Second Division].

[89] *Id*. at 278.

[90] *Heirs of Hinog v. Melicor*, 495 Phil. 422 (2005) [Per J. Austria-Martinez, Second Division]; *Intercontinental Broadcasting Corporation v. Legasto*, 521 Phil. 469 (2006) [Per J. Ynares-Santiago, First Division]; and *United Overseas Bank v. Ros*, 556 Phil. 178 (2007) [Per J. Chico-Nazario, Third Division].

In *Philippine First Insurance Company, Inc. v. Pyramid Logistics and Trucking Corporation*,[91] the respondent attempted to pass off its action for collection of money as one for "specific performance and damages,"[92] failing to specify the amounts in the prayer of its complaint. Thus:

> If respondent Pyramid's counsel had only been forthright in drafting the complaint and taking the cudgels for his client and the trial judge assiduous in applying Circular No. 7 *vis-a-vis* prevailing jurisprudence, the precious time of this Court, as well as of that of the appellate court, would not have been unnecessarily sapped.
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> The Court at this juncture thus reminds Pyramid's counsel to observe Canon 12 of the Code of Professional Ethics which enjoins a lawyer to "exert every effort and consider it his duty to assist in the speedy and efficient administration of justice," and Rule 12.04 of the same Canon which enjoins a lawyer "not [to] unduly delay a case, impede the execution of a judgment or misuse court processes." And the Court reminds too the trial judge to bear in mind that the nature of an action is determined by the allegations of the pleadings and to keep abreast of all laws and prevailing jurisprudence, consistent with the standard that magistrates must be the embodiments of competence, integrity and independence.[93] (Citations omitted)

Likewise, this Court applied the *Manchester Development Corporation* doctrine in *Central Bank of the Philippines v. Court of Appeals*.[94] There, private respondent Producers Bank of the Philippines concealed its intent to collect damages by making it appear that its complaint was principally for injunction. Thus, it avoided the need to pay filing fees on the amount of damages.

Should there be a finding that the filing party intended to conceal the amount of its claims to pay a smaller amount of docket fees, demonstrating an intent to defraud the court what

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[91] 579 Phil. 679 (2008) [Per *J.* Carpio Morales, Second Division].

[92] *Id.* at 681.

[93] *Id.* at 693.

[94] 284-A Phil. 143 (1992) [Per *J.* Davide, Jr., *En Banc*].

it is owed, then the doctrine in *Manchester Development Corporation*, not *Sun Insurance Office*, shall apply.[95]

Thus, the Regional Trial Court gravely erred when it merely stated in its April 3, 2008 Order that *Sun Insurance Office* was applicable:

> The court however is intrigued with the issue raised for the first time by defendant in his reply and supplemental opposition. According to the defendant, since plaintiff willfully and deliberately evaded payment of the correct docket fees for the amounts claimed for interests, penalties and attorney's fees, plaintiff is deemed to have abandoned such claims. Defendant further argues that as a consequence of the non-payment of the correct docket fees by plaintiff, this court has not acquired jurisdiction to award the amounts claimed by the plaintiff.
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> The concern of defendant in this case is not novel. Nevertheless, the case of Sun Insurance Office, Ltd. Et al. vs. Hon. Maximiano C. Asuncion and Manuel Chua Uy Po (G.R. Nos. 79937-38, 13 February 1989) provides a solution on this issue. Hence, there is no more necessity of delving further on this matter.[96]

The trial court should have closely examined whether the circumstances here warrant the liberality of the *Sun Insurance Office* doctrine, especially when even a cursory application of the governing rules on docket fees at that time shows a glaring omission on respondent's part.

For actions involving recovery of money or damages, the aggregate amount claimed should be the basis for assessment of docket fees. In *Tacay*:[97]

> Where the action is purely for the recovery of money or damages, the docket fees are assessed on the basis of the aggregate amount claimed, exclusive only of interests and costs. In this case, the

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[95] *United Overseas Bank v. Ros*, 556 Phil. 178 (2007) [Per *J.* Chico-Nazario, Third Division].

[96] *Rollo*, p. 250.

[97] 259 Phil. 927 (1989) [Per *J.* Narvasa, *En Banc*].

complaint or similar pleading should, according to Circular No. 7 of this Court, "specify the amount of damages being prayed for not only in the body of the pleading but also in the prayer, and said damages shall be considered in the assessment of the filing fees in any case."

Two situations may arise. One is where the complaint or similar pleading sets out a claim purely for money or damages and there is no precise statement of the amounts being claimed. In this event the rule is that the pleading will "not be accepted nor admitted, or shall otherwise be expunged from the record." In other words, the complaint or pleading may be dismissed, or the claims as to which the amounts are unspecified may be expunged, although as aforestated the Court may, on motion, permit amendment of the complaint and payment of the fees provided the claim has not in the meantime become time-barred. The other is where the pleading does specify the amount of every claim, but the fees paid are insufficient; and here again, the rule now is that the court may allow a reasonable time for the payment of the prescribed fees, or the balance thereof, and upon such payment, the defect is cured and the court may properly take cognizance of the action, unless in the meantime prescription has set in and consequently barred the right of action.[98]

When respondent filed its Complaint in 1999, the applicable rule on the basis of the assessment of docket fees was the Supreme Court Administrative Circular No. 11-94, dated June 28, 1994, amending Rule 141 of the Rules of Court. It states in part:

RULE 141
LEGAL FEES

. . . . . .

Sec. 7. Clerks of Regional Trial Courts

(a) For filing an action or a permissive counterclaim or money claim against an estate not based on judgment, or for filing with leave of court a third-party, fourth-party, etc. complaint, or a complaint in intervention, and for all clerical services in the same, *if the total sum claimed, inclusive of interest, damages of whatever kind, attorney's*

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[98] *Id*. at 937-938.

fees, litigation expenses, and costs, or the stated value of the property in litigation, is: . . . (Emphasis supplied)

Thus, the basis for the assessment of the filing fees for respondent's Complaint should not have been only the principal amounts due on the loans, but also the accrued interests, penalties, and attorney's fees. These amounts should have all been specified in both the Complaint's body and prayer.

In its defense, respondent claims that it did not willfully conceal the amount it sought to collect from petitioners, as its Complaint "clearly states"[99] that it intended to collect both the principal amount, plus interests, penalties, and attorney's fees up to the date of actual payment. In effect, respondent claims that it had stated the amount of its claim accurately to assess the filing fees it should pay. Yet, respondent blatantly did not comply with the requirement in Supreme Court Administrative Circular No. 11-94 that the total aggregate amount, including interest claimed, should be specified in the body and prayer of a complaint.

Respondent alleges that it could not determine with certainty the accrued interests, penalties, and attorney's fees petitioners are liable for, pointing to the uncertainty of the date when these additional claims would be awarded by the Regional Trial Court.[100] According to respondent, only the principal amount to be collected could be determined with absolute certainty:

It is clear that the *computation of such interest, penalties and attorney's fees would have been impossible to perform on the date of filing of the Complaint* as the date of actual payment of the instant claim could not be foreseen or forecasted when the *Complaint* was filed as evidenced by the fact that to date, Decedent Dragon has willfully and deliberately evaded payment of these loan obligations he obtained from plaintiff TMBC.[101] (Emphasis supplied)

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[99] *Rollo*, p. 923.

[100] *Id.* at 495.

[101] *Id.* at 497.

Similarly, the Court of Appeals explained:

> Truly, the payment of complete docket fees for the claimed interests, penalties and attorney's fees cannot be made at the time of the filing of the complaint since their true or exact amount cannot be determined as yet with certainty until after the resolution of the case.[102]

However, the demand letters sent to Dragon prior to the filing of respondent's Complaint already contained respondent's computation of the accrued interests, penalties, and attorney's fees corresponding to the Promissory Notes.[103] In its last demand letter before it filed its Complaint, respondent demanded ₱37,093,353.00 in addition to the ₱6,945,642.00 principal amount.[104]

Respondent itself, in multiple pleadings, stated that as of April 3, 2002, it had computed the outstanding interests, penalties, and attorney's fees owed it in the amount of ₱41,082,626.98.[105]

Clearly, respondent is perfectly capable of estimating the accrued interests, penalties, and charges it demanded as of the date it filed its Complaint. But despite respondent's demand letters containing computations of accrued interests, penalties, and attorney's fees, none of these computations were mentioned in the Complaint, either in its body or prayer.

This stands in stark contrast to *Proton Pilipinas Corporation v. Banque Nationale De Paris*.[106] There, the amount of US$1,544,984.40 claimed by Banque Nationale De Paris, for which it paid filing fees, represented the principal amount and interest claimed until August 15, 1998. The insufficient payment there pertained only to the unstated accrued interest from August 16, 1998 until September 7, 1998, the day the complaint was filed.

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[102] *Id*. at 71.

[103] *Id*. at 514-518, 520, and 522.

[104] *Id*. at 522.

[105] *Id*. at 698 and 708-709.

[106] 499 Phil. 247 (2005) [Per J. Carpio Morales, Third Division].

Here, on the other hand, absolutely no filing fees were paid by respondent for the accrued interest it claimed.

In multiple pleadings, respondent reasons that it has not defrauded the government because the court may simply recoup the filing fees in the form of a lien over the judgment award in the event that it be awarded all the amounts it is allegedly owed.

In its March 19, 2008 Rejoinder (To Defendant's Reply dated 21 February 2008) with Supplemental Reply (To Defendant's Supplemental Opposition dated 21 February 2008):[107]

8. Following the *Sun Insurance (Supra.)* ruling, any additional filing fees due on the award made by this Honorable Court upon its proper determination of the interest, penalties and attorney's fees that should rightfully be paid by defendant Dragon for putting plaintiff TMBC through all this trouble, shall constitute a lien upon this Honorable Court's Judgment. As such, the government will not be defrauded, of the filing fees due it and defendant Dragon will not be spared from paying what he should rightfully be held liable for.[108] (Emphasis in the original)

In its October 23, 2009 Plaintiff-Appellee's Brief:[109]

20. Following the *Sun Insurance (Supra.)* and *Soriano and Padilla (Supra.)* rulings, any additional filing fees due on the Appealed Decision, upon the proper determination of the amount of interest, penalties and attorney's fees that should rightfully be paid by Defendant-Appellant Dragon to TMBC, shall constitute a lien upon the Judgment. As such, the government will not be defrauded of the filing fees due it and Defendant-Appellant Dragon will not be spared from paying what he should rightfully be held liable for.[110] (Emphasis in the original)

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[107] *Rollo*, pp. 657-682.

[108] *Id*. at 662.

[109] *Id*. at 751-796.

[110] *Id*. at 766-767.

In its November 3, 2009 Reply Brief:[111]

19. Following the *Sun Insurance (Supra.)* and *Soriano and Padilla (Supra.)* rulings, any additional filing fees due on the award in favor of TMBC, upon the proper determination of the amount of interest, penalties and attorney's fees that should rightfully be paid by Defendant Dragon to TMBC, shall constitute a lien upon such award. As such, the government will not be defrauded of the filing fees due it and Defendant Dragon will not be spared from paying what he should rightfully be held liable for.[112] (Emphasis in the original)

In its June 10, 2013 Comment:[113]

96. Following the *Sun Insurance (Supra.)* and *Soriano and Padilla (Supra.)* rulings, any additional filing fees due on the Appealed Decision, upon the proper determination of the amount of interest, penalties and attorney's fees that should rightfully be paid by Decedent Dragon to TMBC, shall constitute a lien upon the Judgment. As such, the government will not be defrauded of the filing fees due it and Decedent Dragon will not be spared from paying what he should rightfully be held liable for.[114] (Emphasis in the original)

In its May 8, 2014 Memorandum:[115]

106. Following the *Sun Insurance (Supra.)* and *Soriano and Padilla (Supra.)* rulings, any additional filing fees due on the Appealed Decision, upon the proper determination of the amount of interest, penalties and attorney's fees that should rightfully be paid by Decedent Dragon to TMBC, shall constitute a lien upon the judgment. As such, the government will not be defrauded of the filing fees due it and Decedent Dragon will not be spared from paying what he should rightfully be held liable for.[116] (Emphasis in the original)

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[111] *Id*. at 797-830.

[112] *Id*. at 805-806.

[113] *Id*. at 461-508.

[114] *Id*. at 499.

[115] *Id*. at 891-935.

[116] *Id*. at 926-927.

What respondent forgets is that the payment of correct docket fees cannot be made contingent on the result of the case.[117] Otherwise, the government and the judiciary would sustain tremendous losses, as these fees "take care of court expenses in the handling of cases in terms of cost of supplies, use of equipmen[t], salaries and fringe benefits of personnel, *etc*., computed as to man hours used in handling of each case."[118]

Concededly, Rule 141, Section 2 of the Rules of Court states:

> SEC. 2. *Fees in lien.* — Where the court in its final judgment awards a claim not alleged, or a relief different from, or more than that claimed in the pleading, the party concerned shall pay the additional fees which shall constitute a lien on the judgment in satisfaction of said lien. The clerk of court shall assess and collect the corresponding fees.

However, the rule on after-judgment liens applies to instances of incorrectly assessed or paid filing fees, or where the court has discretion to fix the amount to be awarded.[119] In *Proton Pilipinas Corporation*:[120]

> In *Ayala Corporation v. Madayag*, in interpreting the third rule laid down in *Sun Insurance* regarding awards of claims not specified in the pleading, this Court held that the same **refers only to damages arising after the filing of the complaint or similar pleading as to which the additional filing fee therefor shall constitute a lien on the judgment**.
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> . . . The amount of any claim for damages, therefore, arising on or before the filing of the complaint or any pleading should be specified. While it is true that the determination of certain

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[117] *Pilipinas Shell Petroleum Corporation v. Court of Appeals*, 253 Phil. 660 (1989) [Per *J*. Paras, Second Division].

[118] *Id*. at 667. See also *Far East Bank and Trust Company v. Shemberg Marketing Corporation*, 540 Phil. 7 (2006) [Per *J*. Sandoval-Gutierrez, Second Division].

[119] *Do-All Metals Industries, Inc. v. Security Bank Corporation*, 654 Phil. 35 (2011) [Per *J*. Abad, Second Division].

[120] 499 Phil. 247 (2005) [Per *J*. Carpio Morales, Third Division].

> damages as exemplary or corrective damages is left to the sound discretion of the court, it is the duty of the parties claiming such damages to specify the amount sought on the basis of which the court may make a proper determination, and for the proper assessment of the appropriate docket fees. **The exception contemplated as to claims not specified or to claims although specified are left for determination of the court is limited only to any damages that may arise after the filing of the complaint or similar pleading for then it will not be possible for the claimant to specify nor speculate as to the amount thereof.**[121] (Emphasis in the original)

Further, nowhere in any of respondent's pleadings filed before any court did respondent manifest its willingness, to the Regional Trial Court or to the Court of Appeals or to this Court, that it will be paying additional docket fees when required. Its repeated invocation of *Sun Insurance Office* is not a manifestation of willingness to pay additional docket fees contemplated in *United Overseas Bank* and subsequent cases.[122] In none of its pleadings did respondent allude to paying any additional docket fee if so ordered; instead, it left it to the courts to constitute a lien over a hypothetical award, to which it was not entitled, as both lower courts have already held.

Unlike other cases,[123] the amount of unremitted filing fees here is substantial. Respondent paid only ₱34,975.75 in filing fees based on its ₱6,945,642.00 claim alleged in its

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[121] *Id*. at 266-267.

[122] See *Heirs of Reinoso, Sr. v. Court of Appeals*, 669 Phil. 272 (2011) [Per J. Mendoza, Third Division]; *Negros Oriental Planters Association, Inc. v. Hon. Presiding Judge of Regional Trial Court-Negros Occidental, Branch 52, Bacolod City*, 595 Phil. 1158 (2008) [Per J. Chico-Nazario, Third Division]; and *Spouses Gutierrez v. Spouses Valiente*, 579 Phil. 486 (2008) [Per J. Austria-Martinez, Third Division].

[123] See *Negros Oriental Planters Association, Inc. v. Presiding Judge of Regional Trial Court-Negros Occidental, Branch 52, Bacolod City*, 595 Phil. 1158 (2008) [Per J. Chico-Nazario, Third Division] and *Ku v. RCBC Securities, Inc.*, G.R. No. 219491, October 17, 2018, <elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64662> [Per J. Peralta, Third Division].

Complaint.[124] If respondent had properly stated the total sum it claimed in its prayer, including the interests, penalties, and charges, it should have paid ₱222,300.43, as computed by the clerk of court.[125] In effect, respondent only paid 15.7% of the docket fees it owes the court.

Under the circumstances, a liberal application of the rules on payment of filing fees is unwarranted. In accordance with *Manchester Development Corporation*, the Regional Trial Court did not acquire jurisdiction over the Complaint due to respondent's insufficient payment of filing fees.

WHEREFORE, the Petition for Review on *Certiorari* is **GRANTED**. The Court of Appeals June 27, 2012 Decision and December 5, 2012 Resolution in CA-G.R. CV No. 92266 are **REVERSED AND SET ASIDE**. The January 7, 1999 Complaint filed by respondent The Manila Banking Corporation before the Regional Trial Court is **DISMISSED** for lack of jurisdiction due to non-payment of filing fees.

SO ORDERED.

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

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[124] *Rollo*, p. 333.

[125] *Id.* at 334.

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

THIRD DIVISION

[G.R. Nos. 212491-92. March 6, 2019]

MARIA SHIELA HUBAHIB TUPAZ, *petitioner, vs.* **THE OFFICE OF THE DEPUTY OMBUDSMAN FOR THE VISAYAS; ATTY. FERNANDO ABELLA, REGISTER OF DEEDS; and MACRINA ESPIÑA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; PROBABLE CAUSE; A MATTER WHICH RESTS ON LIKELIHOOD RATHER THAN ON CERTAINTY; DETERMINATION THEREOF IS AN EXECUTIVE, NOT A JUDICIAL FUNCTION; A WRIT OF *CERTIORARI* MAY BE ISSUED IF A PUBLIC PROSECUTOR'S RESOLUTION IS TAINTED WITH GRAVE ABUSE OF DISCRETION.—** 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.'" x x x The determination of probable cause is an executive, not a judicial, function. It is generally not for a court to disturb the conclusion made by a public prosecutor. This is grounded on the basic principle of separation of powers. However, "grave abuse of discretion taints a public prosecutor's resolution if he [or she] arbitrarily disregards the jurisprudential parameters of probable cause." In such cases, consistent with the principle of checks and balances among the three (3) branches of government, a writ of *certiorari* may be issued to undo the prosecutor's iniquitous determination.

2. **ID.; ID.; ID.; ID.; DETERMINATION THEREOF MUST BE MADE IN REFERENCE TO THE ELEMENTS OF THE CRIME CHARGED.—** Determining 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."

3. **CRIMINAL LAW; R.A. NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); VIOLATION OF SECTION 3 (E) THEREOF; ELEMENTS.—** Appraising probable cause for a violation of

Section 3(e) of the Anti-Graft and Corrupt Practices Act must begin with the text of Section 3(e). x x x Accordingly, a violation of Section 3(e) is deemed to have occurred when the following elements are demonstrated: (1) the offender is a public officer; (2) the act was done in the discharge of the public officer's official, administrative or judicial functions; (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and (4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.

4. **ID.; ID.; ID.; ID.; THREE DISTINCT MODES OF COMMISSION, DISTINGUISHED.—** The third element identifies three (3) distinct modes of commission: manifest partiality, evident bad faith, and gross inexcusable negligence. *Fonacier v. Sandiganbayan* distinguished these modes, as follows: "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wil[l]fully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property." These definitions prove all too well that the three modes are distinct and different from each other. Proof of the existence of any of these modes in connection with the prohibited acts under Section 3(e) should suffice to warrant conviction.

5. **ID.; ID.; ID.; ID.; TWO WAYS BY WHICH SECTION 3 (E) OF R.A. 3019 MAY BE VIOLATED.—** The fourth element identifies two (2) alternative, typifying effects: causing undue injury to any party and/or giving any private party unwarranted benefit, advantage, or preference. Prosecution and/or conviction under Section 3(e) ensues when either or both of these are occasioned by the public officer's manifest partiality, evident bad faith, or gross inexcusable negligence: [T]here are two ways by which Section 3 (e) of RA 3019 may be violated — the first, by causing

undue injury to any party, including the government, or the second, by giving any private party any unwarranted benefit, advantage or preference. Although neither mode constitutes a distinct offense, an accused may be charged under either mode or both. The use of the disjunctive "or" connotes that the two modes need not be present at the same time. In other words, the presence of one would suffice for conviction. . . The word "unwarranted" means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another. In order to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions.

6. ID.; ID.; ID.; VIOLATED BY GROSSLY ERRING REGISTRAR OF DEEDS AND PRIVATE RESPONDENT WHO ENABLED HIM TO CANCEL THE ORIGINAL CERTIFICATE OF TITLE AND IN ITS STEAD ISSUED NEW TRANSFER CERTIFICATES OF TITLE DESPITE MANIFEST AND UNEQUIVOCAL DEFICIENCIES IN THE OWNER'S DUPLICATE COPY, THE CERTIFICATE AUTHORIZING REGISTRATION, AND THE DEED OF CONVEYANCE PRESENTED TO HIM; CASE AT BAR.— As with *Ampil*, private respondent Abella's official acts of canceling Original Certificate of Title No. 15609, and issuing in its stead Transfer Certificate of Title Nos. 116-2011000073 and 116-2011000074 in the name of Genaro, appear to be attended, at the very least, by gross inexcusable negligence. Here, the evidence strongly suggests that private respondent Abella's actions, like Espenesin's, fell miserably short of the standards apropos to his office. While he did not act with private respondent Macrina out of a shared malevolent design, he nonetheless relied on manifestly defective and tellingly suspicious documents that private respondent Macrina (or persons acting under and for her) presented. Hence, as with *Ampil*, where this Court maintained that criminal informations must be filed against the grossly erring registrar of deeds and the private person at whose urging he performed his errant official acts, private respondents must stand trial for violation of the Anti-Graft and Corrupt Practices Act. From the evidence

> adduced by petitioner, there is basis to maintain a reasonable belief that private respondent Abella enabled the cancellation of the Original Certificate of Title and issuance of new transfer certificates of title. This was despite manifest and unequivocal deficiencies, most notably in the owner's duplicate copy, the Certificate Authorizing Registration, and the Deed of Conveyance that had been presented to him. x x x As things stand, the evidence weighs far more heavily in favor of petitioner's cause. Even granting that he did not act with a deliberately malevolent design, he still appears to have acted with grossly inexcusable negligence that he practically evaded his duties as a registrar of deeds. Private respondent Abella was equipped with skills and training to identify irregularities in property registration. More important, it was his solemn duty to not facilitate registrations attended by manifest aberrations. The palpable defects of the documents presented to him should have prompted him to desist with the cancellation of the Original Certificate of Title. Instead, he went so far as to issue new transfer certificates of title. In so doing, he caused undue injury to Hubahib's heirs and extended unwarranted benefits to Genaro. He, with Macrina, must rightly stand trial for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act.

APPEARANCES OF COUNSEL

Napoleon Uy Galit and Associates Law Offices for petitioner.

Rosah Leah L. Tepace-Estudillo for respondent Macrina Espiña.

D E C I S I O N

LEONEN, *J.*:

Public prosecutors must address the different dimensions of complaints raised before them. When they provide well-reasoned resolutions on one (1) dimension, but overlook palpable indications that another crime has been committed, they fail to responsibly discharge the functions entrusted to them. This amounts to an evasion of positive duty, an act of grave abuse of discretion correctible by *certiorari*.

This resolves a Petition for *Certiorari*[1] under Rule 65 of the 1997 Rules of Civil Procedure, praying that the assailed April 23, 2013 Consolidated Evaluation Report[2] and November 25, 2013 Order[3] issued in OMB-V-C-13-0098 by public respondent Office of the Deputy Ombudsman for the Visayas be set aside for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

In its assailed Consolidated Evaluation Report, the Office of the Deputy Ombudsman for the Visayas dismissed the Criminal Complaint for falsification (as penalized under Article 171[4] of

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[1] *Rollo*, pp. 131-157.

[2] *Id*. at 8-11. The Consolidated Evaluation Report was penned by Graft Investigation and Prosecution Officer II Maria Corazon S. Vergara-Naraja, reviewed by Acting Director Euphemia B. Bacalso, and approved by Deputy Ombudsman for the Visayas Pelagio S. Apostol of the Office of the Deputy Ombudsman for the Visayas, Cebu City.

[3] *Id*. at 70-72. The Order was penned by Graft Investigation and Prosecution Officer II Maria Corazon S. Vergara-Naraja, reviewed by Acting Director Euphemia B. Bacalso, and approved by Deputy Ombudsman for the Visayas Pelagio S. Apostol of the Office of the Deputy Ombudsman for the Visayas, Cebu City.

[4] REVISED PENAL CODE, Art. 171 provides:

ARTICLE 171. Falsification by Public Officer, Employee or Notary or Ecclesiastic Minister. — The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

1. Counterfeiting or imitating any handwriting, signature or rubric;

2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;

3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;

4. Making untruthful statements in a narration of facts;

5. Altering true dates;

6. Making any alteration or intercalation in a genuine document which changes its meaning;

7. Issuing in authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such

the Revised Penal Code) and violation of Section 3(e)[5] of the Anti-Graft and Corrupt Practices Act, filed by petitioner Maria Shiela Hubahib Tupaz (Tupaz) against private respondents Fernando M. Abella (Atty. Abella), Registrar of Deeds of Catarman, Northern Samar, and Macrina Espiña (Macrina), a private individual and the person at whose urging Abella allegedly acted.[6]

In its assailed Order, the Office of the Deputy Ombudsman for the Visayas denied Tupaz's Motion for Reconsideration.

In her Complaint-Affidavit[7] (Complaint), Tupaz stated that her mother, Sol Espiña Hubahib (Hubahib), was the registered owner of a 100,691-square meter property in Barangay Rawis, Lao-ang, Northern Samar, covered by Original Certificate of Title No. 15609. Since its issuance in 1971, she added, a duplicate has always been in the possession of their family—initially by Hubahib and, upon her demise, by her heirs.[8]

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copy a statement contrary to, or different from, that of the genuine original; or

8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

[5] Rep. Act No. 3019 (1960), Sec. 3(e) provides:

SECTION 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

. . . . . .

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[6] *Rollo*, p. 27.

[7] *Id*. at 27-38.

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

On April 17, 2011, Atty. Abella canceled Original Certificate of Title No. 15609 and, in its stead, issued Transfer Certificate of Title Nos. 116-2011000073 and 116-2011000074 in favor of Genaro Espiña (Genaro), represented by his attorney-in-fact, Macrina.[9] According to Tupaz, this cancellation was anchored on the following:

1. A document labeled as the owner's duplicate of Original Certificate of Title No. 15609 but which Tupaz argued was "materially and essentially different"[10] from the copy on file with the Register of Deeds and the genuine owner's duplicate copy in her family's custody;

2. A Certificate Authorizing Registration supposedly issued by the Bureau of Internal Revenue, which indicated that no capital gains tax was paid despite the property being a more than 100,000- square meter commercial land with zonal valuation of ₱400.00 per square meter as of 2002. The same certificate indicated that only ₱2,655.00 in documentary stamp taxes and ₱100.00 for the certification fee were paid;[11]

3. A 1972 Deed of Conveyance, which was never annotated onto Original Certificate of Title No. 15609, and which had surfaced only in 2011, bearing a forgery of Hubahib's signature;[12] and

4. A subdivision plan that was made without the participation of or notice to Tupaz or her co-heirs/owners.[13]

Tupaz maintained that Atty. Abella: (1) issued a spurious owner's duplicate copy of Original Certificate of Title No. 15609;[14]

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[9] *Id*. at 138.

[10] *Id*. at 139.

[11] *Id*. at 32 and 139.

[12] *Id*. at 33 and 139.

[13] *Id*.

[14] *Id*. at 32.

(2) tolerated the use of an equally spurious Certificate Authorizing Registration and Deed of Conveyance;[15] and (3) enabled the issuance of specious transfer certificates of titles, with Genaro as beneficiary.[16] Hence, she filed her Complaint, asserting that Atty. Abella, along with Macrina, were liable for falsification, graft and corrupt practices, misconduct, dishonesty, and conduct prejudicial to the best interest of the service.

Tupaz's Complaint was docketed as OMB-V-C-13-0098 for the criminal aspect concerning falsification and graft and corrupt practices, and OMB-V-A-13-0100 for the administrative aspect concerning misconduct, dishonesty, and conduct prejudicial to the best interest of the service.[17]

In its assailed April 23, 2013 Consolidated Evaluation Report,[18] the Office of the Deputy Ombudsman for the Visayas dismissed Tupaz's Complaint for being "premature"[19] and declined to file criminal informations—both for falsification and graft and corrupt practices—against Atty. Abella and Macrina. It reasoned:

> Upon scrutiny of the present complaint, it is found that the issue on the possible criminal liability of the respondents and the administrative liability of respondent ABELLA is closely intertwined with the issue on ownership of the subject property. It hinges on which party has the better right over the lot in question. If the transfer of the title of the property in favor of respondent ESPIÑA is upheld as valid, the present charges for falsification and dishonesty, etc. against the respondents would have no leg to stand on. Hence, the issue presented before this Office cannot be resolved without first touching on the overarching issue on ownership which is not within our jurisdiction to determine. This matter should be brought before the proper forum wherein questions regarding the transfer of title can be adjudicated.[20]

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

[16] *Id*. at 138.

[17] *Id*. at 70.

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

[19] *Id*. at 10.

[20] *Id*. at 9-10.

In its assailed November 25, 2013 Order,[21] the Office of the Deputy Ombudsman for the Visayas denied Tupaz's Motion for Reconsideration. Maintaining that the Complaint was premature, it stated that Tupaz "has the option to again lodge the same complaint as long as the issue on ownership of the subject property has been settled by the proper court."[22]

Thus, Tupaz filed this Petition for *Certiorari*[23] specifically assailing the ruling of the Office of the Deputy Ombudsman for the Visayas on the criminal aspect of her Complaint. While no longer making averments concerning Abella's and Macrina's liability for falsification, she maintains that they must both stand trial for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act.[24]

For resolution is the issue of whether or not public respondent Office of the Deputy Ombudsman for the Visayas acted with grave abuse of discretion amounting to lack or excess of jurisdiction in not finding probable cause to charge private respondent Fernando M. Abella, along with private respondent Macrina Espiña, with violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act.

This Court grants the Petition.

I

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.'"[25] In *Ampil v. Office of the Ombudsman:*[26]

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[21] *Id*. at 70-72.

[22] *Id*. at 71.

[23] *Id*. at 131-157.

[24] *Id*. at 141.

[25] *Marasigan v. Fuentes*, 776 Phil. 574, 584 (2016) [Per J. Leonen, Second Division].

[26] 715 Phil. 733 (2013) [Per J. Perez, Second Division].

We likewise stress that the determination of probable cause does not require certainty of guilt for a crime. As the term itself implies, probable cause is concerned merely with probability and not absolute or even moral certainty; it is merely based on opinion and reasonable belief. It is sufficient that based on the preliminary investigation conducted, it is believed that the act or omission complained of constitutes the offense charged. Well-settled in jurisprudence, as in *Raro v. Sandiganbayan*, that:

> . . . [P]robable cause has been defined as the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.
>
> Probable cause is a reasonable ground for presuming that a matter is or may be well-founded on such state of facts in the prosecutor's mind as would lead a person of ordinary caution and prudence to believe — or entertain an honest or strong suspicion — that it is so.

A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt.

A finding of 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. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.

A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.

> 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.[27] (Citations omitted)

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[27] *Id*. at 761-762.

The determination of probable cause is an executive, not a judicial, function. It is generally not for a court to disturb the conclusion made by a public prosecutor. This is grounded on the basic principle of separation of powers. However, "grave abuse of discretion taints a public prosecutor's resolution if he [or she] arbitrarily disregards the jurisprudential parameters of probable cause."[28] In such cases, consistent with the principle of checks and balances among the three (3) branches of government, a writ of *certiorari* may be issued to undo the prosecutor's iniquitous determination. In *Lim v. Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices*:[29]

> 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*

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[28] *Aguilar v. Department of Justice,* 717 Phil. 789, 799 (2013) [*Per Curiam*, Second Division].

[29] 795 Phil. 226 (2016) [Per *J*. Peralta, Third Division].

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 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.[30] (Emphasis supplied, citation omitted)

Assessing the evidence before them, public prosecutors are vested "with a wide range of discretion, the discretion of whether, what and whom to charge[.]"[31] As such, "[t]he prosecuting attorney cannot be compelled to file a particular criminal information."[32]

Public prosecutors are not bound to adhere to a party's apparent determination of the specific crime for which a person shall stand trial. Their discretion "include[s] the right to determine under which laws prosecution will be pursued.[33] Thus, in *Uy v. People*,[34] the petitioner's indictment and eventual conviction for estafa was sustained despite his protestations that "the private complainant's demand letter,. . . indicates that the demand was for alleged violation of Batas Pambansa Blg. 22."[35]

In keeping with the basic precept of judicial non-interference, "not even the Supreme Court can order the prosecution of a person against whom the prosecutor does not find sufficient

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[30] *Id*. at 241 citing *Aguilar v. Department of Justice*, 717 Phil. 789 (2013) [*Per Curiam*, Second Division].

[31] *Gonzalez v. Hongkong and Shanghai Banking Corporation*, 562 Phil. 841, 855 (2007) [Per J. Chico-Nazario, Third Division].

[32] *Uy v. People*, 586 Phil. 473, 492 (2008) [Per J. Chico-Nazario, Third Division] citing *People v. Pineda*, 127 Phil. 150 (1967) [Per J. Sanchez, *En Banc*].

[33] *Spouses Romualdez v. Commission on Elections*, 576 Phil. 357, 403 (2008) [Per J. Chico-Nazario, *En Banc*].

[34] 586 Phil. 473 (2008) [Per J. Chico-Nazario, Third Division].

[35] *Id*. at 492.

evidence to support at least a *prima facie* case."[36] In *People v. Pineda*,[37] this Court sustained the public prosecutor and issued a writ of *certiorari*, invalidating the orders of Court of First Instance Judge Hernando Pineda, which compelled the prosecutor to drop four (4) out of the five (5) cases which the prosecutor had filed since, 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[.]'"[38] In ruling against judicial overreach, 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 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 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.
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> 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

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[36] *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*].

[37] 127 Phil. 150 (1967) [Per J. Sanchez, *En Banc*].

[38] *Id.* at 152.

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.[39] (Citation omitted)

When, however, "there is an unmistakable showing of grave abuse of discretion on the part of the prosecutor"[40] in declining to prosecute specific persons for specific offenses, a writ of certiorari may be issued to set aside the prosecutor's initial determination.[41]

In *Chua v. Padillo*,[42] this Court sustained the Court of Appeals in granting the 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 Padillo-Chua, in a case of estafa through falsification of commercial documents.

In *Marasigan v. Fuentes*[43] this Court reversed 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."[44] Accordingly, this Court reinstated the previous Resolution issued by Undersecretary Linda Malenab-Hornilla, which "ordered the provincial prosecutor of

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

[40] *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*].

[41] *Id*.

[42] 550 Phil. 241 (2007) [Per J. Sandoval-Gutierrez, First Division].

[43] 776 Phil. 574 (2016) [Per J. Leonen, Second Division].

[44] *Id*. at 583-584.

Laguna to file informations for attempted murder against Fuentes, Calilan, and Lindo."[45]

Reynes v. Office of the Ombudsman (Visayas)[46] concerned prosecution for illegal exactions as penalized under Article 213(2) of the Revised Penal Code.[47] This Court found grave abuse of discretion on the part of a graft investigation and prosecution officer who, in evaluating proof that the private respondents collected sums which had precisely been alleged by the complainant to lack legal basis, faulted the same complainant for failing to present an ordinance as proof that the amounts received were "different. . . than those authorized by law."[48] This Court set aside the Resolution and Order of the Office of the Ombudsman (Visayas) and directed the filing of an information against one (1) of the private respondents.

II

Determining probable cause must be made in reference to the elements of the crime charged. "This is based on the principle

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[45] *Id*. at 580.

[46] *Reynes v. Office of the Ombudsman (Visayas)*, G.R. No. 223405, February 20, 2019 [Per *J*. Leonen, Third Division].

[47] REV. PEN. CODE, Art. 213 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 or 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.

[48] *Reynes v. Office of the Ombudsman (Visayas)*, G.R. No. 223405, February 20, 2019 [Per *J*. Leonen, Third Division].

that every crime is defined by its elements, without which there should be, at the most, no criminal offense."[49]

Appraising probable cause for a violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act must begin with the text of Section 3(e):

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

Accordingly, a violation of Section 3(e) is deemed to have occurred when the following elements are demonstrated:

(1) the offender is a public officer;

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

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

(4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.[50]

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[49] *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].

[50] *Ampil v. Office of the Ombudsman*, 715 Phil. 733, 755 (2013) [Per *J*. Perez, Second Division] citing *Sison v. People*, 628 Phil. 573 (2010) [Per *J*. Corona, Third Division].

The third element identifies three (3) distinct modes of commission: manifest partiality, evident bad faith, and gross inexcusable negligence. *Fonacier v. Sandiganbayan*[51] distinguished these modes, as follows:

> "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wil[l]fully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property." These definitions prove all too well that the three modes are distinct and different from each other. Proof of the existence of any of these modes in connection with the prohibited acts under Section 3(e) should suffice to warrant conviction.[52] (Citations omitted)

The fourth element identifies two (2) alternative, typifying effects: causing undue injury to any party and/or giving any private party unwarranted benefit, advantage, or preference. Prosecution and/or conviction under Section 3(e) ensues when either or both of these are occasioned by the public officer's manifest partiality, evident bad faith, or gross inexcusable negligence:

> [T]here are two ways by which Section 3 (e) of RA 3019 may be violated — the first, by causing undue injury to any party, including the government, or the second, by giving any private party any unwarranted benefit, advantage or preference. Although neither mode constitutes a distinct offense, an accused may be charged under either mode or both. The use of the disjunctive "or" connotes that the

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[51] *Fonacier v. Sandiganbayan*, 308 Phil. 660 (1994) [Per *J.* Vitug, *En Banc*].

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

two modes need not be present at the same time. In other words, the presence of one would suffice for conviction.

. . . . . .

The word "unwarranted" means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another.

In order to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions.[53] (Citations omitted)

III

This case is not unique. In the past, this Court has overturned the Office of the Ombudsman's resolution not finding probable cause in criminal complaints concerning titles whose issuance was allegedly occasioned by falsification perpetrated by a registrar of deeds who may have violated Section 3(e).

In *Ampil*, petitioner Oscar R. Ampil filed a Complaint charging the private respondents—among them, Pasig City Registrar of Deeds Policarpio L. Espenesin (Espenesin)—with Falsification of Public Documents under Article 171(6) of the Revised Penal Code and violation of Section 3 (a)[54] and (e) of the Anti-Graft

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[53] *Sison v. People*, 628 Phil. 573, 584-585 (2010) [Per *J.* Corona, Third Division].

[54] Rep. Act No. 3019 (1960), Sec. 3 provides:

SECTION 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

(a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.

and Corrupt Practices Act. His Complaint arose from Espenesin's issuance of a second set of condominium certificates of title indicating Malayan Insurance Company (Malayan Insurance) as the owner of 38 condominium units in the Malayan Tower. This was despite his own prior issuance of condominium certificates of title over the same units in the name of ASB Realty Corporation (ASB Realty), and despite ASB Realty allegedly being entitled to those units pursuant to a memorandum of agreement between ASB Realty and Malayan Insurance.

The Office of the Ombudsman dismissed Ampil's Complaint, as in this case, for being supposedly premature considering that the issue of ownership between ASB Realty and Malayan Insurance had yet to be settled. As summarized by this Court:

> For the Ombudsman, the resolution of whether respondents falsified the CCTs must be prefaced by a determination of who, between MICO and ASB, is the rightful owner of the subject units. The Ombudsman held that it had no authority to interpret the provisions of the [Memorandum of Agreement] and, thus, refrained from resolving the preliminary question of ownership. Given the foregoing, the Ombudsman was hard pressed to make a categorical finding that the CCTs were altered to speak something false. In short, the Ombudsman did not have probable cause to indict respondents for falsification of the CCTs because the last element of the crime, *i.e.*, that the change made the document speak something false, had not been established.[55]

However, as to the charge of graft and corruption under Section 3(a) and (e) of the Anti-Graft and Corrupt Practices Act, this Court noted that "the Ombudsman did not dispose of whether probable cause exists to indict respondents for violation of Section 3(a) and (e) of Republic Act No. 3019."[56]

This Court conceded that the charge of falsification cannot prosper. Nonetheless, it faulted the Office of the Ombudsman for failing to address the charges of graft and corruption:

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[55] *Ampil v. Office of the Ombudsman*, 715 Phil. 733, 747-748 (2013) [Per *J.* Perez, Second Division].

[56] *Id.* at 748.

[T]he Ombudsman abruptly dismissed Ampil's complaint-affidavit, resolving only one of the charges contained therein with nary a link regarding the other charge of violation of Sections 3 (a) and (e) of Republic Act No. 3019. Indeed, as found by the Ombudsman, the 4th element of the crime of Falsification of Public Documents is lacking, as the actual ownership of the subject units at The Malayan Tower has yet to be resolved. *Nonetheless, this circumstance does not detract from, much less diminish, Ampil's charge, and the evidence pointing to the possible commission, of offenses under Sections 3 (a) and (e) of the Anti-Graft and Corrupt Practices Act*.[57] (Emphasis supplied)

This Court then proceeded to explain that a *prima facie* case for violating Section 3(e) existed against Espenesin and his co-respondent, Francis Serrano, the lawyer with whom Espenesin had grown familiar for previously liaising with his office on behalf of ASB and Malayan Insurance. It found that based on the evidence, Espenesin acted with gross inexcusable negligence, not complying with "the procedure provided by law for the issuance of [condominium certificates of title] and registration of property,"[58] and "the well-established practice necessitating submission of required documents for registration of property [.]"[59] In violation of his task under Sections 10, 57, and 108 of Presidential Decree No. 1529,[60] or the Property

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[57] *Id*. at 753-754.

[58] *Id*. at 757.

[59] *Id*. at 765.

[60] Pres. Decree No. 1529, Secs. 10, 57, and 108 provide:

SECTION 10. General Functions of Registers of Deeds. — The office of the Register of Deeds constitutes a public repository of records of instruments affecting registered or unregistered lands and chattel mortgages in the province or city wherein such office is situated.

It shall be the duty of the Register of Deeds to immediately register an instrument presented for registration dealing with real or personal property which complies with all the requisites for registration. He shall see to it that said instrument bears the proper documentary and science stamps and that the same are properly cancelled. If the instrument is not registrable, he shall forthwith deny registration thereof and inform the presentor of such denial in writing, stating the ground or reason therefor, and advising

Registration Decree, "to review deeds and other documents

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him of his right to appeal by *consulta* in accordance with Section 117 of this Decree.

. . . . . .

SECTION 57. Procedure in Registration of Conveyances. — An owner desiring to convey his registered land in fee simple shall execute and register a deed of conveyance in a form sufficient in law. The Register of Deeds shall thereafter make out in the registration book a new certificate of title to the grantee and shall prepare and deliver to him an owner's duplicate certificate. The Register of Deeds shall note upon the original and duplicate certificate the date of transfer, the volume and page of the registration book in which the new certificate is registered and a reference by number to the last preceding certificate. The original and the owner's duplicate of the grantor's certificate shall be stamped "cancelled". The deed of conveyance shall be filed and indorsed with the number and the place of registration of the certificate of title of the land conveyed.

. . . . . .

SECTION 108. Amendment and Alteration of Certificates. — No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same by the Register of Deeds, except by order of the proper Court of First Instance. A registered owner or other person having an interest in registered property, or, in proper cases, the Register of Deeds with the approval of the Commissioner of Land Registration, may apply by petition to the court upon the ground that the registered interests of any description, whether vested, contingent, expectant or inchoate appearing on the certificate, have terminated and ceased; or that new interest not appearing upon the certificate have arisen or been created; or that an omission or error was made in entering a certificate or any memorandum thereon, or on any duplicate certificate; or that the same or any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated and no right or interests of heirs or creditors will thereby be affected; or that a corporation which owned registered land and has been dissolved has not conveyed the same within three years after its dissolution; or upon any other reasonable ground; and the court may hear and determine the petition after notice to all parties in interest, and may order the entry or cancellation of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security or bond if necessary, as it may consider proper; Provided, however, That this section shall not be construed to give the court authority to reopen the judgment or decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs and assigns, without

for conformance with the legal requirements of registration[,]"[61] he proceeded to issue a second set of titles merely "at the urging of Serrano[.]"[62]

Thus, "by simply relying on the fact that all throughout the transaction to register the subject units at The Malayan Tower he liaised with Serrano, [Espenesin] gave [Malayan Insurance] an unwarranted benefit, advantage or preference in the registration of the subject units."[63]

Accordingly, this Court concluded that "*certiorari* will lie, given that the Ombudsman made no finding at all on respondents[']possible liability for violation of Section 3(a) and (e) of Republic Act No. 3019."[64]

IV

As with *Ampil*, private respondent Abella's official acts of canceling Original Certificate of Title No. 15609, and issuing in its stead Transfer Certificate of Title Nos. 116-2011000073 and 116-2011000074 in the name of Genaro, appear to be attended, at the very least, by gross inexcusable negligence. Here, the evidence strongly suggests that private respondent Abella's actions, like Espenesin's, fell miserably short of the standards apropos to his office. While he did not act with private respondent Macrina out of a shared malevolent design, he nonetheless relied on manifestly defective and tellingly suspicious

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his or their written consent. Where the owner's duplicate certificate is not presented, a similar petition may be filed as provided in the preceding section.

All petitions or motions filed under this Section as well as under any other provision of this Decree after original registration shall be filed and entitled in the original case in which the decree or registration was entered.

[61] *Ampil v. Office of the Ombudsman*, 715 Phil. 733, 755 (2013) [Per J. Perez, Second Division].

[62] *Id.* at 757.

[63] *Id.*

[64] *Id.* at 767.

documents that private respondent Macrina (or persons acting under and for her) presented.

Hence, as with *Ampil*, where this Court maintained that criminal informations must be filed against the grossly erring registrar of deeds and the private person at whose urging he performed his errant official acts, private respondents must stand trial for violation of the Anti-Graft and Corrupt Practices Act.

From the evidence adduced by petitioner, there is basis to maintain a reasonable belief that private respondent Abella enabled the cancellation of the Original Certificate of Title and issuance of new transfer certificates of title. This was despite manifest and unequivocal deficiencies, most notably in the owner's duplicate copy, the Certificate Authorizing Registration, and the Deed of Conveyance that had been presented to him.

Private respondent Abella admitted canceling Original Certificate of Title No. 15609 after he was presented an owner's duplicate that "consists of only two pages which is somewhat defaced/torn."[65] In contrast, the original copy, which was on file in his own office, consisted of four (4) pages.[66]

Not only did the duplicate presented to him[67] not correspond with the original on file; it was also severely mutilated, with the effect—rather curiously—that identifying features could no longer be perused. As pointed out by petitioner, "[a]ll possible markings of the nature and origin"[68] of the alleged owner's duplicate were torn off: (1) the serial number of the page in the registry book in which the title is recorded; (2) the free patent number;[69] (3) the lot number;[70] (4) the signature of the

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[65] *Rollo*, p. 144.

[66] *Id*. at 84-87.

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

[68] *Id*. at 30.

[69] *Id*. at 30 and 145.

[70] *Id*. at 145.

Survey Division chief who attested to the technical description;[71] and (5) the signature of the "person who verified or checked the technical description[.]"[72]

It is not just that these were missing. What is more dubious is that *the duplicate Original Certificate of Title presented to Abella had holes and tears exactly where these pieces of information would have been indicated, even as the remainder of the informational portions of the title remained intact*.[73] It strains credulity that whatever fortuitous forces occasioned those holes and tears would be so focused on specifically removing only the title's identifying features.

Even as to the intact informational portions, petitioner noted several appreciable differences between the owner's duplicate presented and the original on file. Petitioner's tabulated summary[74] of these differences reads:

Spurious owner's duplicate certificate of OCT No. 15609 (Annex "F")	**Original copy of OCT No. 15609 on file with the ROD (Annex "G")**
On page 1, there is **NO** comma after the word "Filipino."	On page 1, there is a comma after the word "Filipino."
On page 1, the seal is CLEARLY embossed.	On page 1, the seal is **NOT** CLEARLY embossed.
On page 2, the phrase **"from BLLM"** is **OMITTED**.	On page 2, the phrase **"from BLLM"** is written.
On page 2, the number verb (*sic*) "**IS"** is used.	On page 2, the number verb (*sic*) **"WAS"** is used.

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[71] *Id*. at 30 and 145.

[72] *Id*. at 145.

[73] *Id*. at 77-78. Annex "F" of the Petition for *Certiorari*.

[74] *Id*. at 146.

On page 2, there are multiple spaces between the last line of the technical description and the signature of the survey division.	On page 2, there is only a single space between the last line of the technical description and the signature of the survey division.
Throughout page 2, the number "3" has a flat top.	Throughout page 2, the number "3" has a round top.
On page 2, the numbers "6-2-71" **APPEAR** between the marking "6-20-71" and "Checked by:"	On page 2, the numbers "6-2-71" **DO NOT APPEAR** between the marking "6-20-71" and "Checked by:"
The pages are **SO DEFACED** that key serial numbers, signatures, initials and other entries are **MISSING.**	The key serial numbers, signatures, initials and other entries are **INTACT AND CLEAR**. (Emphasis in the original)

Irregularities were also apparent on the Certificate Authorizing Registration that was presented to Abella. Most glaringly, as petitioner points out, it was dated 2011 and referred to a 1972 Deed of Conveyance. Despite this, the certificate did not indicate even the slightest charge or penalty for delayed payment of taxes occasioned by the transfer.[75] Similarly, it indicated that no capital gains tax was due and that only ₱2,655.00 in documentary stamps taxes and ₱100.00 as certificate fee were paid. This, despite how the commercial property encompassed 100,691 square meters, was located along a provincial road and, as of 2002, had its zonal value fixed at ₱400.00 per square meter, or a total of ₱40,276,400.00.[76]

Petitioner also pointed out that the Deed of Conveyance,[77] though dated 1972, was presented for registration only after 39 years and only after the death of Hubahib, the purported seller.[78]

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[75] *Id*. at 33-34.

[76] *Id*. at 34-35.

[77] *Id*. at 89. Annex "I" of the Petition for *Certiorari*.

[78] *Id*. at 35. Petitioner also maintains that Sol Espiña Hubahib's purported signature on this deed is a forgery.

None of the plethora of deficiencies across several documents has been disavowed by any of the respondents. Public respondent, in its Comment, merely reiterated the assailed Consolidated Evaluation Report's thesis that "determining first the lawful owner of the subject property is necessary before the Office of the Ombudsman could act on the complaint."[79] Private respondent Abella's two (2)-page Comment merely adverted to the existence of a "pre-judicial (*sic*) question"[80] on ownership. In addition, Abella made generic assertions of innocence: the owner's duplicate . . . appeared to respondent as authentic[;] [h]e did not suspect that it was not genuine."[81] In her Comment,[82] private respondent Macrina recalled the supposed circumstances through which Genaro was supposed to have acquired ownership and how she, as attorney-in-fact, sought to effect the transfer. However, she did not specifically address any of the deficiencies noted by petitioner.

As things stand, the evidence weighs far more heavily in favor of petitioner's cause. Even granting that he did not act with a deliberately malevolent design, he still appears to have acted with grossly inexcusable negligence that he practically evaded his duties as a registrar of deeds. Private respondent Abella was equipped with skills and training to identify irregularities in property registration. More important, it was his solemn duty to not facilitate registrations attended by manifest aberrations. The palpable defects of the documents presented to him should have prompted him to desist with the cancellation of the Original Certificate of Title. Instead, he went so far as to issue new transfer certificates of title. In so doing, he caused undue injury to Hubahib's heirs and extended unwarranted benefits to Genaro. He, with Macrina, must rightly stand trial

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[79] *Id*. at 219.

[80] *Id*. at 184.

[81] *Id*.

[82] *Id*. at 393-397.

for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act.[83]

WHEREFORE, the Petition is **GRANTED**.

The assailed April 23, 2013 Consolidated Evaluation Report and November 5, 2013 Order issued in OMB-V-C-13-0098 by public respondent Office of the Deputy Ombudsman for the Visayas are **SET ASIDE** insofar as they dismissed the criminal charge against private respondents Atty. Fernando M. Abella and Macrina Espina for violating Section 3(e) of the Anti-Graft and Corrupt Practices Act.

Public respondent is directed to file before the proper court the necessary information for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act against private respondents.

SO ORDERED.

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

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[83] In keeping with Section 13 of the Anti-Graft and Corrupt Practices Act, suspension shall ensue once "a valid information under this Act ... is pending in court."

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

FIRST DIVISION

[G.R. No. 225744. March 6, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JONATHAN VISTRO *y* BAYSIC,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); VIOLATION OF SECTION 5, ARTICLE II THEREOF (ILLEGAL SALE OF DANGEROUS DRUGS); ELEMENTS.— In a successful prosecution for violation of Section 5, Article II of R.A. 9165, the following elements must be proven beyond reasonable doubt: "(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. What is material is the proof that the transaction actually took place, coupled with the presentation before the court of the *corpus delicti*. The prosecution must also establish the integrity of the dangerous drug, being the *corpus delicti* of the case."

2. ID.; ID.; MANDATORY PROCEDURAL SAFEGUARDS IN A BUY-BUST OPERATION; DURING THE PHYSICAL INVENTORY AND TAKING OF PHOTOGRAPH OF SEIZED ITEMS, PRESENCE OF THREE WITNESSES IS REQUIRED; IF PRESENCE OF THE ESSENTIAL WITNESSES WAS NOT OBTAINED, THE PROSECUTION MUST ESTABLISH NOT ONLY THE REASONS FOR THEIR ABSENCE BUT ALSO THE FACT THAT SERIOUS AND SINCERE EFFORTS WERE EXERTED IN SECURING THEIR PRESENCE; CASE AT BAR.— Section 21, Article II of R.A. 9165, which was the law applicable during the commission of the crime, delineates the mandatory procedural safeguards in a buy-bust operation. x x x In *People v. Lim*, this Court stressed the importance of the three witnesses, namely, any elected public official, the representative from the media, and the representative from the Department of Justice (DOJ), at the time of the physical inventory and taking of

photograph of the seized items. x x x Moreover, there must be evidence of earnest efforts to secure the attendance of the necessary witnesses. In *Ramos v. People*, this Court instructs: x x x [I]t 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 R.A. 9165 must be adduced. x x x Failure to disclose the justification for non-compliance with the requirements and the lack of evidence of serious attempts to secure the presence of the necessary witnesses result in a substantial gap in the chain of custody of evidence that shall adversely affect the authenticity of the prohibited substance presented in court. In this case, while a barangay official signed as a witness in the Certificate of Inventory, there was no mention that the inventory and photograph of the seized *shabu* was done in the presence of representatives from the media and the DOJ. The arresting officer merely testified that the buy-bust team marked the seized *shabu* in the police station since the barangay captain and other officials of the place where the crime was committed were relatives of the appellant. He failed to provide a justifiable ground for the absence of the representatives from the media and the DOJ during the inventory and photograph of the seized *shabu* at the police station. The failure of the prosecution to secure the attendance of these witnesses, without providing any reasonable justification therefor, creates doubt as to the integrity and evidentiary value of the seized *shabu*. Thus, there is no recourse for this Court other than to reverse the conviction of 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.*:

Jonathan Vistro *y* Baysic (appellant) appeals the September 4, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R CR-HC No. 06497, that affirmed his conviction for violation of Section 5, Article II of Republic Act (RA) No. 9165, otherwise known as the Comprehensive Drugs Act of 2002, by the Regional Trial Court (RTC) of San Carlos City, Pangasinan, Branch 57.

The Information against appellant contained the following accusatory allegations:

> That on or about June 4, 2009 in the afternoon in Acosta St., Poblacion, Urbiztondo, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, in conspiracy with each other, did, then and there, willfully, unlawfully and felon[i]ously sell, trade, and deliver, one (1) heat sealed plastic sachet containing 0.01 gram of Methamphetamine Hydrochloride/Shabu, a dangerous drug to an agent of [the] Phil. Drug[s] Enforcement Agency (PDEA) acting as a [poseur]-buyer, without any license or authority to sell the same.
>
> CONTRARY to Sec. 5. Art. II of R.A. 9165 (Comprehensive Dangerous Drugs Act of 2002).[2]

During arraignment, appellant pleaded "not guilty." After the termination of the pre-trial conference, trial ensued.

Version of the Prosecution

On June 4, 2009, Philippine Drugs Enforcement Agency (PDEA) officers in Pangasinan formed a buy-bust team and planned an entrapment operation against appellant after verifying a report from a police asset that he was peddling *shabu*. Intelligence Officer Jaime Clave (IO Clave) was designated

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[1] CA *rollo*, pp. 106-121; penned by Associate Justice Carmelita Salandanan-Manahan and concurred in by Associate Justices Japar B. Dimaampao and Franchito N. Diamante.

[2] Records, p. 1.

as poseur-buyer and given ₱500.00 as buy-bust money. IO Noreen Bautista (IO Bautista) was assigned as his immediate back-up while the other members of the buy-bust team were detailed as perimeter back-up.

Upon arrival of the buy-bust team at the target area, the police asset introduced IO Clave to appellant as a buyer of *shabu*. Appellant asked IO Clave how much he would like to purchase and the latter replied that he wanted to buy ₱500.00 worth of *shabu*. Appellant handed to IO Clave a sachet of *shabu* and the latter gave the ₱500.00 marked money as payment. When IO Clave made the pre-arranged signal that the transaction was consummated, IO Bautista rushed to the scene of the crime and arrested appellant. Recovered from his possession was the ₱500.00 marked money. The buy-bust team withdrew from the area after discovering that the barangay captain of the place where the scene of the crime was located was the cousin of appellant's mother while the other barangay officials were also relatives of appellant.

While on their way to the PDEA office, IO Clave was in possession of the seized *shabu*. Upon arrival, he marked the same in the presence of appellant. IO Bautista prepared the Certificate of Inventory of the seized *shabu* and photographed the same in the presence of appellant. A barangay official from a different barangay signed as witness. IO Clave and IO Bautista proceeded to the police crime laboratory to deliver the sachet of *shabu* for examination. Police Senior Inspector Myrna C. Malojo (PSI Malojo) received the same and conducted tests that confirmed the contents of the sachet to be *shabu*.

Version of the Defense

Appellant denied the charges against him. He claimed that at the time of the incident, PDEA officers in civilian clothes went to their house looking for his parents, Reynaldo and Elma Vistro, for their alleged involvement in illegal drug activities. However, he informed them that his parents no longer lived in the house. The police officers then brought him downstairs where he saw the barangay captain, who was the cousin of his

mother, being handcuffed for alleged possession of drug paraphernalia and a gun. The other PDEA officers interrogated his siblings and searched the house. Meanwhile, Teresita A. Baysic (Teresita), their laundry woman, was washing clothes at the back of the house. When the PDEA officers did not find any dangerous drug, they took him, his brother, the barangay captain and Teresita, to the PDEA office. His sibling was eventually sent home, but he and Teresita were charged with illegal sale of *shabu*. He did not know what happened to the barangay captain.

Ruling of the Regional Trial Court

In its Judgment[3] dated November 14, 2013, the RTC found appellant guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165. It ruled that the prosecution evidence established the elements of the offense. The RTC gave credence to the testimony of the PDEA officers, who are presumed to have performed their duties in a regular manner in the absence of evidence that they were impelled by ill-feelings to testify falsely. The RTC ruled that the chain of custody of the seized *shabu* was unbroken since its integrity and evidentiary value had been properly preserved from the moment the buy-bust operation was consummated until its presentation during the trial. The RTC thus sentenced appellant to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.

However, the RTC acquitted Teresita for insufficiency of evidence. It held that she was only doing the laundry when the PDEA officers arrived at appellant's residence. Thus, the dispositive portion of the Judgment reads:

> WHEREFORE, finding accused JONATHAN VlSTRO GUILTY beyond reasonable doubt for violating Sec. 5[,] Article II of R.A. 9165, he is hereby sentenced to suffer [the] penalty of life imprisonment and a fine of Five Hundred Thousand (Php500,000.00) pesos and to pay the cost of this suit. The Court however declares the acquittal of the other accused TERESITA BAYSIC *Y* ALMAZAN

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[3] *Id*. at 147-158; penned by Presiding Judge Renato D. Pinlac.

from the crime charged for reasons discussed above. Her immediate release from custody of the Bureau of Jail Management and Penology (BJMP), San Carlos City, Pangasinan is hereby ordered unless she is being held for some other lawful cause.

The items seized comprising of one (1) heat sealed plastic sachet is hereby ordered confiscated in favor of the government for destruction.

SO ORDERED.[4]

Ruling of the Court of Appeals

In its Decision[5] dated September 4, 2015, the CA affirmed the Judgment of the RTC. The CA was not persuaded by appellant's contention that he should be acquitted. It declared that non-compliance with Section 21, Article II of R.A. 9165 and Section 21(a) of its Implementing Rules and Regulations is not fatal to the prosecution's case since what is vital is the preservation of the integrity and evidentiary value of the seized *shabu*. It found that the testimonies of the PDEA officers established the crucial links in the chain of custody of the seized *shabu*.

Unfazed, appellant filed the instant appeal, seeking a reversal of his conviction based on the same arguments he raised in the CA.

Our Ruling

There is merit in the appeal.

Appellant argues that he should be exonerated since the prosecution failed to establish the chain of custody of the seized *shabu*. He contends that there was non-compliance by the arresting team of PDEA and police officers with the requirement in Section 21, Article II of R.A. 9165, which was the law applicable during the commission of the crime charged. Appellant specifically points out the failure by the PDEA arresting team

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[4] *Id*. at 157.

[5] CA *rollo*, pp. 106-121.

and police officers to conduct a physical inventory and take photographs of the seized *shabu* in the presence of the witnesses mentioned in the law.

In a successful prosecution for violation of Section 5, Article II of R.A. 9165, the following elements must be proven beyond reasonable doubt: "(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. What is material is the proof that the transaction actually took place, coupled with the presentation before the court of the *corpus delicti*. The prosecution must also establish the integrity of the dangerous drug, being the *corpus delicti* of the case."[6]

Section 21, Article II of R.A. 9165, which was the law applicable during the commission of the crime, delineates the mandatory procedural safeguards in a buy-bust operation. The pertinent portion reads:

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

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[6] *People v. Caiz*, 790 Phil. 183, 196-197 (2016).

In *People v. Lim*,[7] this Court stressed the importance of the three witnesses, namely, any elected public official, the representative from the media, and the representative from the Department of Justice (DOJ), at the time of the physical inventory and taking of photograph of the seized items. In the event of their absence, this Court ruled that:

> It must be **alleged and proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:
>
> (1) **their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action [from] the accused or any person/s acting for and in his/her behalf; (3) the elected official[s] themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts 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[d] futile through no fault of the arresting officers, who face[d] 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.**

Moreover, there must be evidence of earnest efforts to secure the attendance of the necessary witnesses. In *Ramos v. People*,[8] this Court instructs:

> x x x [I]t 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 R.A. 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed

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[7] G.R. No. 231989, September 4, 2018. Emphasis in the original.

[8] G.R. No. 233572, July 30, 2018. Emphasis in the original. Citations omitted.

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 R.A. 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.**

In other words, jurisprudence requires that in the event that the presence of the essential witnesses was not obtained, the prosecution must establish not only the reasons for their absence, but also the fact that serious and sincere efforts were exerted in securing their presence. Failure to disclose the justification for non-compliance with the requirements and the lack of evidence of serious attempts to secure the presence of the necessary witnesses result in a substantial gap in the chain of custody of evidence that shall adversely affect the authenticity of the prohibited substance presented in court.

In this case, while a barangay official signed as a witness in the Certificate of Inventory, there was no mention that the inventory and photograph of the seized *shabu* was done in the presence of representatives from the media and the DOJ. The arresting officer merely testified that the buy-bust team marked the seized *shabu* in the police station since the barangay captain and other officials of the place where the crime was committed were relatives of the appellant. He failed to provide a justifiable ground for the absence of the representatives from the media and the DOJ during the inventory and photograph of the seized *shabu* at the police station. The failure of the prosecution to

secure the attendance of these witnesses, without providing any reasonable justification therefor, creates doubt as to the integrity and evidentiary value of the seized *shabu*. Thus, there is no recourse for this Court other than to reverse the conviction of appellant.

WHEREFORE, the appeal is **GRANTED**. The September 4, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06497 is **REVERSED and SET ASIDE**. Appellant Jonathan Vistro *y* Baysic is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for another lawful cause.

Let a copy of this Decision be furnished the Director General, Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director General of the Bureau of Corrections is **DIRECTED** to report to this Court the action he has taken, within five (5) days from receipt of this Decision.

SO ORDERED.

Bersamin, C.J., Caguioa,[*] *Gesmundo*, and *Carandang, JJ.*, concur.

SECOND DIVISION

[G.R. No. 226240. March 6, 2019]

MYRA M. MORAL, *petitioner, vs.* **MOMENTUM PROPERTIES MANAGEMENT CORPORATION,** *respondent.*

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[*] Per raffle dated January 21, 2019.

SYLLABUS

1. **REMEDIAL LAW; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; ONLY QUESTIONS OF LAW MAY BE EXAMINED THEREIN; EXCEPTIONS; CASE AT BAR.—** It is a well-established rule that the Court is not a trier of facts. The function of the Court in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to questions of law. However, this rule admits of exceptions, to wit: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. The present case qualifies as an exception to the aforementioned rule. In the instant case, the Labor Arbiter and the NLRC, on one hand, and the Court of Appeals, on the other hand, arrived at divergent factual findings, with respect to petitioner's termination. Hence, the Court deems it necessary to re-examine such findings and determine whether or not the Court of Appeals had sufficient basis to annul and set aside the Decision and Resolution of the NLRC dated 30 September 2014 and 18 November 2014, respectively, declaring that petitioner was illegally dismissed from work.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; PROBATIONARY EMPLOYMENT; BY VIRTUE THEREOF, AN EMPLOYER IS GIVEN AN OPPORTUNITY TO OBSERVE THE FITNESS AND COMPETENCY OF A PROBATIONARY EMPLOYEE WHILE AT WORK; AN EMPLOYER HAS THE RIGHT TO DECIDE WHO WILL BE HIRED AND WHO WILL**

BE DENIED EMPLOYMENT DURING THE PROBATIONARY PERIOD OF EMPLOYMENT.— A probationary employee is one who is placed on trial by an employer, during which the latter determines whether or not the former is qualified for permanent employment. By virtue of a probationary employment, an employer is given an opportunity to observe the fitness and competency of a probationary employee while at work. During the probationary period of employment, an employer has the right or is at liberty to decide who will be hired and who will be denied employment. The essence of a probationary period of employment lies primordially in the purpose or objective of both the employer and the employee during such period. While the employer observes the fitness, propriety, and efficiency of a probationary employee, in order to ascertain whether or not such person is qualified for regularization, the latter seeks to prove to the former that he or she has the qualifications and proficiency to meet the reasonable standards for permanent employment.

3. **ID.; ID.; ID.; CANNOT EXCEED SIX MONTHS, OTHERWISE, THE CONCERNED EMPLOYEE SHALL BE REGARDED AS A REGULAR EMPLOYEE.—** As a general rule, probationary employment cannot exceed six months. Otherwise, the employee concerned shall be regarded as a regular employee. Moreover, it is indispensable in probationary employment that the employer informs the employee of the reasonable standards that will be used as basis for his or her regularization at the time of his or her engagement. In the event that the employer fails to comply with the aforementioned, then the employee is considered a regular employee.

4. **ID.; ID.; ID.; PROBATIONARY EMPLOYEES ENJOY SECURITY OF TENURE; WHEN EMPLOYMENT OF PROBATIONARY EMPLOYEE MAY BE TERMINATED.—** A probationary employee enjoys security of tenure, although it is not on the same plane as that of a permanent employee. Other than being terminated for a just or authorized cause, a probationary employee may also be dismissed due to his or her failure to qualify in accordance with the standards of the employer made known to him or her at the time of his or her engagement. Hence,

the services of a probationary employee may be terminated for any of the following: (1) a just cause; (2) an authorized cause; and (3) when he or she fails to qualify as a regular employee in accordance with the reasonable standards prescribed by the employer.

5. ID.; ID.; ID.; REQUIREMENTS THAT AN EMPLOYER MUST COMPLY WHEN DEALING WITH A PROBATIONARY EMPLOYEE.— [T]he employer is mandated to comply with two requirements when dealing with a probationary employee, *viz*: (1) the employer must communicate the regularization standards to the probationary employee; and (2) the employer must make such communication at the time of the probationary employee's engagement. If the employer fails to abide by any of the aforementioned obligations, the employee is deemed as a regular, and not a probationary employee. An employer is deemed to have made known the regularization standards when it has exerted reasonable efforts to apprise the employee of what he or she is expected to do or accomplish during the trial period of probation. The exception to the foregoing is when the job is self-descriptive in nature, such as in the case of maids, cooks, drivers, and messengers.

6. ID.; ID.; ID.; PROCEDURE FOR TERMINATION OF A PROBATIONARY EMPLOYEE; VIOLATION THEREOF BY THE EMPLOYER WARRANTS PAYMENT OF INDEMNITY IN THE FORM OF NOMINAL DAMAGES; CASE AT BAR.— Section 2, Rule I, Book VI, as amended by Department Order No. 147-15, of the Omnibus Rules Implementing the Labor Code governs the procedure for the termination of a *probationary employee*, to wit: Section 2. Security of Tenure. — x x x If the termination is brought about by the x x x failure of an employee to meet the standards of the employer in case of probationary employment, it shall be sufficient that a written notice is served the employee within a reasonable time from the effective date of termination. A perusal of the records reveals that petitioner's dismissal was effected through a series of text messages from Tungol, instead of the abovementioned mandated procedure. As correctly pointed out by the Court of Appeals, the NAWOL issued by Ocampo was nothing more than an afterthought, considering it was furnished to petitioner on 7 January 2014

> or five days after she was informed of her dismissal. Hence, in view of the procedural infirmity attending the termination of petitioner, respondent is liable to pay nominal damages. In the case of *Agabon v. National Labor Relations Commission*, the Court pronounced that, where the dismissal is for a just cause, the lack of statutory due process should not nullify the dismissal, or render it illegal or ineffectual. Nevertheless, the employer should indemnify the employee for the violation of his statutory rights. The violation of the employee's right to statutory due process by the employer warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances. The payment of nominal damages would serve to deter employers from future violations of the statutory due process rights of employees. It likewise provides a vindication or recognition of the fundamental right to due process accorded to employees under the Labor Code and its Omnibus Implementing Rules.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Ronaldo A. Ortiz, Anna Marie N. Calonge and *Pamela Jane C. Jalandoni* for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

For resolution is a petition for review on *certiorari* dated 23 September 2016 filed by Myra M. Moral (petitioner) assailing the Decision[1] dated 22 March 2016 and the Resolution[2] dated 19 July 2016 of the Court of Appeals in CA-G.R. SP No. 138704.

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[1] *Rollo*, pp. 33-42. Penned by Associate Justice Stephen C. Cruz, with Associate Justices Jose C. Reyes, Jr. and Ramon Paul L. Hernando concurring.

[2] *Id*. at 44-46.

The Facts

On 5 March 2014, petitioner filed a Complaint[3] for illegal dismissal against her employer, Momentum Properties Management Corporation (respondent) and/or its Chief Executive Officer, Steve Li (Li), before the National Capital Region (NCR) Arbitration Branch of the National Labor Relations Commission (NLRC).

In her Position Paper, petitioner alleged that, on 26 June 2013, respondent hired her as a probationary employee, with her designation being that of a Leasing Assistant. She worked eight hours a day from 9:00 a.m. to 6:00 p.m. Six months after her employment, specifically on 27 December 2013, she was informed of her dismissal and was advised to no longer report for work. According to petitioner, upon inquiring the reason for her dismissal, respondent coldly ignored her query and thereafter, no longer contacted her. She contended that respondent failed to provide any notice or justifiable cause as to why her employment was being severed. Because of respondent's failure to comply with both substantive and procedural due process requirements, as mandated by law, petitioner alleged that she was illegally dismissed.[4]

In its defense, respondent denied the illegal dismissal allegation of petitioner. Respondent acknowledged, however, that petitioner was hired by it as a probationary employee, particularly as a Leasing Assistant. Petitioner's probationary employment with respondent was for a period of six months, as indicated by the former's Employment Agreement with the latter. Petitioner was assigned by respondent to Solemare Parksuites, a condominium building in Bradco Avenue, Parañaque City, to render clerical and secretarial services necessary in the leasing operations of the building. As a Leasing Assistant, petitioner was required to report primarily at the project site in Parañaque

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[3] *Id*. at 131-132.

[4] *Id*. at 134-137.

City, under the supervision of the Leasing Manager, Elizabeth Tungol (Tungol).[5]

According to respondent, in line with the provisions of their Employment Agreement, petitioner was subjected to the respondent's evaluation procedure on the fifth month of her employment. Hence, sometime in November 2013, petitioner's over-all performance and capacity to meet the demands of her work were assessed by her immediate superiors.[6]

On 29 November 2013, petitioner was likewise asked to report to respondent's head office in Makati City to take the Verbal, Non-Verbal, and Numerical Examinations which were administered by the Human Resources (HR) Department. Petitioner garnered below average (BA) scores in the aforesaid tests, rendering her qualifications for regularization doubtful under HR Standards. In addition, petitioner's over-all performance and capacity to meet the demands of her work were assessed by her immediate superior, Tungol. Based on respondent's set criteria for quantitative and qualitative performance and developmental assessment, Tungol's findings indicated that petitioner failed to satisfactorily meet the level of performance expected from her position.[7]

According to respondent, petitioner's over-all rating indicated a BA score, which made her unqualified for regularization purposes. Hence, in accordance with standard procedure, the HR and Administration Manager, Annie Ocampo (Ocampo), directed Tungol to advise petitioner to report to the head office, for the purpose of discussing her poor evaluation scores. Unfortunately, petitioner disregarded the aforesaid request.[8] Thereafter, Tungol was instructed to talk to petitioner about possibly extending her employment contract and improving her performance, during such an extension period. Unexpectedly,

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[5] *Id*. at 142.

[6] *Id*.

[7] *Id*.

[8] *Id*.

however, petitioner no longer reported for work as of 27 December 2013. In line with standard procedure, on 7 January 2014, Ocampo prepared a Notice of Absence without Official Leave (NAWOL) requiring petitioner to submit a written explanation as to why her employment should not be considered terminated due to her absence within five days from receipt thereof. Petitioner was likewise invited to the head office for a meeting with Ocampo.[9]

Respondent averred that, on 13 January 2014, as it awaited petitioner's response to various invitations for her to report to the head office, petitioner filed a Request for Assistance (RFA) before the NCR Arbitration Branch of the NLRC.[10] After conciliation and mediation efforts between petitioner and respondent failed, they submitted their respective Position Papers, Replies, and Rejoinders. Thereafter, the case was submitted for resolution.[11]

The Ruling of the Labor Arbiter

On 31 July 2014, the Labor Arbiter rendered a Decision[12] in favor of petitioner. The dispositive portion of the Decision of the Labor Arbiter dated 31 July 2014 provides:

> WHEREFORE, judgment is hereby rendered declaring that the Complainant was illegally dismissed. Consequently, Respondent MOMENTUM PROPERTIES MANAGEMENT CORP. is hereby ordered to pay the Complainant the following:
>
> 1. ₱124,280[.00] as her backwages;
> 2. ₱16,000.00 as her separation pay;
> 3. ₱20,000.00 as moral damages;
> 4. ₱20,000.00 as exemplary damages; and
> 5. Ten percent of the total monetary award or the amount of ₱18,028.00 as attorney's fees.

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[9] *Id.* at 143.

[10] *Id.*

[11] *Id.* at 34.

[12] *Id.* at 208-214.

All other claims are dismissed for lack of merit.

SO ORDERED.[13]

The Labor Arbiter found the allegation of respondent that petitioner was guilty of abandonment untenable. It emphasized that, in order for there to be abandonment, which is a just ground for dismissal, there must be a deliberate and unjustified refusal on the part of the employee to resume employment. It held that mere absence or failure to report for work, after a notice of return is given to such employee, is not enough to amount to abandonment. Hence, it held that petitioner was illegally dismissed by respondent.[14]

The Labor Arbiter noted that, because petitioner was illegally dismissed, it naturally follows that she would be entitled to reinstatement with the payment of backwages. However, because her relationship with respondent had already become strained, the Labor Arbiter ruled that separation pay of one month for every year of service, in lieu of reinstatement, was more proper. Hence, petitioner was awarded separation pay in addition to the payment of backwages. Petitioner was further awarded moral and exemplary damages and attorney's fees. With respect to the grant of moral and exemplary damages, the Labor Arbiter ruled that there was bad faith on the part of respondent when it dismissed petitioner, because it was carried out whimsically and capriciously.[15]

The Labor Arbiter held that Li could not be held solidarily liable with respondent, because no evidence was submitted to prove that the former was guilty of bad faith.[16]

Aggrieved, respondent filed an appeal with the NLRC.

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[13] *Id*. at 214.

[14] *Id*. at 212.

[15] *Id*. at 212-213.

[16] *Id*. at 214.

The Ruling of the NLRC

On 30 September 2014, the NLRC rendered a Decision[17] modifying the Decision of the Labor Arbiter dated 31 July 2014 removing the award of moral and exemplary damages from the judgment and reducing the entire amount to ₱154,308.00, *viz*:

> WHEREFORE, the decision is hereby MODIFIED. Respondent Momentum Properties Management Corp. is ordered to pay complainant the following:
>
> | | |
> |---|---|
> | Backwages | ₱124,280.00 |
> | Separation Pay | 16,000.00 |
> | | 140,280.00 |
> | Ten Percent (10%) Attorney's Fees | 14,028.00 |
> | Total | ₱154,308.00 |
>
> The other findings are affirmed.
>
> SO ORDERED.[18]

The NLRC upheld the view of the Labor Arbiter that respondent failed to defend its argument that it did not dismiss petitioner. It held that the payroll issued by respondent did not establish petitioner's employment beyond 27 December 2013, because the document merely covered the periods of 11 and 12 December 2013. On the other hand, petitioner presented the text messages she received from Tungol, informing her that she should no longer report for work and instructing her to report to the HR Department to process her clearance and backpay.[19]

The NLRC deleted the award of moral and exemplary damages granted by the Labor Arbiter, on the ground that petitioner failed to prove through clear and convincing evidence that her termination was "carried out in an arbitrary, capricious

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[17] *Id*. at 84-94.

[18] *Id*. at 93.

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

and malicious manner, with evident personal ill-will."[20] It ruled that "the award of moral and exemplary damages cannot be justified solely upon the premise that the employer dismissed his employee without just cause or due process."[21]

Respondent moved for reconsideration, which was denied by the NLRC in a Resolution[22] dated 18 November 2014. Thereafter, it sought to reverse the Decision and Resolution of the NLRC dated 30 September 2014 and 18 November 2014, respectively, by filing a petition for *certiorari* with the Court of Appeals.[23]

The Ruling of the Court of Appeals

In its Decision dated 22 March 2016, the Court of Appeals granted the petition and annulled and set aside the Decision and Resolution of the NLRC dated 30 September 2014 and 18 November 2014, respectively. The dispositive portion of the Decision of the Court of Appeals dated 22 March 2016 provides:

> WHEREFORE, premises considered, the instant petition is hereby GRANTED. The assailed Decision and Resolution of the Third Division of the National Labor Relations Commission dated September 30, 2014 and November 18, 2014, respectively, are ANNULLED and SET ASIDE. However, for failure to observe procedural due process, the petitioner is hereby directed to pay nominal damages to private respondent in the amount of Php30,000.00.
>
> SO ORDERED.[24]

Respondent argued that petitioner failed to show through substantial evidence that she was dismissed from work. It contended that the text messages purportedly from Tungol were not verified or authenticated in accordance with the Rules on

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[20] *Id*. at 92.

[21] *Id*.

[22] *Id*. at 81-82.

[23] *Id*. at 36.

[24] *Id*. at 41.

Electronic Evidence. It averred that, while technical rules of procedure are not strictly observed by the NLRC, the latter remains to have a duty to comply with certain procedures, in order to determine the admissibility and probative value of the evidence sought to be presented. It further alleged that, assuming *arguendo*, that such text messages were from Tungol, the same cannot be regarded as a formal notice of petitioner's termination, because the authority to do so fully resides with the HR Department.[25]

Respondent likewise argued that it was improper for the NLRC to consider the payroll for December 2013 as basis for petitioner's dismissal. It averred that such document was merely meant to negate her claim for payment of salary and was not to be used as evidence to show that she remained under its employ beyond the covered date.[26]

The Court of Appeals held that the status of petitioner as a probationary employee was established and not contested. Hence, her employment was under respondent's observation for a period of six months. It ruled that respondent had the option of hiring petitioner or terminating her services, because she failed to qualify as a regular employee in accordance with the reasonable standards made known to her at the time of her engagement.[27]

The Court of Appeals ruled that, based on the evidence, petitioner's performance evaluation was not up to par. It was established that petitioner received abysmal scores in a series of aptitude tests that she took before her six months of probationary employment were done.[28] In the same manner, petitioner's Performance Appraisal Report (PAR) indicated that she did not meet respondent's expectations when it came to her performance at work. In most of the components of the

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[25] *Id*. at 36-37.

[26] *Id*. at 37.

[27] *Id*.

[28] *Id*.

subject PAR, petitioner received BA scores.[29] Furthermore, the Court of Appeals noted that petitioner's tests were given "appropriately, fairly and with proper notice before they were taken."[30]

Given the abovementioned circumstances and the fact that petitioner was duly apprised of her probationary status at the time of her hiring and was made aware of the evaluation that she had to undergo in order for her to become a regular employee of respondent, the Court of Appeals held that respondent had every right to refuse petitioner's regularization. However, it ruled that, while respondent had the right to terminate petitioner's employment, such termination was carried out in a manner not in accordance with the standards set forth under the law. Instead of dismissing petitioner through a formal written notice within a reasonable time, petitioner was informed of her dismissal by respondent via a series of text messages.[31] Due to the aforementioned procedural infirmity, the Court of Appeals ruled that petitioner was entitled to nominal damages.[32]

Petitioner moved for reconsideration, which the Court of Appeals denied in its Resolution dated 19 July 2016. Hence, the instant petition before this Court.

The Issue

The issue in this case is whether or not petitioner was illegally dismissed by respondent.

The Court's Ruling

The Court finds the instant petition bereft of merit.

It is a well-established rule that the Court is not a trier of facts. The function of the Court in a petition for review on

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[29] *Id*. at 38.

[30] *Id*. at 39.

[31] *Id*.

[32] *Id*. at 40.

certiorari under Rule 45 of the Rules of Court is limited to questions of law. However, this rule admits of exceptions, to wit: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[33]

The present case qualifies as an exception to the aforementioned rule. In the instant case, the Labor Arbiter and the NLRC, on one hand, and the Court of Appeals, on the other hand, arrived at divergent factual findings, with respect to petitioner's termination. Hence, the Court deems it necessary to re-examine such findings and determine whether or not the Court of Appeals had sufficient basis to annul and set aside the Decision and Resolution of the NLRC dated 30 September 2014 and 18 November 2014, respectively, declaring that petitioner was illegally dismissed from work.

Petitioner maintains that she was constructively dismissed, because the reason for her termination from employment was not due to poor performance or her failure to meet the regularization standards set by respondent at the time of her engagement. In the instant petition, petitioner alleges that "she was not dismissed by the respondent on the ground of poor performance but for reasons only known to the respondent, which do not constitute as just or authorized cause of termination."[34]

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[33] *Enchanted Kingdom, Inc. v. Verzo*, 775 Phil. 388, 400 (2015); *Eastern Telecommunications, Phils., Inc. v. Diamse*, 524 Phil. 549, 555 (2006).

[34] *Rollo*, p. 20.

On the other hand, respondent insists that it was within its power to refuse petitioner's regularization. Respondent avers that petitioner was hired as a probationary employee and was made aware of the evaluation that she had to undergo to attain regularization. According to respondent, petitioner failed to comply with the regularization standards made known to her at the time of her employment, as indicated by her poor ratings in both her performance evaluation and PAR. Hence, it had every right to dismiss petitioner.[35]

A probationary employee is one who is placed on trial by an employer, during which the latter determines whether or not the former is qualified for permanent employment.[36] By virtue of a probationary employment, an employer is given an opportunity to observe the fitness and competency of a probationary employee while at work. During the probationary period of employment, an employer has the right or is at liberty to decide who will be hired and who will be denied employment.[37]

The essence of a probationary period of employment lies primordially in the purpose or objective of both the employer and the employee during such period. While the employer observes the fitness, propriety, and efficiency of a probationary employee, in order to ascertain whether or not such person is qualified for regularization, the latter seeks to prove to the former that he or she has the qualifications and proficiency to meet the reasonable standards for permanent employment.[38]

As a general rule, probationary employment cannot exceed six months. Otherwise, the employee concerned shall be regarded as a regular employee. Moreover, it is indispensable in probationary

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[35] *Id*. at 332-333.

[36] *Canadian Opportunities Unlimited, Inc. v. Dalangin, Jr*., 681 Phil. 21, 33 (2012), citing *International Catholic Migration Commission v. NLRC*, 251 Phil. 560 (1989).

[37] *Oyster Plaza Hotel v. Melivo*, 796 Phil. 800, 813 (2016).

[38] *Canadian Opportunities Unlimited, Inc. v. Dalangin, Jr., supra* note 36, at 34.

employment that the employer informs the employee of the reasonable standards that will be used as basis for his or her regularization at the time of his or her engagement. In the event that the employer fails to comply with the aforementioned, then the employee is considered a regular employee.[39]

A probationary employee enjoys security of tenure, although it is not on the same plane as that of a permanent employee. Other than being terminated for a just or authorized cause, a probationary employee may also be dismissed due to his or her failure to qualify in accordance with the standards of the employer made known to him or her at the time of his or her engagement.[40] Hence, the services of a probationary employee may be terminated for any of the following: (1) a just cause; (2) an authorized cause; and (3) when he or she fails to qualify as a regular employee in accordance with the reasonable standards prescribed by the employer.[41]

In connection with the abovementioned, Section 6(d), Rule I, Book VI, as amended by Department Order No. 147-15, of the Omnibus Rules Implementing the Labor Code of the Philippines (Labor Code) provides the following:

x x x x x x x x x

(d) In all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee.

In other words, the employer is mandated to comply with two requirements when dealing with a probationary employee, *viz*: (1) the employer must communicate the regularization standards to the probationary employee; and (2) the employer

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[39] *Philippine National Oil Company-Energy Development Corporation v. Buenviaje*, 788 Phil. 508, 529 (2016).

[40] *Id*. at 536.

[41] *Abbott Laboratories, Philippines v. Alcaraz*, 714 Phil. 510, 533 (2013).

must make such communication at the time of the probationary employee's engagement. If the employer fails to abide by any of the aforementioned obligations, the employee is deemed as a regular, and not a probationary employee. An employer is deemed to have made known the regularization standards when it has exerted reasonable efforts to apprise the employee of what he or she is expected to do or accomplish during the trial period of probation. The exception to the foregoing is when the job is self-descriptive in nature, such as in the case of maids, cooks, drivers, and messengers.[42]

In the instant case, the evidence is clear that petitioner is a probationary employee of respondent. Evidently, an examination of the Employment Agreement dated 28 June 2013 executed by petitioner and respondent positively indicates the hiring of the former by the latter as a probationary employee, to wit:

EMPLOYMENT AGREEMENT

x x x x x x x x x

EMPLOYER shall employ the EMPLOYEE based on the following terms and conditions:

1. <u>Employment & Duties</u>

a) ***Momentum Properties Management Corp.***/EMPLOYER hereby employs the services of the EMPLOYEE as **<u>Leasing Assistant</u>** to perform the function of his/her position and such other duties at such times and in such manner as the company and/or its officers may direct him/her from time to time;

b) EMPLOYEE agrees to perform duties assigned to him/her as stated in his/her job description, to the best of his/her ability, to maintain an account of his/her work, to devote hi[s]/her full and undivided time to the transaction of company's business;

c) EMPLOYEE expressly understood that he/she must refrain and should not engage in any other business

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[42] *Id*. at 533-534.

during the tenure of his/her employment with the company that may jeopardize his/her performance and create a conflict with the interest of the company;

d) EMPLOYEE agrees to comply with all stated standards of performance, policies, rules and regulations that is set and/or thereafter may be promulgated by the company.

2. Terms of Employment

The term of employment governing the EMPLOYEE shall be the following:

2.1 Probationary status – for six (6) months commencing on **June 26, 2013** until **December 26, 2013**.

During the probationary status, the EMPLOYEE shall be appraised on the following schedule:

a) 3rd month of employment – to determine EMPLOYEE'S ability to carry the tasks assigned to him/her, assess culture fit and consideration to other growth areas of the EMPLOYEE that is necessary for continued progress

b) 5th month of employment – prior to regularization to fully determine EMPLOYEE'S over-all performance and output including but not limited to the improvement on the growth areas of the EMPLOYEE during the first evaluation schedule

2.2 EMPLOYEE shall be given a notice of employment status before the 6th month of employment.

2.3 EMPLOYEE expressly agree[d] and understood that his/her employment with the company may be terminated at any given time for a cause.

x x x x x x x x x[43] (Boldfacing and underscoring in the original)

Petitioner was well-aware that her regularization would depend on her ability and capacity to fulfill the requirements of her position as a Leasing Assistant and that her failure to perform

[43] *Rollo*, p. 114.

such would give respondent a valid cause to terminate her probationary employment.

A thorough examination of the records of the instant case reveals that petitioner failed to comply with the regularization standards of respondent made known to her at the time of her engagement. Petitioner's performance evaluation was substandard, as evinced by her dismal scores in a series of aptitude tests she took before the end of her six-month probationary period. In her PTI-Numerical Examination, which consisted of 30 items, petitioner only garnered a raw score of six. Noticeably, petitioner left 10 items blank in her PTI-Numerical Examination.[44] With respect to her PTI-Verbal Examination, which consisted of 50 items, petitioner only received a raw score of 19.[45]

With the objective of testing her language skills, petitioner was asked to write about herself and where she saw herself in the future. She was likewise asked to discuss other matters which she believed would help strengthen her application for regular employment. Strikingly, her answers to the aforesaid were marked as questionable by the HR Department.[46] In addition, petitioner was asked to draft a memorandum for a given situation. Her written memorandum was peppered with grammatical errors and erasures and was likewise marked as questionable by the HR Department.[47]

In her PAR, petitioner received the following ratings in the key results areas portion, which measured her quantitative performance: (1) Contract Management – BA; (2) Lease Administrative Functions – average (A); (3) Basic Financial/ Accounting Functions – BA; (4) General Administration – A; and (5) Customer Service/Communication Skills – BA. In the same PAR, petitioner received the following marks in the

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[44] *Id*. at 115.

[45] *Id*. at 116.

[46] *Id*. at 118.

[47] *Id*. at 119-120.

behavioral factors portion, which measured her qualitative performance: (1) Job Knowledge and Quality of Work – A; (2) Service Orientation – BA; (3) Communication – BA; (4) Judgment – BA; (5) Attendance and Punctuality – A; (6) Risk Control – BA; (7) Use of Technology – A; (8) Process Improvement – BA; (9) Planning and Organization – A; and (10) Training – BA. In the Employee's Performance Summary part of her PAR, petitioner's scores for her quantitative and qualitative performance and results under the developmental assessment portion were analyzed. For her overall grade, petitioner received a 1.43 score, which fell under the rating norm for BA.[48]

Based on the abovementioned test results, respondent was only exercising its statutory hiring prerogative when it refused to hire petitioner on a permanent basis, upon the expiration of her six-month probationary period. It is a well-established principle that an employer has the right or is at liberty to choose who will be hired and who will be denied employment. Accordingly, it is within the exercise of the right to select one's employees that an employer may set or fix a probationary period within which the latter may test and observe the conduct of the former before the former is hired on a permanent basis.[49] As long as the employer has made known to the employee the regularization standards at the time of the employee's engagement, the refusal of the former to regularize the latter, by reason of the latter's failure to comply with the regularization standards, is within the ambit of the law.[50]

All the same, while respondent had the right to terminate petitioner's employment, and not to accord her the status of a regular employee, the manner by which petitioner's dismissal

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[48] *Id*. at 121-125.

[49] *Philippine Daily Inquirer, Inc. v. Magtibay, Jr*., 555 Phil. 326, 333-334 (2007), citing *International Catholic Migration Commission v. NLRC*, 251 Phil. 560 (1989).

[50] *Abbott Laboratories, Philippines v. Alcaraz*, *supra* note 41, at 532-533.

was carried out was not in accordance with the standards set forth under the law.

With respect to the termination of a probationary employee, a different procedure is applied – the usual two-notice rule does not govern.[51] The aforesaid two-notice rule is that which is found under Article 292(b) of the Labor Code, as amended by Section 33 of Republic Act No. 10151, *viz*:

> Article 292. Miscellaneous Provisions. —
>
> x x x x x x x x x x x x
>
> (b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 (now, Article 298) of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the cause for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. x x x.

The aforementioned procedure is also found in Section 2, Rule I, Book VI, as amended by Department Order No. 147-15, of the Omnibus Rules Implementing the Labor Code which states:

> Section 2. Security of Tenure. —
>
> x x x x x x x x x x x x
>
> In all cases of termination of employment, the following standards of due process shall be substantially observed:
>
> For termination of employment based on just causes as defined in Article 288 (now, Article 297) 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.

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[51] *Abbott Laboratories, Philippines v. Alcaraz*, *supra* note 41, at 537.

(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.

x x x x x x x x x

Section 2, Rule I, Book VI, as amended by Department Order No. 147-15, of the Omnibus Rules Implementing the Labor Code governs the procedure for the termination of a *probationary employee*, to wit:

Section 2. Security of Tenure. —

x x x x x x x x x

If the termination is brought about by the x x x failure of an employee to meet the standards of the employer in case of probationary employment, it shall be sufficient that a written notice is served the employee within a reasonable time from the effective date of termination.

A perusal of the records reveals that petitioner's dismissal was effected through a series of text messages from Tungol, instead of the abovementioned mandated procedure. As correctly pointed out by the Court of Appeals, the NAWOL issued by Ocampo was nothing more than an afterthought, considering it was furnished to petitioner on 7 January 2014 or five days after she was informed of her dismissal.[52] Hence, in view of the procedural infirmity attending the termination of petitioner, respondent is liable to pay nominal damages.

In the case of *Agabon v. National Labor Relations Commission*,[53] the Court pronounced that, where the dismissal is for a just cause, the lack of statutory due process should not

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[52] *Rollo*, p. 40.

[53] 485 Phil. 248 (2004).

nullify the dismissal, or render it illegal or ineffectual. Nevertheless, the employer should indemnify the employee for the violation of his statutory rights. The violation of the employee's right to statutory due process by the employer warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances. The payment of nominal damages would serve to deter employers from future violations of the statutory due process rights of employees. It likewise provides a vindication or recognition of the fundamental right to due process accorded to employees under the Labor Code and its Omnibus Implementing Rules.[54]

With respect to the proper amount of damages to be awarded in the instant case, the Court notes that petitioner's dismissal proceeded from her failure to comply with the standards required for her regularization. Hence, it is indisputable that the dismissal process was, in effect, initiated by an act imputable to the employee, akin to dismissals due to just causes under Article 297 of the Labor Code. Therefore, the Court deems it appropriate to fix the amount of nominal damages in the sum of ₱30,000.00, consistent with its ruling in *Agabon v. National Labor Relations Commission*.[55]

WHEREFORE, the petition is **DENIED**. The Decision dated 22 March 2016 and the Resolution dated 19 July 2016 of the Court of Appeals in CA-G.R. SP No. 138704 are **AFFIRMED**.

SO ORDERED.

Del Castillo,[*] *Leonen,*[**] and *Caguioa, JJ.*, concur.

Perlas-Bernabe, J., on official leave.

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[54] *Id.* at 288.

[55] *Id.* at 291.

[*] Designated additional member per Raffle dated 20 February 2019.

[**] Designated additional member per Special Order No. 2630-O dated 18 February 2019.

THIRD DIVISION

[G.R. Nos. 226634-44. March 6, 2019]

SANTIAGO G. BARCELONA, JR., *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 6656 (AN ACT TO PROTECT THE SECURITY OF TENURE OF CIVIL SERVICE OFFICERS AND EMPLOYEES IN THE IMPLEMENTATION OF GOVERNMENT REORGANIZATION); THE VERY POLICY OF THE LAW IS TO PROTECT THE SECURITY OF TENURE OF THE EMPLOYEES, MORE SO THOSE BELONGING TO THE MARGINALIZED SECTOR, THEIR TERMINATION MUST BE DONE IN A LEGAL AND VALID PROCEDURE; VIOLATION IN CASE AT BAR.— As it is the very policy of R.A. No. 6656 to protect the security of tenure of the employees, more so those belonging to the marginalized sector, their termination must be done in a legal and valid procedure. It has been settled that from the very start, however, the nature and extent of the power to reorganize were circumscribed by the source of the power itself. The grant of authority was accompanied by guidelines and limitations. It was never intended that department and agency heads would be vested with untrammeled and automatic authority to dismiss the millions of government workers on the stroke of a pen and with the same sweeping power, determine under their sole discretion who would be appointed or reappointed to the vacant positions. The Court finds the petitioner's act of seeking refuge behind the cloak of a reorganization of the City of Escaiante in order to effect the removal of 11 employees as illegal, considering that it was only during the time of this change that the private complainants were removed. x x x Further, the Court observes badges of bad faith on the part of the petitioner when he imputed incompetence and unfitness to work on the 11 terminated private complainants; hence, the disapproval of their applications for

reassignment. x x x The absence of a written evaluation report casts doubt on the legality of the removal procedure of these 11 employees. If these private complainants have become burdens and liabilities to the City, the performance evaluations should have been conducted early on. To the Court's mind, the reorganization became an instrument of an illegal dismissal for the petitioner to show these 11 private complainants the exit door.

2. ID.; ID.; ID.; CIRCUMSTANCES WHICH MAY BE CONSIDERED AS EVIDENCE OF BAD FAITH IN THE REMOVAL MADE AS A RESULT OF REORGANIZATION, ENUMERATED; PRESENT IN CASE AT BAR.— The Court perceives that the petitioner was in bad faith (a) when he failed to observe the "due notice" requirement of Section 2 of R.A. No. 6656; (b) when he failed to observe and ensure the observance of the requirements of order of separation, comparative assessment of qualifications and priority in appointment under Sections 3, 4, 5 and 6; and (c) when he allowed the unceremonious dropping from the payroll of the private complainants' names. x x x As correctly pointed out by the private complainants, prior notice is procedurally explained under Sections 10 and 15 of the Implementing Rules and Regulations of R.A. No. 6656, x x x Clearly, the petitioner failed to observe due process when the Placement Committee violated the constitutional rights of the 11 employees to security of tenure. The law is emphatic. Section 2 of R.A. No. 6656 cites certain circumstances showing bad faith in the removal of employees as a result of any reorganization: x x x **The existence of any or some of the following circumstances may be considered as evidence of bad faith in the removals made as a result of reorganization, giving rise to a claim for reinstatement or reappointment by an aggrieved party**: a) Where there is a significant increase in the number of positions in the new staffing pattern of the department or agency concerned; b) **Where an office is abolished and another performing substantially the same functions is created;** c) **Where incumbents are replaced by those *less qualified* in terms of status of appointment, performance and merit;** d) **Where there is a reclassification of offices in the department or agency concerned and the reclassified offices perform substantially the same function as the original offices;** e) Where the removal violates the order of separation provided in Section 3 hereof.

x x x Moreover, Section 3 of the same law provides for the order of removal of employees as follows: x x x (a) Casual employees with less than five (5) years of government service; (b) Casual employees with five (5) years or more of government service; (c) Employees holding temporary appointments; and (d) Employees holding permanent appointments: Provided, that those in the same category as enumerated above, who are least qualified in terms of performance and merit shall be laid first, length of service notwithstanding. The Court notes that despite the CSC's ruling of reinstatement, the petitioner insisted on defying said order of reinstatement and placement of the 11 employees. Such act on the part of the petitioner absolutely violates the very spirit of R.A. No. 6656. Moreover, such disobedience is tantamount to bad faith.

3. **ID.; ID.; ID.; DOCTRINE OF QUALIFIED POLITICAL AGENCY; THE ACTS OF A SUBORDINATE BEAR THE IMPLIED APPROVAL OF HIS SUPERIOR, UNLESS ACTUALLY DISAPPROVED BY THE LATTER; CASE AT BAR.—** Petitioner cannot feign ignorance nor claim that he was not part of the deliberations conducted on the 11 private complainants by the Placement Committee. The Court likewise cannot sustain the reasoning that he merely adopted the recommendations made by the said committee. Springing from the power of control is the doctrine of qualified political agency, wherein the acts of a subordinate bear the implied approval of his superior, unless actually disapproved by the latter. Under Section 6 of R.A. No. 6656, a Placement Committee is created which would consist of two members appointed by the head of the department agency, a representative of the appointing authority, and two members duly elected by the employees holding positions in the first and second levels of the career service. Therefore, the petitioner cannot evade accountability by insisting he was not part of the evaluating team of the employees removed from service.

APPEARANCES OF COUNSEL

Tan Acut Lopez & Pison for petitioner.
Office of the Special Prosecutor for respondent.

D E C I S I O N

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

Before this Court is a Petition for Review,[1] filed by Santiago G. Barcelona, Jr. (petitioner), assailing the Joint Decision[2] dated April 30, 2015 and the Resolution[3] dated August 30, 2016 of the Sandiganbayan, Third Division in Criminal Case Nos. SB-10-CRM-0244 to SB-10-CRM-0254. The petition seeks to set aside the Sandiganbayan's Joint Decision and Resolution adjudging the petitioner guilty for eleven (11) cases of violation of Section 2 of Republic Act (R.A.) No. 6656 or "*An Act to Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization*."

The Facts

The petitioner was the municipal mayor of the town of Escalante, Negros Occidental when it was converted to a city by virtue of R.A. No. 9014.[4]

Edna A. Abibas (Abibas), Emerson Bermejo (Bermejo), Rodolfo Pritos (Pritos), Rodolfo Api (Api), Norma Jose (Jose), and Noel Dueñas (Dueñas) alleged that they were removed from their permanent positions as a result of the reorganization of the City of Escalante.

As a result, the petitioner was indicted for violations of Section 2 of R.A. No. 6656. The eleven (11) separate Informations[5] read as follows:

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[1] *Rollo*, pp. 3-30.

[2] Penned by Associate Justice Samuel R. Martires (now a Retired Justice of this Court), with Presiding Justice Amparo M. Cabotaje-Tang and Associate Justice Alex L. Quiroz, concurring; *id*. at 34-52.

[3] *Id*. at 53-57.

[4] AN ACT CONVERTING THE MUNICIPALITY OF ESCALANTE, PROVINCE OF NEGROS OCCIDENTAL INTO A COMPONENT CITY TO BE KNOWN AS THE CITY OF ESCALANTE.

[5] *Rollo*, pp. 34-40.

SB-10-CRM-0244

That sometime in the year 2002, in the City of Escalante, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, SANTIAGO G. BARCELONA, JR., public officer, being then the Municipal Mayor of the City of Escalante, Province of Negros Occidental, in such capacity and committing the crime in relation to office, taking advantage of his public position, with deliberate intent, did then and there, willfully, unlawfully, and criminally dismiss from the service one Edna A. Abibas, who was holding a permanent appointment as Utility Worker II in the City Government of Escalante City, without a valid cause and without due notice and hearing as a result of reorganization, and despite demand or claim for him to reinstate or reappoint said Edna A. Abibas, the said accused refused, and continued to refuse, to do so, to the damage and prejudice of said Edna A. Abibas.

CONTRARY TO LAW.

SB-10-CRM-0245

That sometime in the year 2002, in the City of Escalante, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, SANTIAGO G. BARCELONA, JR., public officer, being then the Municipal Mayor of the City of Escalante, Province of Negros Occidental, in such capacity and committing the crime in relation to office, taking advantage of his public position, with deliberate intent, did then and there, willfully, unlawfully, and criminally dismiss from the service one Aurelio N. Pios, who was holding a permanent appointment as Utility Worker II in the City Government of Escalante City, without a valid cause and without due notice and hearing as a result of reorganization, and despite demand or claim for him to reinstate or reappoint said Aurelio N. Pios, the said accused refused, and continued to refuse, to do so, to the damage and prejudice of said Aurelio N. Pios.

CONTRARY TO LAW.

SB-10-CRM-0246

That sometime in the year 2002, in the City of Escalante, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, SANTIAGO G. BARCELONA, JR., public officer, being then the Municipal Mayor of the City of

Escalante, Province of Negros Occidental, in such capacity and committing the crime in relation to office, taking advantage of his public position, with deliberate intent, did then and there, willfully, unlawfully, and criminally dismiss from the service one Eduardo L. Bacaron, who was holding a permanent appointment as Driver II in the City Government of Escalante City, without a valid cause and without due notice and hearing as a result of reorganization, and despite demand or claim for him to reinstate or reappoint said Eduardo L. Bacaron, the said accused refused, and continued to refuse, to do so, to the damage and prejudice of said Eduardo L. Bacaron.

CONTRARY TO LAW.

SB-10-CRM-0247

That sometime in the year 2002, in the City of Escalante, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, SANTIAGO G. BARCELONA, JR., public officer, being then the Municipal Mayor of the City of Escalante, Province of Negros Occidental, in such capacity and committing the crime in relation to office, taking advantage of his public position, with deliberate intent, did then and there, willfully, unlawfully, and criminally dismiss from the service one Emerson Bermejo, who was holding a permanent appointment as Driver in the City Government of Escalante City, without a valid cause and without due notice and hearing as a result of reorganization, and despite demand or claim for him to reinstate or reappoint said Emerson Bermejo, the said accused refused, and continued to refuse, to do so, to the damage and prejudice of said Emerson Bermejo.

CONTRARY TO LAW.

SB-10-CRM-0248

That sometime, in the year 2002, in the City of Escalante, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, SANTIAGO G. BARCELONA, JR., public officer, being then the Municipal Mayor of the City of Escalante, Province of Negros Occidental, in such capacity and committing the crime in relation to office, taking advantage of his public position, with deliberate intent, did then and there, willfully, unlawfully, and criminally dismiss from the service one Noel C. Dueñas, who was holding a permanent appointment as Utility Worker II in the City Government of Escalante City, without a valid cause and

without due notice and hearing as a result of reorganization, and despite demand or claim for him to reinstate or reappoint said Noel C. Dueñas, the said accused refused, and continued to refuse, to do so, to the damage and prejudice of said Noel C. Dueñas.

CONTRARY TO LAW.

SB-10-CRM-0249

That sometime in the year 2002, in the City of Escalante, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, SANTIAGO G. BARCELONA, JR., public officer, being then the Municipal Mayor of the City of Escalante, Province of Negros Occidental, in such capacity and committing the crime in relation to office, taking advantage of his public position, with deliberate intent, did then and there, willfully, unlawfully, and criminally dismiss from the service one Silva P. Bacaron, who was holding a permanent appointment as Utility Worker II in the City Government of Escalante City, without a valid cause and without due notice and hearing as a result of reorganization, and despite demand or claim for him to reinstate or reappoint said Silva P. Bacaron, the said accused refused, and continued to refuse, to do so, to the damage and prejudice of said Silva P. Bacaron.

CONTRARY TO LAW.

SB-10-CRM-0250

That sometime, in the year 2002, in the City of Escalante, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, SANTIAGO G. BARCELONA, JR., public officer, being then the Municipal Mayor of the City of Escalante, Province of Negros Occidental, in such capacity and committing the crime in relation to office, taking advantage of his public position, with deliberate intent, did then and there, willfully, unlawfully, and criminally dismiss from the service one Rodolfo C. Pritos, who was holding a permanent appointment as Utility Worker II in the City Government of Escalante City, without a valid cause and without due notice and hearing as a result of reorganization, and despite demand or claim for him to reinstate or reappoint said Rodolfo C. Pritos, the said accused refused, and continued to refuse, to do so, to the damage and prejudice of said Rodolfo C. Pritos.

CONTRARY TO LAW.

SB-10-CRM-0251

That sometime in the year 2002, in the City of Escalante, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, SANTIAGO G. BARCELONA, JR., public officer, being then the Municipal Mayor of the City of Escalante, Province of Negros Occidental, in such capacity and committing the crime in relation to office, taking advantage of his public position, with deliberate intent, did then and there, willfully, unlawfully, and criminally dismiss from the service one Rodolfo B. Api, who was holding a permanent appointment as Utility Worker II in the City Government of Escalante City, without a valid cause and without due notice and hearing as a result of reorganization, and despite demand or claim for him to reinstate or reappoint said Rodolfo B. Api, the said accused refused, and continued to refuse, to do so, to the damage and prejudice of said Rodolfo B. Api.

CONTRARY TO LAW.

SB-10-CRM-[0252]

That sometime in the year 2002, in the City of Escalante, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, SANTIAGO G. BARCELONA, JR., public officer, being then the Municipal Mayor of the City of Escalante, Province of Negros Occidental, in such capacity and committing the crime in relation to office, taking advantage of his public position, with deliberate intent, did then and there, willfully, unlawfully, and criminally dismiss from the service one Constantino Dueñas, who was holding a permanent appointment as Labor Foreman in the City Government of Escalante City, without a valid cause and without due notice and hearing as a result of reorganization, and despite demand or claim for him to reinstate or reappoint said Constantino Dueñas, the said accused refused, and continued to refuse, to do so, to the damage and prejudice of said Constantino Dueñas.

CONTRARY TO LAW.

SB-10-CRM-0253

That sometime in the year 2002, in the City of Escalante, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, SANTIAGO G. BARCELONA,

JR., public officer, being then the Municipal Mayor of the City of Escalante, Province of Negros Occidental, in such capacity and committing the crime in relation to office, taking advantage of his public position, with deliberate intent, did then and there, willfully, unlawfully, and criminally dismiss from the service one Amelia B. Villa, who was holding a permanent appointment as Utility Worker II in the City Government of Escalante City, without a valid cause and without due notice and hearing as a result of reorganization, and despite demand or claim for him to reinstate or reappoint said Amelia B. Villa, the said accused refused, and continued to refuse, to do so, to the damage and prejudice of said Amelia B. Villa.

CONTRARY TO LAW.

SB-10-CRM-0254

That sometime in the year 2002, in the City of Escalante, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, SANTIAGO G. BARCELONA, JR., public officer, being then the Municipal Mayor of the City of Escalante, Province of Negros Occidental, in such capacity and committing the crime in relation to office, taking advantage of his public position, with deliberate intent, did then and there, willfully, unlawfully, and criminally dismiss from the service one Norma D. Jose, who was holding a permanent appointment as Utility Worker II in the City Government of Escalante City, without a valid cause and without due notice and hearing as a result of reorganization, and despite demand or claim for him to reinstate or reappoint said Norma D. Jose, the said accused refused, and continued to refuse, to do so, to the damage and prejudice of said Norma D. Jose.

CONTRARY TO LAW.

Version of the Prosecution

Abibas, Bermejo, Pritos, Api, Jose and Dueñas, former employees of the Local Government of Escalante City, testified for the prosecution.

They alleged that they were former employees of Escalante City when the *Sangguniang Panlungsod* Ordinance was implemented causing the reorganization of the City of Escalante, which brought about the abolition of their positions. With the implementation of this Ordinance, the petitioner, then Mayor

of the City of Escalante, issued a Memorandum directing all the employees to submit applications for their placement in their preferred positions.[6]

The said witnesses duly complied with the memorandum of the petitioner where their application letters were submitted to the Placement Committee, however, nothing transpired as they were eventually terminated.[7]

As a result of the inaction by the said Committee, the witnesses, alongside the other employees, wrote a letter addressed to the petitioner begging them to be reinstated to any position since this is their only means of livelihood.[8]

As there was no action coming from the Office of the Mayor, they filed their appeal to the Civil Service Commission (CSC).[9]

The CSC Regional Office, thereafter, issued a Decision dated October 11, 2002, directing the petitioner "to appoint said appellants to positions in the new staffing pattern which are similar to or are comparable to their former positions and to which they qualify, or if there are none, to positions next lower in rank and to which they qualify."[10]

The petitioner did not comply with the order, but instead filed a Motion for Reconsideration which was denied by the CSC in its Decision[11] dated July 8, 2003.

Undeterred by the denial of the Motion for Reconsideration, the petitioner filed an appeal before the CSC Central Office and continued to defy the ruling of the CSC directing the reinstatement of the said employees.

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[6] *Id*. at 40.

[7] *Id*

[8] *Id*. at 40-41.

[9] *Id*. at 41.

[10] *Id*.

[11] Rendered by Assistant Commissioner Jesse J. Caberoy; *id*. at 158-177.

When the CSC Central Office dismissed the appeal and, subsequently, denied his motion for reconsideration, the petitioner elevated the case *via* Petition for Review before the Sandiganbayan. The appellate court dismissed the same, thus, making the Decision dated June 4, 2007 of the CSC final.

Melencio G. Yap, then, assumed as new mayor, with the term of the petitioner coming to an end.

Another witness, Delia P. Ocdinaria (Ocdinaria), is the Human Resource Management Officer of the City of Escalante.

By virtue of a subpoena from the Office of the Special Prosecutor, Ocdinaria submitted the plantilla of the manpower for the City Government of Escalante prior to and after the reorganization in 2002 pursuant to the Ordinance, the service records, and the appointments of the 11 terminated employees, among other documents.

The witness testified that she had issued appointments of employees as a result of the reorganization which were already for signature by the appointing authority. These were likewise turned over to the CSC for its prompt action.

Witness Ocdinaria was advised though that some appointments were not approved for the reason that "the incumbent or the existing personnel were not placed to comparable positions as to the appointments mentioned."[12] The affected personnel were Abibas, Api, Jose, Amelia Villa, Silva Bacaron, Eduardo Bacaron, Bermejo, Constantino Dueñas, Dueñas, Aurelio Pios, Pritos, Gloria Tan, Diolito Albento, and Joseph Dalmario.

She alleged that there were 211 positions, but after the reorganization, 336 positions were thereafter created, with another position being added, which was tantamount to 337 positions available.

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[12] *Id*. at 42.

Version of the Defense

The defense presented two witnesses: the petitioner and former City Councilor and Chairperson of the Placement Committee of the City of Escalante, Evelyn L. Hinolan (Hinolan).

The petitioner admitted that the Municipality of Escalante became a component city of Negros Occidental for which they had adopted a revised organizational structure and staffing pattern, with the selection of personnel. Resolution No. 047 was passed by the *Sangguniang Panlungsod* of Escalante which provided for the creation of a Placement Committee that would select qualified personnel for placement in pursuit of the reorganization. In the same vein, Ordinance No. 103 was passed that adopted a new staffing pattern for the newly organized local government. Executive Order No. 6 created a Placement Committee.

The petitioner issued Office Memorandum No. 10, Series of 2002, which directed all city government employees to submit their new applications for the positions they intended, further advising them, through a Notice, that there are 191 vacant positions available.

The petitioner reasoned that his policy of not filling up all the 191 positions was by reason of the delay in the remittance of the city's share in revenue allocation. He said that he intended for the unused funds to be utilized for future purposes.

The petitioner clarified that it was the Placement Committee which conducted interviews and background checks which finalized the list of manpower who would qualify to be posted in the reorganized structure. When the private complainants wrote a letter of reconsideration to the petitioner, he replied that he was only affirming the decision of the Personnel Selection Board, or the Placement Committee.

Witness Hinolan corroborated the testimony of the petitioner. She asserted that she was the Chairperson of the Placement Committee which comprised of the following members: the petitioner, the Vice Mayor, Councilor Armando Alcos, Mrs.

Aniceta Hinolan, Mr. Guarino Maguate (Maguate) and Mrs. Thelma Francisco.

She further testified that the petitioner did not play a major role in the Placement Committee as it is Maguate who was the representative in the said selection committee.

She explained that the employees who were no longer posted were given oral performance evaluations by their department heads and remarked that they were either lazy, habitually absent and tardy, or not fit for work. She was not able to produce written evaluation forms for the reason that it was not a human resource practice to include these performance evaluations in the 201 files of employees. She likewise admitted that the Placement Committee did not comply with the provisions of R.A. No. 6656.

In a Joint Decision[13] dated April 30, 2015, the Honorable Sandiganbayan found the petitioner guilty for all 11 cases. The dispositive portion of the ruling reads:

> **WHEREFORE**, premised (sic) considered, in Criminal Case Nos. SB-10-CRM-0244 up to SB-10-CRM-0254, the accused SANTIAGO G. BARCELONA, JR., is hereby found **GUILTY** in each of the eleven (11) cases herein. The accused is hereby sentenced to pay a fine of **FIVE THOUSAND PESOS (₱5,000.00) IN EACH OF THE ELEVEN (11) CASES** and to suffer **PERMANENT DISQUALIFICATION TO HOLD OFFICE**.
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> **SO ORDERED.**[14] (Emphases in the original)

The petitioner filed a Motion for Reconsideration, but the same was denied by the Sandiganbayan in a Resolution[15] dated August 30, 2016, *viz.*:

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[13] *Id*. at 34-52.

[14] *Id*. at 51.

[15] *Id*. at 53-57.

WHEREFORE, the *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED.[16] (Emphases in the original)

Ruling of the Court

The Court finds no reason to disturb the findings of the Sandiganbayan in holding the petitioner liable in all 11 cases for violation of Section 2 of R.A. No. 6656.

Petitioner was in bad faith for removing 11 private respondents under the guise of a reorganization.

As it is the very policy of R.A. No. 6656 to protect the security of tenure of the employees, more so those belonging to the marginalized sector, their termination must be done in a legal and valid procedure. It has been settled that from the very start, however, the nature and extent of the power to reorganize were circumscribed by the source of the power itself. The grant of authority was accompanied by guidelines and limitations. It was never intended that department and agency heads would be vested with untrammeled and automatic authority to dismiss the millions of government workers on the stroke of a pen and with the same sweeping power, determine under their sole discretion who would be appointed or reappointed to the vacant positions.[17]

The Court finds the petitioner's act of seeking refuge behind the cloak of a reorganization of the City of Escalante in order to effect the removal of 11 employees as illegal, considering that it was only during the time of this change that the private complainants were removed.

In the case of *Gov. Aurora E. Cerilles v. Civil Service Commission, Anita Jangad-Chua, Ma. Eden S. Tagayuna, Meriam Campomanes, Bernadette P. Quirante, Ma. Delora*

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[16] *Id*. at 57.

[17] *Mendoza v. Hon. Quisumbing*, 264 Phil. 471, 493 (1990).

P. Flores and Edgar Paran,[18] it was reiterated that R.A. No. 6656 was enacted to implement the State's policy of protecting the security of tenure of officers and employees in the civil service during the reorganization of government agencies.[19] The pertinent provision of R.A. No. 6656 provides, thus:

> **No new employees shall be taken in until all permanent officers and employees have been appointed**, including temporary and casual employees who possess the necessary qualification requirements, among which is the appropriate civil service eligibility, for permanent appointment to positions in the approved staffing pattern, in case there are still positions to be filled, unless such positions are policy-determining, primarily confidential or highly technical in nature.[20] (Emphasis Ours)

Further, the Court observes badges of bad faith on the part of the petitioner when he imputed incompetence and unfitness to work on the 11 terminated private complainants; hence, the disapproval of their applications for reassignment. If the petitioner and his Placement Committee insist on the non-qualification of these employees as a result of a series of evaluations and background checks, then why were these performance evaluations not conducted prior to the reorganization? The absence of a written evaluation report casts doubt on the legality of the removal procedure of these 11 employees.

If these private complainants have become burdens and liabilities to the City, the performance evaluations should have been conducted early on. To the Court's mind, the reorganization became an instrument of an illegal dismissal for the petitioner to show these 11 private complainants the exit door.

The prosecution presented 337 plantilla positions *vis-a-vis* the petitioner alleging only 191 positions available after the reorganization, showing a disparity of 146 available positions.

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[18] G.R. No. 180845, November 22, 2017.

[19] *Id*.

[20] *Id*.

Whether the number of available positions numbered to 337 according to the private complainants, or 191 according to the petitioner, still, what the Court views is that 11 blue collar positions were sweepingly removed after the reorganization without any written record of employee assessments.

Petitioner failed to observe due process in removing the private complainants constituting violation of their right to security of tenure.

As much as the Placement Committee is still tasked to have wide latitude of discretion to select and appoint employees pursuant to R.A. No. 6656, it is without the observance of procedural due process.

The Court perceives that the petitioner was in bad faith (a) when he failed to observe the "due notice" requirement of Section 2 of R.A. No. 6656; (b) when he failed to observe and ensure the observance of the requirements of order of separation, comparative assessment of qualifications and priority in appointment under Sections 3, 4, 5 and 6; and (c) when he allowed the unceremonious dropping from the payroll of the private complainants' names.[21]

Prosecutor Padaca:

Q: You said in your letter May 7, 2002 that "we were informed that our employment with the City Government of Escalante was to be terminated because our positions were abolished." My question is, who informed you?
A: One of my co-workers, ma'am.

Q: How did they inform you, in writing or (in) verbal?
A: Verbal, ma'am.

Pros. Padaca:

Q: You testified that you were dropped from the payroll, when was that?
A: First week of June 2002.

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[21] *Rollo*, p. 205.

Q: When was the last time that you received your salary?
A: May 31, 2002.

Q: Who if any informed you that you will be dropped from the payroll?
A: No, ma'am.

Q: How did the management inform you that you would be dropped from the payroll?
A: During the first week of June when I went to get my salary, and I found out that my name is no longer listed in the payroll.

x x x x x x x x x

Prosecutor Padaca:

Q: Mr. Witness, why did you file a letter appeal to the Civil Service Commission, Field Office?
A: We are all terminated and my name was no longer in the payroll.[22]
(Citations omitted)

As correctly pointed out by the private complainants, prior notice is procedurally explained under Sections 10 and 15 of the Implementing Rules and Regulations of R.A. No. 6656, *viz.*:

Section 10. *Notice and Hearing.*

1. Officers and employees who upon evaluation and assessment will be laid off for any of the valid causes as provided for in these rules, shall be duly notified thereof and shall be given opportunity to present their side to assure utmost objectivity and impartiality. The hearing need not adhere to the technical rules in judicial proceedings.

x x x x x x x x x

Section 15. *Notice of Non-Appointment*

Officers and employees laid off as a result of reorganization shall be given written notice at least thirty (30) days in advance of the effective date of the termination of their service.[23]

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[22] *Id.* at 206.

[23] *Id.* at 205, citing CSC Memorandum Circular No. 13, s. 1988.

Clearly, the petitioner failed to observe due process when the Placement Committee violated the constitutional rights of the 11 employees to security of tenure. The law is emphatic. Section 2 of R.A. No. 6656 cites certain circumstances showing bad faith in the removal of employees as a result of any reorganization:[24]

Sec. 2. No officer or employee in the career service shall be removed except for a valid cause and after due notice and hearing. A valid cause for removal exists when, pursuant to a bona fide reorganization, a position has been abolished or rendered redundant or there is a need to merge, divide, or consolidate positions in order to meet the exigencies of the service, or other lawful causes allowed by the Civil Service Law. **The existence of any or some of the following circumstances may be considered as evidence of bad faith in the removals made as a result of reorganization, giving rise to a claim for reinstatement or reappointment by an aggrieved party**:

a) Where there is a significant increase in the number of positions in the new staffing pattern of the department or agency concerned;
b) **Where an office is abolished and another performing substantially the same functions is created;**
c) **Where incumbents are replaced by those *less qualified* in terms of status of appointment, performance and merit;**
d) **Where there is a reclassification of offices in the department or agency concerned and the reclassified offices perform substantially the same function as the original offices;**
e) Where the removal violates the order of separation provided in Section 3 hereof. (Emphasis, italics and underscoring Ours)

Moreover, Section 3 of the same law provides for the order of removal of employees as follows:

Sec. 3. In the separation of personnel pursuant to reorganization, the following order of removal shall be followed:

(a) Casual employees with less than five (5) years of government service;
(b) Casual employees with five (5) years or more of government service;

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[24] *Mayor Pan v. Peña*, 598 Phil. 781, 790-791 (2009).

(c) Employees holding temporary appointments; and
(d) Employees holding permanent appointments: Provided, that those in the same category as enumerated above, who are least qualified in terms of performance and merit shall be laid first, length of service notwithstanding.

The Court notes that despite the CSC's ruling of reinstatement, the petitioner insisted on defying said order of reinstatement and placement of the 11 employees. Such act on the part of the petitioner absolutely violates the very spirit of R.A. No. 6656. Moreover, such disobedience is tantamount to bad faith.

It bears stressing that the petitioner in his Reply[25] takes refuge in the first paragraph of Section 4 of R.A. No. 6656, but the Court reminds the petitioner that the law must be read in its entirety, to wit:

Sec. 4. Officers and employees holding **permanent** appointments shall be **given preference** for appointment to the new positions in the approved staffing pattern **comparable** to their former positions or in case there are not enough comparable positions, to **positions next lower in rank**.

No new employees shall be taken until all permanent officers and employees have been appointed, including temporary and casual employees who possess the necessary qualification requirements, among which is the appropriate civil service eligibility, for permanent appointment to positions in the approved staffing pattern, in case there are still positions to be filled, unless such positions are policy-determining, primarily confidential or highly technical in nature. (Emphasis and underscoring Ours)

Doctrine of qualified political agency makes the petitioner liable for violation of R.A. No. 6656.

Petitioner cannot feign ignorance nor claim that he was not part of the deliberations conducted on the 11 private complainants by the Placement Committee. The Court likewise cannot sustain

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[25] *Rollo*, p. 227.

the reasoning that he merely adopted the recommendations made by the said committee. Springing from the power of control is the doctrine of qualified political agency, wherein the acts of a subordinate bear the implied approval of his superior, unless actually disapproved by the latter.[26]

Under Section 6 of R.A. No. 6656, a Placement Committee is created which would consist of two members appointed by the head of the department agency, a representative of the appointing authority, and two members duly elected by the employees holding positions in the first and second levels of the career service. Therefore, the petitioner cannot evade accountability by insisting he was not part of the evaluating team of the employees removed from service.

Petitioner was in bad faith in completely defying the ruling of the CSC to place the 11 employees in similar positions.

In countless occasions, the Court has ruled that the only function of the CSC is to ascertain whether the appointee possesses the minimum requirements under the law; if it is so, then the CSC has no choice but to attest to such appointment.[27]

As stated earlier, ritual invocation of the abolition of an office is not sufficient to justify the termination of the services of an officer or employee in such abolished office. Abolition should be exercised in good faith, should not be for personal or political reasons, and cannot be implemented in a manner contrary to law. "Good faith, as a component of a reorganization under a constitutional regime, is judged from the facts of each case."[28]

In the case of *Rama v. Court of Appeals*,[29] the Court held:

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[26] *KBMBPM v. Hon. Dominguez*, 282 Phil. 105, 124 (1992).

[27] *Supra* note 18, citing *Lapinid v. Civil Service Commission*, 274 Phil. 381, 387-388 (1991).

[28] *Dario v. Mison*, 257 Phil. 84, 130-131 (1989).

[29] 232 Phil. 461 (1987).

It is an undeniable fact that the dismissed employees who were holding such positions as foremen, watchmen and drivers, suffered the uncertainties of the unemployed when they were plucked out of their positions. That not all of them testified as to the extent of damages they sustained on account of their separation from their government jobs; cannot be used as a defense by the petitioners. Suffice it to state that considering the positions they were holding, the dismissed employees concerned belong to a low-salaried group, who, if deprived of wages would generally incur considerable economic hardships.[30]

What transpired in the City of Escalante upon reorganization is similar to a mere window dressing as enunciated in the case of *Cruz, et al. v. Hon. Primicias, et al.*,[31] as a "subterfuge resorted to for disguising an illegal removal of permanent civil service employees."[32] The employees are terminated without being given reasons for their dismissal. Only the appointing authority knows why employees are no longer reappointed.

WHEREFORE, premises considered, the Joint Decision dated April 30, 2015 and Resolution dated August 30, 2016 of the Sandiganbayan in Criminal Case Nos. SB-10-CRM-0244 to SB-10-CRM-0254, affirming petitioner Santiago G. Barcelona, Jr.'s conviction for eleven (11) counts of violation of Section 2 of Republic Act No. 6656, are hereby **AFFIRMED**.

SO ORDERED.

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

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[30] *Id.* at 469.

[31] 132 Phil. 467 (1968).

[32] *Id.* at 472.

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

THIRD DIVISION

[G.R. No. 228684. March 6, 2019]

EDMUND C. MAWANAY, *petitioner, vs.* **PHILIPPINE TRANSMARINE CARRIERS, INC., RIZZO-BOTTIGLIERI - DE CARLINI ARMATORISPA and/or CAPT. DANILO SALASAN,**[*] *respondents.*

SYLLABUS

1. **REMEDIAL LAW; PETITION FOR REVIEW ON *CERTIORARI*; AS A RULE, COMPENSABILITY OF A SEAFARER'S ILLNESS IS A FACTUAL ISSUE THAT IS BEYOND THE PROVINCE THEREOF; EXCEPTION; CONFLICTING RULINGS OF THE NATIONAL LABOR RELATIONS COMMISSION AND THE COURT OF APPEALS.—** [I]t must be stated that the compensability of the petitioner's illness is a factual issue that is beyond the province of a petition for review on *certiorari*. Nonetheless, the conflicting rulings of the NLRC and the CA, present an exception to the rule and justifies the Court's examination.

2. **LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); DISABILITY COMPENSATION; PROCEDURE FOR COMPLIANCE UNDER THE 240-DAY RULE; CASE AT BAR.—** The determination of the rights of a seafarer for disability compensation, when covered by the 240-day rule, requires a balance in application by Philippine law, the parties' contractual obligations under the POEA SEC and/or Collective Bargaining Agreement, and the pertinent medical findings of the seafarer's condition by his own physician and the company-designated physician. The interplay of these rules has been explained by the Court in *Kestrel Shipping Co. Inc., et al. v. Munar*, which succinctly sets forth the following procedure for compliance under the 240-day rule: [T]he seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3)

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[*] Salasalan in some parts of the *rollo*.

days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA [SEC] and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition. Proceeding from the foregoing ruling, with the declaration of the company-designated physician that the petitioner is fit to work, under Section 20-13(3) of the POEA SEC, the seafarer in case of disagreement, may then consult with his own doctor. In the event of variance in the opinions of the company-designated physician and the seafarer's doctor of choice, the matter may be referred to a third doctor chosen by both parties whose diagnosis shall be final and binding. Tested against the attendant factual circumstances, the Court finds that in here, the findings issued by the company-designated physician prevails for two reasons: first, on account of the petitioner's breach of his contractual obligations under the POEA SEC; and second, on the basis of the intrinsic merit and reliability of the medical report issued.

3. **ID.; ID.; PROVISIONS OF THE POEA-SEC MUST BE WEIGHED IN ACCORDANCE WITH PRESCRIBED LAWS, PROCEDURE, AND PROVISIONS OF CONTRACT FREELY AGREED UPON BY THE PARTIES, AND WITH UTMOST REGARD AS WELL OF THE RIGHTS OF EMPLOYERS.—** While it is true that the provisions of the POEA SEC must be construed logically and liberally in favor of Filipino seamen in pursuit of their employment on board ocean-going vessels consistent with the State's policy to afford full protection to labor, it does not mean that the Court should automatically rule in favor of the seafarer. The provisions of the POEA SEC must be weighed in accordance with the prescribed laws, procedure, and provisions of contract freely agreed upon by the parties, and with utmost regard as

> well of the rights of the employers. x x x While it can be said that the POEA SEC was drafted in order to promote the interest of Filipino workers abroad, the same does not mean that its interpretation and implementation would have to always benefit labor. The goal of every court in every litigation is to render justice. And in this sense, it is not justice to favor labor on this score alone. Neither does this excuses the workers from compliance with their obligations under the contract. The scales of justice tilts in favor of labor only where the evidence presented by both is in an equipoise, and with due consideration to attendant circumstances. When it is clear that it is the employee who failed to meet his freely and lawfully contracted obligation, the Court must not hesitate to rule against them for as long as the same is in accordance with what is due in light of established facts, pertinent law, and relevant jurisprudence.

APPEARANCES OF COUNSEL

Justiniano B. Panambo, Jr. for petitioner.
Cherry Lyn Olalia-Retoriano for respondents.

D E C I S I O N

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

Before this Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated June 8, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 143132, and its Resolution[3] dated October 17, 2016, denying the motion for reconsideration thereof. The assailed decision granted the petition for *certiorari* filed by Edmund C. Mawanay (petitioner), annulled and set aside the Decision and Resolution, dated July 10, 2015 and September 21, 2015, respectively, of the National Labor Relations Commission

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[1] *Rollo*, pp. 9-31.

[2] Penned by Associate Justice Ramon R. Garcia, with Associate Justices Leoncia R. Dimagiba and Jhosep Y. Lopez concurring; *id.* at 34-46.

[3] *Id.* at 47-48.

(NLRC), and reinstated the Decision dated February 27, 2015 issued by the Labor Arbiter (LA).

The Antecedent Facts

The petitioner was hired by respondent Rizzo-Bottiglieri-De Carlini Armatorispa through its local manning agency in the Philippines – respondent Philippine Transmarine Carriers, Inc. (PTCI) on July 10, 2013.[4]

Under the employment contract, the petitioner was employed as an ordinary seaman on board the ocean-going vessel *Giovanni Battista Bottiglieri* for a period of eight (8) months which commenced on July 24, 2013, with a basic monthly salary of US$430.00.[5]

On August 30, 2013, while removing rust at the ship's deck, the petitioner experienced severe headache and dizziness. He brushed these aside thinking that they were merely caused by the exhaustion of having to work continuously for three days. The pain, however, persisted the whole day. The next day, while performing his usual tasks at the deck, the petitioner collapsed after experiencing shortness of breath and suffocation. The petitioner was then given first aid and allowed to rest. The next day, the petitioner again lost consciousness while he was returning the tools and equipment used in his work. With this, it was decided that the petitioner was to be brought to a medical facility at the next port of destination.[6]

On October 1, 2013, the vessel reached the port of Fujairah, United Arab Emirates. The petitioner was then brought to the Fujairah Port Clinic where he underwent laboratory scans and a CT scan of his brain, and was diagnosed to be suffering from "chronic headache/sinusitis; increase intra-cranial pressure." The petitioner was confined for three days and thereafter declared

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[4] *Id*. at 35.

[5] *Id*.

[6] *Id*.

unfit for sea duty. On October 6, 2013, the petitioner was medically repatriated to the Philippines.[7]

Upon his arrival, the petitioner immediately reported to PTCI, which then referred him to the company's accredited physician for post-employment medical examination. Due to his recurring headache, the petitioner was advised to consult with an ENT specialist, and was found to have vertiginous migraine. He was prescribed medications to manage his pain, and was told to return for another check-up on October 18, 2013. As the petitioner's headache persisted, he was told to undergo an MRI, which nonetheless yielded normal results. Despite oral medications, the petitioner claimed that he remained to experience headache. He was then referred to and seen by the company-designated neurologist on January 17, 2014 which found the petitioner to be suffering from cluster headache thereby prescribing medications to alleviate pains and attacks.[8]

On January 21, 2014, the company-designated physician issued a medical report reflecting the treatments the petitioner has undergone, his present medical condition, and concluded on the basis thereof that his interim disability assessment is Grade 10.[9]

Two medical reports by the company-designated physician followed. In the first which was issued on February 19, 2014, the physician indicated the possibility that the petitioner is feigning illness considering that all the diagnostic tests results are normal. In this regard, the report stated that the petitioner may be cleared during his next check-up, but emphasized that migraine is a chronic disease that can be triggered by external stimuli. The final medical report on the other hand, issued on March 5, 2014, stated that the petitioner is no longer suffering from headache and as such, is cleared of his condition.[10]

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[7] *Id*.

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

[9] *Id*. at 36.

[10] *Id*.

On August 26, 2014, the petitioner filed a complaint for permanent and total disability benefits before the NLRC. The petitioner submits that since the company-designated physician stopped treatment after five sessions despite the fact that he has yet recovered from illness, he was constrained to consult with another doctor, Dr. May Donato-Tan (Dr. Donato-Tan). On August 18, 2014, on the basis of the results of laboratory tests and examinations, Dr. Donato-Tan issued a medical certificate declaring the petitioner permanently and totally disable to perform his work as a seaman.[11]

On February 27, 2015, the LA rendered his Decision dismissing the petitioner's claim for permanent and total disability benefits, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered, [dismissing] the instant complaint for utter lack of merit.
>
> SO ORDERED.[12]

The LA held that there is no reason to deviate from the findings of the company-designated physician that the petitioner is fit to work, especially as the latter's diagnosis is a result of a series of medical examinations, tests, and treatments.[13]

The petitioner appealed to the NLRC, which rendered its Decision on July 10, 2015, reversing and setting aside the decision of the LA and finding the petitioner to be entitled to permanent and total disability benefit, *viz.*:

> WHEREFORE, finding the appeal to be meritorious, the judgment [*a quo*] is REVERSED and SET ASIDE and a NEW ONE entered reading as follows:
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> 1.) Respondents, *in solidum* shall pay in peso equivalent at time of payment US$93,154.00 as disability benefits;
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> 2.) 10% thereof as attorney's fees.

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[11] *Id*. at 36-37.

[12] *Id*. at 38.

[13] *Id*. at 37.

All other claims are dismissed for lack of merit.

SO ORDERED.[14]

In so ruling, the NLRC pointed out the glaring inconsistency in the findings of the company-designated physician. The NLRC noted that while the company-designated physician declared that the petitioner is free from illness, at the same time, he recognized that migraine is chronic and can easily be triggered by external stimuli.[15]

The NLRC also ruled that the petitioner is entitled to permanent and total disability as he suffers from recurrent headache and dizziness for more than 120 days or exactly for a period of 10 months from his repatriation.[16]

The respondents filed a motion for reconsideration of the said decision, but the same was denied by the NLRC in its Resolution dated September 21, 2015.[17]

The respondents then filed a petition for *certiorari* with the CA alleging that the NLRC committed grave abuse of discretion in granting the petitioner permanent and total disability benefits and attorney's fees.

Ruling of the CA

On June 8, 2016, the CA rendered the herein assailed Decision,[18] which granted the petition for *certiorari* filed by the respondents, the *fallo* of which reads:

WHEREFORE, premises considered, the instant petition for *certiorari* is hereby GRANTED. The assailed Decision dated July 10, 2015 and the Resolution dated September 21, 2015 of public respondent [NLRC], Fourth Division, are hereby ANNULLED and

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[14] *Id*. at 40.

[15] *Id*. at 39.

[16] *Id*.

[17] *Id*. at 40.

[18] *Id*. at 34-46.

SET ASIDE. Accordingly, the complaint for permanent and total disability compensation filed by [the petitioner] is DISMISSED.

SO ORDERED.[19]

The CA held that the parties are bound by the provisions of the Philippine Overseas Employment Administration Standard Employment Contract (POEA SEC) in that the company-designated physician's findings and assessment is controlling on the matter of disability or fitness to work of a seafarer.[20]

At any rate, applying the ruling in the case of *Vergara v. Hammonia Maritime Services*,[21] the CA adjudged the petitioner ineligible to permanent and total disability claims. The CA emphasized that the mere lapse of the 120-day period does not automatically entitle the petitioner to his claim particularly because he requires further medical attention and the maximum 240-day period from the time of the petitioner's repatriation has not yet lapsed at the time the company-designated physician issued a final assessment.[22]

Moreover, the CA declared that the NLRC erred in relying fully with the company-designated physician's assessment, as it is settled that the latter's findings are not binding on the labor tribunals and the courts.[23]

The petitioner sought a reconsideration of the Decision dated June 8, 2016, but the CA denied it in its Resolution[24] dated September 21, 2015.

Issues

In the instant petition, the petitioner submits the following issues for this Court's resolution:

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[19] *Id*. at 46.

[20] *Id*. at 41.

[21] 588 Phil. 895 (2008).

[22] *Rollo*, pp. 44-45.

[23] *Id*. at 43.

[24] *Id*. at 40.

WHETHER OR NOT THE CA ERRED IN THE FOLLOWING:

a. WHEN IT RULED THAT THE PETITIONER IS NOT ENTITLED TO PERMANENT AND TOTAL DISABILITY BENEFITS;

b. WHEN IT GAVE SOLE CREDENCE TO THE FINDINGS OF THE PETITIONER'S PERSONAL PHYSICIAN[; and]

c. WHEN IT AWARDED ATTORNEY'S FEES TO THE PETITIONER.[25]

Ruling of the Court

The petitioner entreats that the Court adhere to the findings of his physician that he is afflicted with cardio-vascular disease, a compensable illness under Section 32-A (11) of the POEA SEC. The petitioner submits that he has continuously served PTCI for three years, thus, considering that the illness supervened in the course of his employment, the same is work-related particularly considering the working conditions under which the seaman is exposed to.[26]

In addition, the petitioner argues that labor tribunals are not bound by the medical findings of the company-designated physician and that the seafarer is not precluded from engaging the services of a physician of his own choice to obtain a second medical opinion.[27] Claiming that the company-designated physician abandoned treatment, the petitioner then invites the Court to give more weight to his own physician's finding that he is suffering from cardio-vascular disease which rendered him unable to work for more than 120 days, and therefore, entitled to permanent total disability benefit.[28]

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[25] *Id*. at 18.

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

[27] *Id*. at 23.

[28] *Id*. at 25-27.

For their part, the respondents aver in their Comment that the petitioner was diagnosed and treated for his recurrent headache and dizziness.[29] The respondents narrated that the petitioner commenced his treatment with the company-designated physician on October 8, 2013. On January 21, 2014, prior to the expiration of the 120-day period, the company-designated physician issued a medical report. Therein, the physician stated that the petitioner is still under the care of the Neurologist but is expected to respond to his medications. In the interim, the petitioner was given a disability rating of Grade 10.[30] Thereafter, the petitioner was eventually cleared by the company-designated physician on March 5, 2014, the 148th day of treatment period. Having been cleared from illness within the 240-day period, the petitioner is not entitled to disability claims.[31]

The petition is ***not meritorious***.

Initially, it must be stated that the compensability of the petitioner's illness is a factual issue that is beyond the province of a petition for review on *certiorari*. Nonetheless, the conflicting rulings of the NLRC and the CA, present an exception to the rule and justifies the Court's examination.[32]

Primarily, the mere lapse of 120 days with the petitioner remaining incapacitated to resume his duties and earn a gainful occupation does not automatically entitle him to permanent total disability benefits.

The Court, in the recent case of *Oriental Shipmanagement Co., Inc. v. Ocangas*,[33] clarified that the 120-day rule applies only in cases where the complaint for maritime disability compensation was filed prior to October 6, 2008. Consequently, the succeeding claims, as in the case at bar where the complaint

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[29] *Id*. at 56-57.

[30] *Id*. at 67.

[31] *Id*. at 56-57.

[32] *De Leon v. Maunlad Trans, Inc., et al.*, 805 Phil. 531, 539 (2017).

[33] G.R. No. 226766, September 27, 2017, 841 SCRA 258.

was filed by the petitioner on August 26, 2014, are covered by the 240-day rule.[34]

The determination of the rights of a seafarer for disability compensation, when covered by the 240-day rule, requires a balance in application by Philippine law, the parties' contractual obligations under the POEA SEC and/or Collective Bargaining Agreement, and the pertinent medical findings of the seafarer's condition by his own physician and the company-designated physician.[35] The interplay of these rules has been explained by the Court in *Kestrel Shipping Co. Inc., et al. v. Munar*,[36] which succinctly sets forth the following procedure for compliance under the 240-day rule:

> [T]he seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA [SEC] and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.[37]

Proceeding from the foregoing ruling, with the declaration of the company-designated physician that the petitioner is fit to work, under Section 20-13(3) of the POEA SEC, the seafarer

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[34] *Id.* at 268.

[35] *OSG Shipmanagement Manila, Inc., et al. v. Pellazar*, 740 Phil. 638, 648-649 (2014).

[36] 702 Phil. 717 (2013).

[37] *Id.* at 734.

in case of disagreement, may then consult with his own doctor. In the event of variance in the opinions of the company-designated physician and the seafarer's doctor of choice, the matter may be referred to a third doctor chosen by both parties whose diagnosis shall be final and binding.[38]

Tested against the attendant factual circumstances, the Court finds that in here, the findings issued by the company-designated physician prevails for two reasons: first, on account of the petitioner's breach of his contractual obligations under the POEA SEC; and second, on the basis of the intrinsic merit and reliability of the medical report issued.

Anent the first, it bears to recall that the petitioner was repatriated and initially diagnosed by the company-designated physician on October 6, 2013. From then on until January 20, 2014, the petitioner has been undergoing various tests, consultations, and advised to take medications. On January 21, 2014, prior to the lapse of the 120-day period, the company-designated physician issued a medical report stating that the petitioner needs further medical treatment. On the same report, the company-designated physician gave the petitioner's illness an interim disability assessment of Grade 10. Finally, 150 days from the petitioner's repatriation or on March 5, 2014, the company-designated physician issued a final medical report clearing the petitioner of his illness. It must be noted that up until then, the petitioner has been complaining and was treated of severe headache and dizziness. Five months thereafter, the petitioner consulted with his physician, who then issued a medical report on August 18, 2014, this time, finding the petitioner to be suffering from cardio-vascular disease, and as such is totally and permanently unable to continue with work.

From these undisputed facts, the following may be drawn: *first*, that the company-designated physician complied with the law when he issued a temporary disability rating within the 120-day period and a final assessment of the petitioner's medical status prior to the expiration of the 240-day period; *second*,

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

that the petitioner, aggrieved of the findings issued by the company-designated physician, availed of his rights under the POEA SEC and consulted with his own physician who issued a contrary finding; and *finally*, that despite the conflicting opinions of the two doctors, the matter was not referred to a third doctor as mandated by Section 20-B(3) of the POEA SEC.

The dispute mechanism to determine liability for a disability benefits claim set forth under the POEA SEC is a mandatory procedure which must be complied with by the parties. It is an obligation imposed not only by law, but as well, as a stipulation in the contract signed by the parties. Failure to comply with the aforementioned procedure renders the disability grading and assessment by the company-designated physician conclusive, the latter being the primary person to determine the seafarer's disability or fitness to work.[39]

Here, the company-designated physician rendered his assessment within the specified period. The petitioner, instead of expressing his disagreement to the said findings, consulted a physician of his choice five months thereafter, and then filed a Complaint for permanent total disability benefits on this basis. The petitioner, by pursuing his claim before the labor tribunals without referring the conflicting opinions to a third doctor for final determination, committed a breach of his contractual obligation[40] and renders final upon the Court the assessment by the company-designated physician that the petitioner is fit to work.[41]

Notably, the conflicting opinions of the two physicians as to the type of illness the petitioner is suffering highlights even more the importance of seeking the opinion of a third doctor.

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[39] *OSG Shipmanagement Manila, Inc., et al. v. Pellazar*, *supra* note 35, at 644-645.

[40] *Id*., citing *Phil. Hammonia Ship Agency, Inc., et al. v. Dumadag*, 712 Phil. 507, 521 (2013).

[41] *Jebsens' Maritime, Inc., et al. v. Rapiz*, 803 Phil. 266, 272 (2017); *Vergara v. Hammonia Maritime Services Inc.*, *supra* note 21, 908.

As between the two opinions nonetheless, even setting the mandatory procedure aside, the Court still finds the assessment and the disability rating by the company-designated physician to be more worthy of belief and credence. The Court, in making such conclusion, is particularly mindful of the efforts exerted by the company-designated physician to examine, diagnose, and treat the petitioner. It was the company-designated physician who initially attended to the petitioner after repatriation, the one who referred him to the proper medical specialists, and consistently monitored his progress until he was eventually declared fit to work on March 5, 2014. Ultimately, the certification issued by the company-designated physician is based on medical records obtained after a lengthy and thorough examination of the petitioner. In contrast, the assessment relied upon by the petitioner from his own physician was issued five months after the company-designated physician's assessment and only after one consultation/examination. This brings legitimate doubts as to the accuracy of the diagnosis issued by the petitioner's physician. For these reasons, the Court cannot merely set aside the company-designated physician's findings in lieu of that issued by the petitioner's doctor.[42]

While it is true that the provisions of the POEA SEC must be construed logically and liberally in favor of Filipino seamen in pursuit of their employment on board ocean-going vessels[43] consistent with the State's policy to afford full protection to labor,[44] it does not mean that the Court should automatically rule in favor of the seafarer. The provisions of the POEA SEC must be weighed in accordance with the prescribed laws, procedure, and provisions of contract freely agreed upon by the parties, and with utmost regard as well of the rights of the employers.

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[42] See *Wilhelmsen-Smith Bell Manning, et al. v. Suarez*, 758 Phil. 540, 554 (2015); *Nazareno v. Maersk Filipinos Crewing, Inc., et al.*, 704 Phil. 625, 633 (2013).

[43] *Panganiban v. Tara Trading Shipmanagement Inc., et al.*, 647 Phil. 675, 691 (2010).

[44] 1987 CONSTITUTION, Article XIII, Section 3.

In closing, it must be said that the Court commiserates with the plight of our seafarers who had to sacrifice and endure a lot in order to give their families a better life. Nonetheless, the law and rules are there for a reason. They give order and serve as an equalizing force between the different sectors of society. Thus, it must be respected and followed. While it can be said that the POEA SEC was drafted in order to promote the interest of Filipino workers abroad, the same does not mean that its interpretation and implementation would have to always benefit labor. The goal of every court in every litigation is to render justice. And in this sense, it is not justice to favor labor on this score alone. Neither does this excuses the workers from compliance with their obligations under the contract. The scales of justice tilts in favor of labor only where the evidence presented by both is in an equipoise,[45] and with due consideration to attendant circumstances. When it is clear that it is the employee who failed to meet his freely and lawfully contracted obligation, the Court must not hesitate to rule against them for as long as the same is in accordance with what is due in light of established facts, pertinent law, and relevant jurisprudence.[46]

WHEREFORE, in consideration of the foregoing disquisitions, the instant petition for review on *certiorari* is **DENIED**. The Decision dated June 8, 2016 of the Court of Appeals in CA-G.R. SP No. 143132, and its Resolution dated October 17, 2016, are hereby **AFFIRMED**.

SO ORDERED.

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

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[45] *Grande v. Philippine Nautical Training Colleges*, 806 Phil. 601, 622 (2017).

[46] *Reyes v. Glaucoma Research Foundation, Inc., et al.*, 760 Phil. 779, 794 (2015).

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

THIRD DIVISION

[G.R. No. 228880. March 6, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LINA ACHIENG NOAH,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL TRANSPORTATION OF DANGEROUS DRUGS; THE ESSENTIAL ELEMENT OF THE CRIME IS THE MOVEMENT OF THE DANGEROUS DRUG FROM ONE PLACE TO ANOTHER; ESTABLISHED IN CASE AT BAR.— To sustain a conviction for the crime of illegal transportation of dangerous drugs, the transportation and the identity and integrity of the seized drugs must be proven beyond reasonable doubt. The illegal transportation of dangerous drugs is punished under Section 5 of the Comprehensive Dangerous Drugs Act: x x x The essential element for the crime of illegal transportation of dangerous drugs is the movement of the dangerous drug from one (1) place to another. To establish the accused's guilt, it must be proven that: (1) the transportation of illegal drugs was committed; and (2) the prohibited drug exists. Proof of ownership of the dangerous drugs seized is immaterial. What is important is that the prosecution prove the act of transporting as well as the identity and integrity of the seized drugs. This is because the confiscated drug is the *corpus delicti* of the crime. x x x It must be stressed that the act of transporting illegal drugs is a *malum prohibitum*. Consequently, proof of ownership and intent are not essential elements of the crime. Accused-appellant was apprehended inside the airport upon her arrival from Ethiopia to Manila via Dubai. *Shabu* was found in her possession, contained in seven (7) packs of vacuum-sealed aluminum foil and concealed in a laptop bag inside her luggage. This satisfies the elements of the crime because she was found transporting illegal drugs to the Philippines.

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; THE CHAIN OF CUSTODY ENSURES THAT THERE WOULD BE NO UNNECESSARY DOUBTS CONCERNING THE IDENTITY OF

THE EVIDENCE; FOUR LINKS WHICH MUST BE ESTABLISHED IN THE CHAIN OF CUSTODY; ENUMERATED; PRESENT IN CASE AT BAR.— The chain of custody ensures that there would be no unnecessary doubts concerning the identity of the evidence. Chain of custody is the duly recorded authorized movements and custody of seized items at each stage, from seizure to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized items shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and used in court as evidence, and the final disposition. x x x Section 21 of the Comprehensive Dangerous Drugs Act, as amended by Republic Act No. 10640, provides the standard for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia, spelling out the requirements for custody prior to the filing of a criminal case: x x x Compliance with the chain of custody requirements under Section 21 ensures the integrity of the seized items. In contrast, noncompliance tarnishes the credibility of the *corpus delicti*, on which prosecutions under the Comprehensive Dangerous Drugs Act are based. In *People v. Nandi*, the four (4) links in the chain of custody are established: Thus, the following links should be established in the chain of custody of the confiscated item: *first, the seizure and marking*, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer *to the investigating officer*; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist *for laboratory examination*; and *fourth, the turnover and submission* of the marked illegal drug seized from the forensic chemist *to the court*. When the identity of *corpus delicti* is compromised by noncompliance with Section 21, critical elements of the offense of illegal transportation of dangerous drugs are not proven. This warrants an accused's acquittal. x x x The four links of chain of custody of evidence were proven: (1) Landicho seized and marked the *shabu* obtained from accused-appellant; (2) he turned them over to Agent Fajardo; (3) Agent Fajardo delivered them to Forensic Chemist Arcos; and (4) from the Philippine Drug Enforcement Agency, the drugs were presented in court.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONEN, *J.*:

This resolves an appeal from the Court of Appeals July 29, 2016 Decision[1] in CA-G.R. CR HC No. 07006, affirming the conviction of accused-appellant Lina Achieng Noah (Noah) for violating Article II, Section 5 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002, for the illegal transportation of dangerous drugs.

On April 16, 2012, an Information was filed charging Noah with violation of Article II, Section 5 of Republic Act No. 9165.[2] It read in part:

> That on or about the 24th day of February 2012, in Pasay City, Metro Manila, 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 transport and bring to the Philippines a total of 5,941.9 grams of Methamphetamine Hydrochloride.
>
> CONTRARY TO LAW.[3]

On her arraignment last March 28, 2012, Noah pleaded not guilty to the crime charged. On July 25, 2012, pre-trial was conducted and, afterwards, trial on the merits ensued.[4]

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[1] *Rollo*, pp. 2-19. The Decision was penned by Associate Justice Renato C. Francisco, and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Danton Q. Bueser of the Fourteenth Division, Court of Appeals, Manila.

[2] *Id*. at 3.

[3] CA *rollo*, p. 134.

[4] *Id*.

Customs Examiner Marius Landicho (Landicho) testified that at around 5:23 p.m. on February 24, 2012 at the Ninoy Aquino International Airport Terminal 1, Noah, a Kenyan national who arrived from Kenya via Dubai, approached Lane Number Five (5) of the Customs Arrival Area. He asked her to present her passport and Baggage Declaration.[5]

Landicho then asked her to open her luggage: a black trolley bag, which was three (3) feet tall and less than two (2) feet wide.[6] In it was a smaller bag described as a laptop bag.[7] Upon inspection, Landicho noticed that while the smaller bag was empty, its flap was hard and thick and its sidings were suspiciously padded and had tampered stitches. Noting that it was odd for such a bag to be hard,[8] Landicho asked Noah to follow him to the exclusion room for further examination of her luggage.[9]

In the exclusion room, Landicho examined the bag before: (1) Noah; (2) three (3) airport employees; (3) Bureau of Customs Narcotics Group; (4) agents of the Philippine Drug Enforcement Agency; and (5) other government officers.[10] The inspection revealed seven (7) rectangular packages, wrapped in vacuum-sealed aluminum foil, on which Landicho affixed his initials and signature.

Landicho then prepared an Inventory Report as witnessed by: (1) officers of the Customs Task Force on Dangerous Drugs; (2) Anti-Narcotics Group; (3) Prosecutor Dolores Rillera (Prosecutor Rillera); (4) Julie Fabroa (Fabroa), the airport's media representative; and (5) Barangay Councilor Mel Anthony Bajada (Barangay Councilor Bajada).[11] Landicho then turned over the Inventory Report, along with Noah's personal belongings,

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[5] *Id*. at 86, RTC Decision, and 134.

[6] *Id*.

[7] *Id*. at 134.

[8] *Id*. at 86.

[9] *Id*. at 135.

[10] *Id*. at 87 and 135.

[11] *Id*.

to the Philippine Drug Enforcement Agency and Customs Task Force.[12]

Special Agent I Alejandro R. Noble (Special Agent I Noble), a Customs officer, testified that he went to the arrival area of the Ninoy Aquino International Airport Terminal 1 for an anti-illegal drug operation. There, he saw Noah show Landicho her Customs Declaration and luggage. He added that Noah had been invited to the exclusion room for further examination and interrogation.[13]

In Noah's presence, Special Agent I Noble and Landicho inspected the luggage and found hidden compartments. Inside were compressed foil packs containing white crystalline substance.[14] Upon testing samples using Marquis Reagent No. 2, the white crystalline substance yielded positive for methamphetamine hydrochloride or shabu. Special Agent I Noble added that before Noah's arrest, he asked her if she could understand English. When she said yes, he apprised her of her Miranda rights.[15]

Corroborating Landicho's account, Special Agent I Noble further testified that they conducted an inventory of the seized items in the presence of Noah, an elective official, Prosecutor Rillera, and Fabroa. In addition, pictures showing Noah with Landicho and other witnesses were taken during the field-testing, marking, and inventory.[16]

Agent Adrian Fajardo (Agent Fajardo), a member of the Philippine Drug Enforcement Agency Special Enforcement Service, testified that he brought the seized items to Forensic Chemist Ariane Arcos (Forensic Chemist Arcos) for proper documentation and laboratory examinations. The test results

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[12] *Id*. at 135.

[13] *Id*. at 88 and 135.

[14] *Id*. at 135-136.

[15] *Id*. at 88 and 136. Marquis reagent was misspelled as "marquee reagent" in the RTC Decision.

[16] *Id*. at 88.

showed that the seized items contained *shabu*, with a confirmatory test yielding the same outcome.[17]

In her defense, Noah denied transporting the illegal drugs, claiming that she went to the Philippines for a job opportunity. She added that the luggage was only given to her while she was in her recruiter's office in Cameroon,[18] Central Africa. She allegedly met an unidentified man who, while discussing her travel details, also offered the black trolley bag after commenting that her bag was soiled. He also supposedly helped her transfer all her things from her old bag to the new luggage.[19]

In its January 16, 2014 Decision,[20] the Regional Trial Court found Noah guilty beyond reasonable doubt of the crime charged. It held that the warrantless search and arrest of Noah was "lawful, valid, and effective"[21] because searches done in airport premises fell under consented searches. It found that Noah had known she was in possession of illegal drugs considering that *animus possidendi* is presumed. Moreover, the trial court ruled that the presumption of regularity of duty on the airline personnel's placing of the bag tags at the airport of origin established that Noah was the real owner of the luggage. It ruled that there was compliance with Article II, Section 21 of Republic Act No. 9165.[22]

The dispositive portion of the Judgment read:

WHEREFORE, premises considered, the prosecution, having discharged its bounden duty to prove the guilt of the accused beyond reasonable doubt, the accused, **LINA ACHIENG NOAH**, is hereby found guilty of the offense charged in the Information and is hereby sentenced to suffer a penalty of life imprisonment and to pay a fine of **FIVE HUNDRED THOUSAND PESOS (₱500,000.00)**.

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[17] *Id*. at 89-90 and 136.

[18] Cameroon was misspelled as "Cameroun" in the *rollo*.

[19] CA *rollo*, pp. 136-137.

[20] *Id*. at 85-106. The Decision was penned by Judge Racquelen Abary-Vasquez of Branch 116, Regional Trial Court, Pasay City.

[21] *Id*. at 96.

[22] *Id*. at 95-105.

The Branch Officer-in-Charge is hereby directed to coordinate with, and transmit to the PDEA, the representative samples previously extracted from the confiscated specimens for its proper disposition.

Furnish the Legal and Prosecution Service of the PDEA, the prosecutor, the accused and her counsel, copies of this decision.[23] (Emphasis in the original)

On March 11, 2015, Noah filed an Appeal[24] before the Court of Appeals.

In its July 29, 2016 Decision,[25] the Court of Appeals denied the Appeal and affirmed Noah's conviction:

WHEREFORE, premises considered, the appeal is **DENIED**. The Decision dated 16 January 2014 of Branch 116, Regional Trial Court of Pasay City in Criminal Case No. R-PSY-12-04855-CR is **AFFIRMED**.

SO ORDERED.[26] (Emphasis in the original)

The Court of Appeals held that Noah's act of transporting the seized *shabu* to the Philippines fell under Section 5 of the Comprehensive Dangerous Drugs Act. Moreover, since her act was *malum prohibitum*, its mere commission constituted the offense.[27] It rendered the search valid despite being warrantless, ruling that the operation was a customs search.[28] Further, it agreed with the trial court that the integrity and evidentiary value of the seized drugs were properly preserved.[29]

On August 31, 2016, Noah filed her Notice of Appeal.[30] Subsequently, the records of the case were elevated to this Court for review.

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[23] *Id*. at 105-106.

[24] *Id*. at 55-84.

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

[26] CA *rollo*, pp. 149-150.

[27] *Id*. at 140-141.

[28] *Id*. at 144-145.

[29] *Id*. at 147.

[30] *Id*. at 160-162.

In its February 22, 2017 Resolution,[31] this Court noted the records forwarded by the Courts of Appeal and notified the parties to submit their respective supplemental briefs.

On April 24, 2017, the Office of the Solicitor General, on behalf of the People of the Philippines, filed a Manifestation,[32] stating that it would no longer file a supplemental brief.

On April 26, 2017, accused-appellant filed her Supplemental Brief.[33] She stresses that the chain of custody in handling the evidence against her had gaps, which raise serious doubts on the authenticity of the seized *shabu*. She argues that the integrity and evidentiary value of the packages recovered from her were not preserved.[34] While Landicho testified to marking the seized items, she points out that the records show that the marking was neither immediately made upon seizure nor was it made in her presence.[35]

Accused-appellant concedes that compliance with Section 21(a) of the Comprehensive Dangerous Drugs Act's Implementing Rules and Regulations may be relaxed if the State can explain reasonable lapses in its handling of evidence. Here, however, the prosecution neither recognized any lapse in the disposition of the seized items nor offered any explanation for such lapse. Hence, she argues that the guidelines under Section 21(a) cannot be relaxed,[36] and that this broken chain of custody is enough to raise reasonable doubt on her guilt.

For its part, the Office of the Solicitor General counters that the prosecution sufficiently proved the identity and integrity of the items seized from accused-appellant. It points out that based on the records, the chain of custody was followed: packs of

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[31] *Rollo*, pp. 25-26.

[32] *Id*. at 27-31.

[33] *Id*. at 32-38.

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

[35] *Id*.

[36] *Id*. at 34.

aluminum foil were found when her luggage was examined in the presence of airport employees, Customs staff, and media representatives. These were documented in the Inventory Report signed by the witnesses, and later turned over to the Philippine Drug Enforcement Agency and Customs Task Force. The Philippine Drug Enforcement Agency sent the seized items to Forensic Chemist Arcos for examination and, finally, to the trial court for identification and presentation.[37]

The Office of the Solicitor General notes that even if Section 21 of the Comprehensive Dangerous Drugs Act had not been complied with, it is not fatal as long as the integrity and evidentiary value of the confiscated items were preserved. It claims that the sachets of *shabu* were marked, identified, offered, and admitted in evidence properly.[38]

The principal issue for this Court's resolution is whether or not accused-appellant Lina Achieng Noah's guilt for violation of Section 5 of the Comprehensive Dangerous Drugs Act was proven beyond reasonable doubt. Subsumed here is the issue of whether or not the prosecution established the unbroken chain of custody of the drug seized from accused-appellant.

The Appeal must be dismissed.

To sustain a conviction for the crime of illegal transportation of dangerous drugs, the transportation[39] and the identity and integrity of the seized drugs must be proven beyond reasonable doubt.[40]

The illegal transportation of dangerous drugs is punished under Section 5 of the Comprehensive Dangerous Drugs Act:

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[37] CA *rollo*, p. 124.

[38] *Id*. at 124-125.

[39] *People v. Dimaano*, 780 Phil. 586, 603 [Per J. Leonen, Second Division] citing *People v. Laba*, 702 Phil. 301 (2013) [Per J. Perlas-Bernabe, Second Division].

[40] *Id*. citing *People v. Guzon*, 719 Phil. 441 (2013) [Per J. Reyes, First Division].

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.

The essential element for the crime of illegal transportation of dangerous drugs is the movement of the dangerous drug from one (1) place to another.[41] To establish the accused's guilt, it must be proven that: (1) the transportation of illegal drugs was committed; and (2) the prohibited drug exists.[42]

Proof of ownership of the dangerous drugs seized is immaterial. What is important is that the prosecution prove the act of transporting as well as the identity and integrity of the seized drugs.[43]

This is because the confiscated drug is the *corpus delicti* of the crime.[44] Since it is not readily identifiable by sight or touch and may be easily tampered with, its preservation is paramount.[45] The chain of custody ensures that there would be no unnecessary doubts concerning the identity of the evidence.[46]

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[41] *People v. Asislo*, 778 Phil. 509 (2016) [Per J. Peralta, Third Division].

[42] *People v. Watamama*, 692 Phil. 102, 106 (2012) [Per J. Villarama, Jr., First Division].

[43] *People v. Mariacos*, 635 Phil. 315 (2010) [Per J. Nachura, Second Division].

[44] *People v. Casacop*, 755 Phil. 265, 276 (2015) [Per J. Leonen, Second Division].

[45] *People v. Guzon*, 719 Phil. 441 (2013) [Per J. Reyes, First Division].

[46] *People v. Ismael*, 806 Phil. 21, 29 (2017) [Per J. Del Castillo, First Division] citing *Fajardo v. People*, 691 Phil. 752 (2012) [Per J. Perez, Second Division].

Chain of custody is the duly recorded authorized movements and custody of seized items at each stage, from seizure to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized items shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and used in court as evidence, and the final disposition.[47]

In *Mallillin v. People*:[48]

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness. The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substitution and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering – without regard to whether the same is advertent or otherwise not – dictates the level of strictness in the application of the chain of custody rule.[49] (Citations omitted)

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[47] Dangerous Drugs Board Regulation No. 1, (2002), Sec. 1(b).

[48] 576 Phil. 576 (2008) [Per *J*. Tinga, Second Division].

[49] *Id*. at 587-589.

Section 21 of the Comprehensive Dangerous Drugs Act, as amended by Republic Act No. 10640, provides the standard for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia, spelling out the requirements for custody prior to the filing of a criminal case:

SECTION 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance 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 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.[50]

Compliance with the chain of custody requirements under Section 21 ensures the integrity of the seized items. In contrast, noncompliance tarnishes the credibility of the *corpus delicti*, on which prosecutions under the Comprehensive Dangerous Drugs Act are based.[51]

In *People v. Nandi*,[52] the four (4) links in the chain of custody are established:

> Thus, the following links should be established in the chain of custody of the confiscated item: *first, the seizure and marking*, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer *to the investigating officer*; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist *for laboratory examination*; and *fourth, the turnover and submission* of the marked illegal drug seized from the forensic chemist *to the court*.[53] (Emphasis supplied, citation omitted)

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[50] Rep. Act No. 9165 (2002), Secs. 21(1), (2), and (3).

[51] *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].

[52] 639 Phil. 134 (2010) [Per J. Mendoza, Second Division].

[53] *Id*. at 144-145.

When the identity of *corpus delicti* is compromised by noncompliance with Section 21, critical elements of the offense of illegal transportation of dangerous drugs are not proven. This warrants an accused's acquittal.[54]

Here, the prosecution proved beyond reasonable doubt that accused-appellant was indeed transporting the illegal drugs. Although she had initially denied ownership of the luggage and illegal drugs found, accused-appellant's claim is disputed by the evidence on record.

In the ordinary course of business, check-in officers attach airline bag tags to the owner's check-in luggage at the airport of origin. As appreciated by both the trial court and the Court of Appeals, the luggage had a bag tag attached to its handle clearly bearing the name "Lina Achieng Noah." Accused-appellant exercised control and took possession of the luggage and its corresponding claim stub. It must be stressed that the act of transporting illegal drugs is a *malum prohibitum*. Consequently, proof of ownership and intent are not essential elements of the crime.[55]

Accused-appellant was apprehended inside the airport upon her arrival from Ethiopia to Manila via Dubai. *Shabu* was found in her possession, contained in seven (7) packs of vacuum-sealed aluminum foil and concealed in a laptop bag inside her luggage. This satisfies the elements of the crime because she was found transporting illegal drugs to the Philippines.

The chain of custody was also established by the prosecution.

The four links of chain of custody of evidence were proven: (1) Landicho seized and marked the *shabu* obtained from accused-appellant; (2) he turned them over to Agent Fajardo;

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[54] *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].

[55] *People v. Del Mundo*, 418 Phil. 740 (2001) [Per J. Ynares-Santiago, First Division].

(3) Agent Fajardo delivered them to Forensic Chemist Arcos; and (4) from the Philippine Drug Enforcement Agency, the drugs were presented in court.

The Court of Appeals summarized the sequence of events showing that the *shabu* seized from accused-appellant was the very same *shabu* tested and later identified in court:

1. Suspicious of the unusually sewed bag of appellant, Landicho asked her to follow him at the exclusion room for further examination of her luggage;
2. While inside the exclusion room, Landicho further examined the bag in the presence of appellant, Teresita Roque (Deputy Collector for Passenger Services), Roxanne Antonio (Supervisor), Nelson Lavilles (Warehouseman), other Customs staff and some media men;
3. *Upon discovery of the packages of shabu, Landicho affixed his initials "MRL", signature and date thereon;*
4. After marking, Landicho prepared the Inventory Report dated 24 February 2012. This was witnessed by the representatives of Customs Task Force on Dangerous Drugs, Narcotics Group and the Department of Justice;
5. Landicho turned over the Inventory Report together with appellant's personal belongings to the PDEA and Customs Task Force[;]
6. SA Noble then asked appellant if she can understand English, to which she replied in positive. He apprised appellant of her constitutional rights and thereafter effected arrest;
7. Agent Fajardo of PDEA turned over the luggage and bag to Forensic Chemist Ariane Arcos;
8. After proper documentation, Arcos conducted physical and chemical examinations;
9. Arcos then prepared Chemistry Report No. PDEA-DD012-067 dated 25 February 2012;
10. When the specimen subject of her examination was brought to court, Arcos identified it to be the same sample she took; and

11. Landicho positively identified it to be the one seized from appellant.[56] (Emphasis supplied, citations omitted)

This Court is convinced that the apprehending officers have complied with the requirements under Section 21. Based on the records, there was an unbroken chain of custody of the seized *shabu* from the time of its discovery up to its presentation in court. The prosecution established that in the exclusion room, Landicho continued inspecting the luggage before airport officers, government agents, and accused-appellant herself. There were even pictures showing that accused-appellant was present during the field test, marking, and inventory of the seized items.

Contrary to accused-appellant's claim, Landicho properly marked the seized *shabu*. Both the Court of Appeals and the trial court found that the Inventory Report had confirmed that members of the Customs Task Force, Anti-Narcotics Group, Fabroa, Barangay Councilor Bajada, and Prosecutor Rillera witnessed the marking and inventory proceedings.[57] The testimonies of Landicho, Special Agent I Noble, and Agent Fajardo corroborated the contents of the Inventory Report. Against all these, accused-appellant cannot possibly claim the opposite.

Clearly, there were no lapses in the disposition and handling of the seized *shabu* to even prompt the relaxation of the procedure under Section 21. The prosecution complied with the standard in handling the evidence and in establishing the chain of custody. Indeed, it proved beyond reasonable doubt that accused-appellant is guilty of illegally transporting 5,941.9 grams of *shabu* as penalized under Section 5 of the Comprehensive Dangerous Drugs Act.

WHEREFORE, the Appeal is **DISMISSED**. The Court of Appeals July 29, 2016 Decision in CA-G.R. CR HC No. 07006 is **AFFIRMED**.

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[56] CA *rollo*, pp. 148-149. In item no. 4, the Court of Appeals left out Julie Fabroa, the airport's media representative, and Barangay Councilor Mel Anthony Bajada.

[57] *Id.* at 148.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 229205. March 6, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDUARDO CATINGUEL *y* VIRAY,** *accused-appellant.*

SYLLABUS

CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY; FOUR LINKS TO BE ESTABLISHED IN THE CHAIN OF CUSTODY OF THE DANGEROUS DRUGS.— The four critical links that must be established in the chain of custody of the dangerous drugs are as follows: (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. x x x Evaluated against the abovementioned provisions, the evidence adduced by the prosecution instantly reveals discrepancies. First, the marking of the seized item by the apprehending officer was not immediately done at the place of arrest. x x x Another deviation

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* Designated additional Member per Special Order No. 2624 dated November 28, 2018.

from the rule involving the persons required by law to witness the taking of inventory and photographs was also apparent. x x x Meanwhile, the second link was similarly not complied with. The apprehending officer was supposed to turn over the seized item to the investigating officer. However, the item remained in the right hand of PO1 Lamsen. x x x Going further to the third link, PCI Todeño, the forensic chemist, claimed that she personally received the item from PO1 Lamsen. However, PO1 Lamsen, who testified much later than PCI Todeño, declared that he gave the item for laboratory examination to PO1 Daus. x x x The fourth link was likewise not established. The turnover and submission of the seized item from the forensic chemist to the court was not clearly shown since the testimony of the evidence custodian was not presented. x x x It bears restating that "[t]he illegal drugs being the *corpus delicti*, it is essential for the prosecution to establish with moral certainty and prove beyond reasonable doubt that the illegal drugs presented and offered in evidence before the trial court are the same illegal drugs lawfully seized from the accused, and tested and found to be positive for dangerous substance." The prosecution was clearly amiss in showing that the chain of custody was complied with in the present case which gives this Court no other course of action but to reverse the assailed rulings and acquit 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 March 4, 2016 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07038 which

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

[2] CA *rollo*, pp. 83-93; penned by Associate Justice Carmelita Salandanan Manahan and concurred in by Associate Justices Japar B. Dimaampao and Franchito N. Diamante.

affirmed the August 26, 2014 Decision[3] of the Regional Trial Court (RTC) of Lingayen, Pangasinan, Branch 69, in Criminal Case No. L-10004.

The Facts

Accused-appellant Eduardo Catinguel *y* Viray was charged with violation of Section 5,[4] Article II of Republic Act (RA) No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 in an Information[5] which reads:

> That on or about 2:30 in the afternoon of March 3, 2014, in Navato St., Brgy. Poblacion, Bugallon, Pangasinan, and within the jurisdiction of the Honorable Court, the above-named accused, did, then and there, willfully, unlawfully and feloniously sell one (1) heat-sealed transparent plastic sachet containing marijuana leaves, a dangerous drug, to PO1 Adhedin C. Lamsen worth PHP 100.00 without lawful authority to do so.
>
> Contrary to Sec. 5, Article II of R.A. 9165.[6]

Arraignment pushed through and accused-appellant pleaded not guilty.[7] Pretrial was conducted and terminated, after which trial ensued.[8]

Version of the Prosecution

The evidence for the prosecution included the testimony of Police Officer 1 (PO1) Adhedin C. Lamsen (Lamsen) who claimed that he was assigned at Bugallon Police Station, Bugallon,

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[3] Records, pp. 64-73; penned by Presiding Judge Loreto S. Alog, Jr.

[4] **Section 5.** *Sale x x x of Dangerous Drugs x x x* – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, x x x any dangerous drug, x x x regardless of the quantity and purity involved, x x x.

[5] Records, p. 1.

[6] *Id*.

[7] *Id*. at 22.

[8] *Id*. at 31-32.

Pangasinan.[9] On March 3, 2014, at 2:00 p.m., he received information that a certain Brazil was allegedly selling marijuana on Navato St.[10] PO1 Lamsen was dispatched in a buy-bust operation as a poseur-buyer, along with PO3 Jonathan Rico (Rico) who served as the arresting officer, as well as the confidential informant.[11]

When the team proceeded to the target area,[12] PO3 Rico positioned himself about three (3) to five (5) meters away, while PO1 Lamsen and the confidential informant approached accused-appellant.[13] Upon being assured by the confidential informant that PO1 Lamsen was not a police asset, and having been informed that PO1 Lamsen wanted to buy marijuana, accused-appellant handed to PO1 Lamsen one (1) transparent heat-sealed plastic sachet who, in turn, handed the marked money[14] — five 20-peso bills with serial numbers FR819295, KY533953, FP637402, NY808726, and AR673195 marked "ACL1" to "ACL5" on the rightmost top corner.[15]

After receipt of the plastic sachet from accused-appellant, PO1 Lamsen gave the pre-arranged signal to PO3 Rico who immediately rushed to their location. PO3 Rico introduced himself and PO1 Lamsen as police officers and informed the accused-appellant of his rights in the language known to him. Thereafter, PO3 Rico arrested accused-appellant and recovered from him the marked money.[16]

PO1 Lamsen kept the plastic sachet in his possession en route to the police station. Thereat, the plastic sachet and the

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[9] TSN, May 13, 2014, p. 3.

[10] *Id*. at 4.

[11] *Id*. at 6.

[12] *Id*. at 8.

[13] *Id*. at 9.

[14] *Id*. at 10-11.

[15] Records, p. 18.

[16] TSN, May 13, 2014, pp. 12-14.

marked money were marked, inventoried, and photographed, in the presence of accused-appellant, Emil Toledo (Toledo) and Orlando Peralta (Peralta), who were the representatives from the media and the Department of Justice (DOJ), respectively.[17] PO1 Lamsen, PO3 Rico, Toledo, and Peralta thereafter signed the Receipt of Property Seized.[18] PO1 Lamsen explained that he did not mark the seized items at the place of arrest since he feared that two or three of accused-appellant's friends who were in the area would cause trouble following the arrest of accused-appellant.[19] On cross-examination, PO1 Lamsen further elaborated that he kept the plastic sachet for about an hour, from apprehension up to the time of arrival of the representatives from the media and DOJ at the police station.[20] He also stated that the intelligence operatives at the police station invited barangay officials during the briefing via telephone calls but nobody responded to their invitation.[21]

PO1 Lamsen, together with PO3 Rico and accused-appellant, brought the request[22] for a laboratory examination, as prepared by Senior Police Officer 1 (SPO1) Jojit Ocromas (Ocromas) and signed by Police Chief Inspector (PCI) Dominick S. Poblete (Poblete), as well as the sachet containing white substance, to the Pangasinan Police Provincial Office in Lingayen, Pangasinan, which were both received by PO1 Emilson Daus*.[23]

Forensic chemist, PCI Myrna C. Malojo-Todeño (PCI Todeño), on the other hand, claimed that she personally received the sachet containing white substance from PO1 Lamsen.[24] She

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[17] *Id*. at 15.

[18] Records, p. 14.

[19] TSN, May 13, 2014, pp. 21 and 28.

[20] TSN, July 3, 2014, pp. 6-7.

[21] *Id*. at 7-8.

[22] Records, p. 15.

[*] Also referred to as PO1 Daos in some parts of the records.

[23] TSN, May 13, 2014, pp. 18-19.

[24] TSN, April 15, 2014, p. 6.

conducted a qualitative examination on the item containing 2.304 grams of suspected dried marijuana which yielded a positive result for the presence of marijuana.[25] PCI Todeño later sealed the sachet with a masking tape, put markings thereon, and turned it over to the evidence custodian, Elmer G. Manuel (Manuel), who in turn received it and placed "EGM" thereon.[26] PCI Todeño thereafter issued Chemistry Report No. D-102-2014L[27] dated March 3, 2014.

The testimonies of SPO1 Ocromas and PO3 Rico were dispensed with in light of the stipulation that they would only corroborate the testimony of PO1 Lamsen.[28]

Version of the Defense

The defense presented the lone testimony of accused-appellant who denied the allegation. He claimed that on that day, he was plying his route as a tricycle driver.[29]After his passenger got off on Navato St., two police officers in civilian attire approached him and invited him to the police station for questioning.[30] He voluntarily went with them thinking that it would only take a while.[31] At the police station, accused-appellant was bodily searched and when nothing was found, the Chief of Police brought out marijuana and asserted that it belonged to accused-appellant.[32]

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[25] *Id*. at 3.

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

[27] Records, p. 36.

[28] *Id*. at 48 (Order dated May 29, 2014) and 53 (Order dated June 17, 2014).

[29] TSN, July 24, 2014, p. 3.

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

[31] *Id*. at 6.

[32] *Id*. at 6-8.

Ruling of the Regional Trial Court

The trial court found accused-appellant guilty in a Decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, the accused is hereby found guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165 and is accordingly sentenced to suffer the penalty of life imprisonment, together with such accessory penalties provided for in the law, and to pay a fine of ₱500,000.00.
>
> The sachet of marijuana subject of this case is confiscated in favor of the government to be dealt with as the law directs.
>
> SO ORDERED.[33]

Accused-appellant filed his appeal assailing his conviction.[34] In his Brief,[35] he imputed error on the trial court in finding him guilty despite failure of the prosecution to prove a valid buy-bust operation and of the police officers to comply with the requirements of RA 9165 and its Implementing Rules and Regulations (IRR).[36] He claimed that the marking of the seized item was not done at the place of arrest despite lack of proof that the people thereat posed a threat to security.[37] Second, he assailed the absence of a local elected official during the marking, inventory, and taking of photographs.[38] Third, he argued that the chain of custody was not unbroken since PO1 Daus who received the seized item from PO1 Lamsen; Manuel, who received the seized item from the forensic chemist for safekeeping until it was presented in court; and the unidentified person who turned over the seized item to the court, were all not presented in court.[39] Finally, he bewailed that his denial was not given

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[33] Records, p. 73.

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

[35] *Id*. at 23-37.

[36] *Id*. at 29.

[37] *Id*. at 36.

[38] *Id*. at 35.

[39] CA *rollo*, pp. 32-33.

credence in light of the reality that in most cases, denial is the only plausible defense available to an innocent person.[40]

The Office of the Solicitor General (OSG) filed the Plaintiff-Appellee's Brief[41] for the People, insisting that the prosecution proved beyond reasonable doubt that accused-appellant was guilty of violating Section 5 of RA 9165.[42] It argued that the integrity and evidentiary value of the seized item were properly preserved and there was no break in the chain of custody of the seized item.[43] It likewise claimed that the defense of denial cannot prevail over the positive testimonies of the prosecution witnesses.[44]

Ruling of the Court of Appeals

The appellate court affirmed the ruling of the trial court.[45] It held that the prosecution was able to preserve the integrity and evidentiary value of the marijuana seized from accused-appellant and there was substantial compliance with the requirements of the law.

Hence, the present appeal.[46]

After being required to file supplemental briefs if they so desired,[47] the parties instead submitted Manifestations[48] in which they stated that they were adopting their Briefs submitted earlier before the appellate court and were dispensing with the filing of Supplemental Briefs.

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[40] *Id*. at 36.

[41] *Id*. at 53-76.

[42] *Id*. at 58.

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

[44] *Id*. at 73.

[45] *Id*. at 83-93.

[46] *Id*. at 102-104.

[47] *Rollo*, pp. 18-19.

[48] *Id*. at 20-23 and 26-28.

Our Ruling

There is merit in the appeal.

The failure of the police officers to observe the rule on the chain of custody of the seized item compels this Court to reverse the assailed rulings and acquit accused-appellant and clear him from the charge.

Mallillin v. People[49] elaborates on the chain of custody in this wise:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[50]

The four critical links that must be established in the chain of custody of the dangerous drugs are as follows: (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.[51]

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[49] 576 Phil. 576 (2008).

[50] *Id*. at 587.

[51] *People v. Macud*, G.R. No. 219175, December 14, 2017.

Section 21 of RA 9165 provides:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice, 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

Section 21 (a) of the IRR of the same law additionally prescribes as follows:

SECTION 21. *Custody and Disposition of Confiscated, Seized and/ or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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

> photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items; x x x

Evaluated against the abovementioned provisions, the evidence adduced by the prosecution instantly reveals discrepancies.

First, the marking of the seized item by the apprehending officer was not immediately done at the place of arrest. PO1 Lamsen explained that he did not mark the seized item at the place of arrest since he feared that accused-appellant's friends who were in the area would cause trouble following the arrest of accused-appellant.[52] This excuse, however, proved flimsy after further questioning by the court, as follows:

> Q You said earlier Mr. Witness, that you did not [immediately mark] the seized item from the accused because you were afraid that trouble might [ensue], did you say that a while ago?
> A Yes, [Y]our Honor.
>
> Q What made you say so? x x x
> A Because some of his friends, [Y]our Honor, [were] there.
>
> Q How many of them?
> A About two or three, [Y]our Honor.
>
> Q Did they manifest any actuation for you to think that they would cause trouble?
> A Yes, [Y]our Honor.
>
> Q What?
> A In their action, [Y]our Honor.
>
> Q What actions did they manifest?
> A [They were murmuring something], [Y]our Honor.

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[52] TSN, May 13, 2014, pp. 21 and 28.

Q But you were with another [p]olice [o]fficer?
A Yes, [Y]our Honor.

Q [PO3] Rico?
A Yes, [Y]our Honor.

Q Did you have your service firearm that time?
A Yes, [Y]our Honor.

Q So [your] possession of your firearm [did not make you feel secure]?
A We have not [thought] of that, [Y]our Honor.[53]

Another deviation from the rule involving the persons required by law to witness the taking of inventory and photographs was also apparent. On cross examination, counsel for accused-appellant elicited the following from PO1 Lamsen:

Q You x x x called for Emil Toledo, the media, only after the accused was arrested by your team?
A Yes, sir.

Q So, it was only when the accused was arrested and brought to the [p]olice [s]tation, that you called for the representative of the media x x x is that correct?
A Yes, sir.

Q That is also [true] for the representative of the DOJ x x x [he] came only after the accused was already brought to the [p]olice [s]tation?
A Yes, sir.

x x x x x x x x x

Q You were able to invite x x x [a] representative of the media and [a] representative of the DOJ. But you did not invite any [member] of the *barangay* council of Poblacion, Aguilar, Pangasinan, is that correct?
A They were invited but none of them came/[arrived], sir.

Q Who invited the *barangay* officials, x x x?
A Our Intelligence Operatives, sir.

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

Q How did they invite them?
A Through a telephone call, sir.

Q And how did you know that he made such invitation to the *barangay* officials of Poblacion, Pangasinan?
A That was already taken [up] during the briefing.

Q You did not personally hear him [make] the call, you merely assumed that he made the call because that was delegated to him as his task during the briefing?
A Yes, sir.

Q But when no one from the *barangay* officials of Poblacion, Bugallon, Pangasinan arrived, you did not go directly to the office of the *barangay* captain of Poblacion, Pangasinan, despite [its] proximity to the [p]olice [s]tation, you did not do that anymore?
A No more, sir.[54]

Meanwhile, the second link was similarly not complied with. The apprehending officer was supposed to turn over the seized item to the investigating officer. However, the item remained in the right hand of PO1 Lamsen.

Q Where was the subject item when you went to the [p]olice [s]tation together with the suspect?
A Still in my right hand, sir.

Q Still in your possession?
A Yes, sir, in my possession.[55]

x x x x x x x x x

Q Mr. [W]itness, what else was done or prepared at the [p]olice [s]tation?
A I turned over the marijuana to the Chief Investigator but still in my possession, sir.

Q When you said turned over but still in your possession, what do you mean [by that]?
A I'm still [holding] it, sir.

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[54] TSN, July 3, 2014, pp. 5-8.

[55] TSN, May 13, 2014, p. 15.

Q How can you turn it over when you're still [holding] the item?
A I'm still [holding] it, sir.

Q So, what do you mean exactly when you said you turned it over? What did you do when you turn it over?
A I told them, [Y]our Honor, that I have the plastic [heat-sealed] marijuana, [Y]our Honor.

Q You [showed] it to the investigator?
A Yes, [Y]our Honor, I showed it.

Q But you [remained] in possession of the item?
A Yes, [Y]our Honor.[56]

The failure of the apprehending officer to turn over the seized item to the investigating officer was elaborated upon on cross examination as follows:

Q So, while waiting for Emil Toledo and Orlando Peralta, to whom did you indorse the pieces of evidence allegedly obtained from the accused?

A It is in my hands but I [told] the [i]nvestigator if they can hold it, but they said "no". They refused to receive the evidence because they said, it's only me who will hold that.[57]

Going further to the third link, PCI Todeño, the forensic chemist, claimed that she personally received the item from PO1 Lamsen.[58] However, PO1 Lamsen, who testified much later than PCI Todeño, declared that he gave the item for laboratory examination to PO1 Daus.[59] PO1 Lamsen recounted as follows:

Q When you were at the Crime [Laboratory what did you do with the letter request together with the plastic sachet of marijuana?
A I handed it to PO1 Daos, sir.

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[56] *Id*. at 17-18.

[57] TSN, July 3, 2014, p. 8.

[58] TSN, April 15, 2014, p. 6.

[59] TSN, May 13, 2014, p. 19.

x x x x x x x x x

Q Where is the evidence that it was this PO1 Daos who received it?
A This, sir.[60]

The document referred to was the request for laboratory examination which was stamped received by "PCI Todeño/ PO1 Daus."[61]

The fourth link was likewise not established. The turnover and submission of the seized item from the forensic chemist to the court was not clearly shown since the testimony of the evidence custodian was not presented. PCI Todeño testified as follows:

Q Madam Witness, after you have conducted the examination over the said plastic sachet of marijuana leaves, what did you do?
A After putting my markings I turned [it] over to the Evidence Custodian for safekeeping, sir.

Q Did you turn [it over] as it is when it was indorsed to you by PO1 Adhedin Lamsen?
A No, sir, the specimen was already sealed with masking tape bearing my markings and placed inside a paper envelope.

Q So you mean after examination, you [had] the said plastic sachet sealed with a masking tape and again you put [this] in this improvised envelope?
A Yes, sir, that is actually the container of the plastic sachet.

Q And after putting it here, what did you do afterwards?
A I turned [it] over to the Evidence Custodian for safekeeping after sealing the improvised paper envelope, sir.

Q You said you turned it over and there is a subpoena issued to you to bring the same plastic sachet of marijuana leaves, did you bring it here before this Honorable Court?
A Yes, sir.

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[60] *Id*. at 19.

[61] Records, p. 16.

Q From whom did you secure that since you have already indorsed that to your Evidence Custodian?
A [From] the same person, the Evidence Custodian, sir.

Q Is this the one you are saying?
A Yes, sir.

Q How sure are you that [the one that] you [had] indorsed x x x and [the one that was] turned over x x x again to you [was one and the same]?
A I have placed my markings in front of the paper, sir.

Q For what purpose is this [marking] or signature all about?
A The markings [pertain] to the case or the identity of the specimen and my signature serves as tamper proof sealed on the improvised envelope.

Q So that it will not be adulterated, is that what you are trying to say?
A Yes, sir.

Q And you said it was indorsed to your Custodian? Is there any proof that indeed it was indorsed to your Custodian?
A Yes, sir. He put his initial[s] on the improvised envelope.

Q What initials?
A EGM, sir.

Q Stands for?
A Elmer G. Manuel.[62]

PCI Todeño's testimony was clear that the evidence custodian took the item. However, the custodian's testimony was never offered in the course of the trial. There was also no stipulation that the evidence custodian preserved the integrity and evidentiary value of the seized item.

It bears restating that "[t]he illegal drugs being the *corpus delicti*, it is essential for the prosecution to establish with moral certainty and prove beyond reasonable doubt that the illegal drugs presented and offered in evidence before the trial court are the same illegal drugs lawfully seized from the accused,

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[62] TSN, April 15, 2014, pp. 4-5.

and tested and found to be positive for dangerous substance."[63] The prosecution was clearly amiss in showing that the chain of custody was complied with in the present case which gives this Court no other course of action but to reverse the assailed rulings and acquit accused-appellant.

WHEREFORE, the appeal is **GRANTED**. The March 4, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 07038 which affirmed the August 26, 2014 Decision of the Regional Trial Court of Lingayen, Pangasinan, Branch 69, in Criminal Case No. L-10004, is **REVERSED and SET ASIDE**.

Accused-appellant Eduardo Catinguel *y* Viray 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 of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director 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.

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[63] *People v. Mola*, G.R. No. 226481, April 18, 2018.

THIRD DIVISION

[G.R. No. 233520. March 6, 2019]

ROICE ANNE F. FOX, *petitioner, vs.* **THE PHILIPPINE STATISTICS AUTHORITY and THE OFFICE OF THE SOLICITOR GENERAL,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL PROCEEDINGS; CORRECTION OF ENTRY IN THE CIVIL REGISTRY; VENUE; THE PETITION MUST BE FILED WITH THE REGIONAL TRIAL COURT OF THE PROVINCE WHERE THE CORRESPONDING CIVIL REGISTRY IS LOCATED.—** [A] petition for the cancellation or correction of any entry concerning the civil status of persons which has been recorded in the civil register may be filed with the RTC of the province where the corresponding civil registry is located. It bears stressing that Rule 108 is a special proceeding for which specific rules apply. x x x Given that Rule 108 pertains to a special proceeding, the specific provisions stated thereunder, particularly on venue, must be observed in order to vest the court with jurisdiction.

2. **ID.; ID.; ID.; WHERE THE PETITION LIKEWISE FAILED TO IMPLEAD THE CIVIL REGISTRAR AND ALL PERSONS WHO MAY HAVE INTEREST IN THE CORRECTION SOUGHT, THE PETITION IS PROPERLY DISMISSED FOR LACK OF JURISDICTION.—** [T]he petition likewise failed to comply with other jurisdictional requirements such as impleading the civil registrar and all persons who may have a claim or interest in the correction sought. The local civil registrar is an indispensable party for which no final determination of the case can be reached. x x x The inescapable consequence of the failure to implead the civil registrar is that the RTC will not acquire jurisdiction over the case or, if proceedings were conducted, to render the same a nullity. x x x In view of the defects in the filing of the petition, the RTC of Davao City cannot be faulted in dismissing the same on the ground of lack of jurisdiction.

APPEARANCES OF COUNSEL

Remie Calatrava for petitioner.
Office of the Solicitor General for respondents.

D E C I S I O N

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

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by Roice Anne F. Fox (petitioner), assailing the Orders dated March 24, 2017[1] and July 24, 2017[2] of the Regional Trial Court (RTC), Branch 54 of Davao City, which dismissed outright her petition for correction of entry on the ground of lack of jurisdiction.

Antecedent Facts

On October 29, 2012, petitioner married Thomas Kenneth K. Fox (Thomas), a Canadian citizen, in a ceremony held at the Grand Regal Hotel in Lanang, Davao City. Right after their union, they flew to Thomas's hometown in Weyburn, Saskatchewan, Canada where they have decided to settle and raise a family. Not long thereafter, the petitioner conceived and gave birth to a baby girl, whom they named Zion Pearl Fox (Zion), on June 27, 2015. The fact of birth of the petitioner's daughter was duly registered at the Registrar's Office in Regina Saskatchewan, Canada, which issued the corresponding birth certificate. In the said certificate, the petitioner's minor daughter's birthdate was correctly stated as June 27, 2015. Thereafter, in October 2015, her daughter was issued a Canadian passport which also properly reflected the exact date of birth of the child.[3]

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[1] *Rollo*, pp. 8-9.

[2] *Id*. at 6-7.

[3] *Id*. at 16-17.

On June 7, 2016, considering that the petitioner's daughter was born outside of the Philippines, the Philippine Consulate Office (PCO) in Calgary, Alberta submitted a Report of Birth[4] of the child to the national office of the Philippine Statistics Authority (PSA) in Manila. Unfortunately, through oversight or mistake, the PCO erroneously indicated the child's birthdate as June 27, 2016, instead of June 27, 2015, in the said Report of Birth. The petitioner brought the said discrepancy to the attention of the concerned officials of the PCO which, instead of taking immediate action, advised her to file a petition before the proper court in the Philippines for the correction of entry in the Report of Birth of her daughter.[5]

Ruling of the RTC

On January 17, 2017, the petitioner filed before the RTC of Davao City, where she was a resident, a Petition[6] entitled "*In the Matter of the Petition of Roice Anne F. Fox to Correct in the Report of Birth under Registration Number 2016-124030 the Year of Birth of Her Minor Daughter Zion Pearl F. Fox From June 27, 2016 to June 27, 2015*," which was docketed as SP Case No. R-DVO-17-00181-SP. In an Order[7] dated March 24, 2017, however, the RTC *motu proprio* dismissed the petition on the ground of lack of jurisdiction. The pertinent portions of the order read, thus:

> Acting on the petition, this court cites Section 1 of Rule 108 of the Rules of Civil Procedure which provides for the Cancellation or Correction of Entries in the Civil Registry, as follows:
>
> Section 1, Rule 108
>
> "Any person interested in any act, event, order, or decree concerning the civil status of persons which has been recorded

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[4] *Id*. at 32.

[5] *Id*. at 17.

[6] *Id*. at 24-27.

[7] *Id*. at 8-9.

in the civil register, may file a verified petition for the cancellation or correction of any entry relating thereto, with the [Regional Trial Court] of the province where the corresponding civil registry is located."

x x x x x x x x x

Evidently, the Regional Trial Court in Davao City has no jurisdiction over the instant petition which seeks to direct the Philippine Statistics Authority in Manila to make the correction of entry in the report of birth of Zion Pearl F. Fox made by the Philippine Consulate Office of Calgary, Alberta, Canada to the said office in Manila.

WHEREFORE, the foregoing premises considered, the instant petition is hereby DISMISSED for lack of jurisdiction.

SO ORDERED.[8]

On April 10, 2017, the petitioner filed a Motion for Reconsideration,[9] but the same was denied in the Order[10] dated July 24, 2017, which pertinently states:

In the instant petition, the fact of birth of petitioner's daughter Zion Pearl F. Fox was reported by petitioner to the Philippine Consulate in Calgary, Alberta, Canada, which in turn caused to be recorded directly said fact of birth before the Philippine Statistics Authority (PSA) in Manila and not to any local civil registrar. Consequently, the Petition for Correction of Entry in the Report of Birth of Zion Pearl F. Fox recorded directly before the Philippine Statistics Office in Manila should have been filed before the Regional Trial Court in Manila pursuant to Section 1 of Rule 108 of the Rules of Court. There is no evidence that said fact of birth was recorded in the Civil Registry of Davao City. Consequently, the Regional Trial Court in Davao City is NOT the proper venue of the instant petition for correction of entry in the report of birth of the minor daughter of the petitioner.

WHEREFORE, premises considered, the Motion for Reconsideration is hereby DENIED.

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[8] *Id*. at 9.

[9] *Id*. at 35-37.

[10] *Supra* note 2.

SO ORDERED.[11]

The petitioner turns to this Court for relief in a petition for review on *certiorari* raising a pure question of law, particularly whether the RTC was correct in *motu proprio* dismissing her petition for correction of entry on the ground of lack of jurisdiction.

Ruling of the Court

The petition lacks merit.

In the assailed Order dated March 24, 2017, the RTC *motu proprio* dismissed the petition on the ground of lack of jurisdiction. It ruled that the proper court is the RTC of Manila, where the PSA Office, in which the Report of Birth of the petitioner's daughter was registered, is situated.

To be clear, the petition filed before the RTC was a petition for correction of entry which, under Section 1 of Rule 108 of the Rules of Court, must be filed in the RTC where the corresponding civil registry is located. The Rule provides:

> Section 1. Who may file petition. – Any person interested in any act, event, order or decree concerning the civil status of persons which has been recorded in the civil register, may file a verified petition for the cancellation or correction of any entry relating thereto, with the [Regional Trial Court] of the province where the corresponding civil registry is located.
>
> **Section 2.** *Entries subject to cancellation or correction*. — Upon good and valid grounds, the following entries in the civil register may be cancelled or corrected: (a) births; (b) marriage; (c) deaths; (d) legal separations; (e) judgments of annulments of marriage; (f) judgments declaring marriages void from the beginning; (g) legitimations; (h) adoptions; (i) acknowledgments of natural children; (j) naturalization; (k) election, loss or recovery of citizenship; (1) civil interdiction; (m) judicial determination of filiation; (n) voluntary emancipation of a minor; and (o) changes of name.

Based on the above-mentioned rule, a petition for the cancellation or correction of any entry concerning the civil status

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[11] *Id*. at 7.

of persons which has been recorded in the civil register may be filed with the RTC of the province where the corresponding civil registry is located.

It bears stressing that Rule 108 is a special proceeding for which specific rules apply. In *Fujiki v. Marinay*,[12] the Court noted, thus:

> Rule 1, Section 3 of the Rules of Court provides that "[a] special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact." Rule 108 creates a remedy to rectify facts of a person's life which are recorded by the State pursuant to the Civil Register Law or Act No. 3753. These are facts of public consequence such as birth, death or marriage, which the State has an interest in recording.[13]

Given that Rule 108 pertains to a special proceeding, the specific provisions stated thereunder, particularly on venue, must be observed in order to vest the court with jurisdiction.

Apart from the foregoing, the petition likewise failed to comply with other jurisdictional requirements such as impleading the civil registrar and all persons who may have a claim or interest in the correction sought. The local civil registrar is an indispensable party for which no final determination of the case can be reached. In *Republic v. Court of Appeals*,[14] the Court reiterated the importance of impleading the civil registrar on petitions filed under Rule 108, *viz.*:

> The local civil registrar is thus required to be made a party to the proceeding. He is an indispensable party, without whom no final determination of the case can be had. As he was not impleaded in this case much less given notice of the proceeding, the decision of the trial court, insofar as it granted the prayer for the correction of entry, is void. The absence of an indispensable party in a case renders

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[12] 712 Phil. 524 (2013).

[13] *Id*. at 548-549.

[14] 325 Phil. 361 (1996).

ineffectual all the proceedings subsequent to the filing of the complaint including the judgment.[15]

The inescapable consequence of the failure to implead the civil registrar is that the RTC will not acquire jurisdiction over the case or, if proceedings were conducted, to render the same a nullity. In *Republic*, the Court emphasized, thus:

> The necessary consequence of the failure to implead the civil registrar as an indispensable party and to give notice by publication of the petition for correction of entry was concerned, null and void for lack of jurisdiction both as to party and as to the subject matter.[16]

In view of the defects in the filing of the petition, the RTC of Davao City cannot be faulted in dismissing the same on the ground of lack of jurisdiction. Nonetheless, the dismissal is without prejudice to the refilling of the petition in the proper court, with full compliance to the specific requirements of Rule 108.

WHEREFORE, the petition is **DENIED**. The Orders dated March 24, 2017 and July 24, 2017 of the Regional Trial Court, Branch 54 of Davao City are **AFFIRMED**.

SO ORDERED.

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

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[15] *Id.* at 369.

[16] *Id.* at 370.

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

THIRD DIVISION

[G.R. No. 233800. March 6, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MINDA PANTALLANO,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.—** To convict an accused who is charged with illegal possession of dangerous drugs, defined and penalized under Section 11, Article II of R.A. No. 9165, the prosecution must establish the following elements by proof beyond reasonable doubt: (a) that the accused was in possession of dangerous drugs; (b) such possession was not authorized by law; and (c) the accused was freely and consciously aware of being in possession of dangerous drugs.

2. **ID.; ID.; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** [I]n order to secure a conviction for illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of R.A. No. 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.

3. **ID.; ID.; IN A PROSECUTION FOR SALE AND POSSESSION OF ILLEGAL DRUGS, THE STATE MUST NOT ONLY PROVE THE ELEMENTS OF THE OFFENSE BUT ALSO THE *CORPUS DELICTI*, FAILING IN WHICH THE STATE WILL NOT DISCHARGE ITS BASIC DUTY OF PROVING THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.—** The prosecution must prove with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of

the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link in the chain of custody from the moment that the illegal drugs are seized up to their presentation in court as evidence of the crime. In *People v. Relato*, the Court explained that in a prosecution for sale and possession of methamphetamine hydrochloride (*shabu*) prohibited under R.A. No. 9165, the State not only carries the heavy burden of proving the elements of the offense but also bears the obligation to prove the *corpus delicti*, failing in which the State will not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt. **It is settled that the State does not establish the *corpus delicti* when the prohibited substance subject of the prosecution is missing or when substantial gaps in the chain of custody of the prohibited substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court.** Any gap renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt.

4. **ID.; ID.; CHAIN OF CUSTODY; PRESENCE OF THE REQUIRED WITNESSES DURING THE PHYSICAL INVENTORY AND THE TAKING OF PHOTOGRAPHS WOULD PRESERVE AN UNBROKEN CHAIN OF CUSTODY AND PREVENT THE POSSIBILITY OF TAMPERING WITH OR PLANTING OF EVIDENCE.—** Section 21, Article II of R.A. No. 9165 laid down the procedure that must be observed and followed by police officers in the seizure and custody of dangerous drugs. Paragraph 1 not only provides the manner by which the seized drugs must be handled but likewise enumerates the persons who are required to be present during the inventory and taking of photographs. x x x Section 21 (a) clearly states that physical inventory and the taking of photographs must be made in the presence of the accused or his/her representative or counsel and the following indispensable witnesses: **(1) an elected public official, (2) a representative from the DOJ and (3) a representative from the media**. The Court, in *People v. Mendoza*, explained that the presence of these witnesses would preserve an unbroken chain of custody and prevent the possibility of tampering with or "planting" of evidence.

5. **ID.; ID.; ID.; MINOR PROCEDURAL LAPSES OR DEVIATIONS FROM THE PRESCRIBED CHAIN OF CUSTODY ARE**

EXCUSED SO LONG AS IT CAN BE SHOWN THAT THE ARRESTING OFFICERS PUT IN THEIR BEST EFFORT TO COMPLY WITH THE SAME AND THE JUSTIFIABLE GROUND FOR NON-COMPLIANCE IS PROVEN AS A FACT.— The Court is well aware that a perfect chain of custody is almost always impossible to achieve and so it has previously ruled that minor procedural lapses or deviations from the prescribed chain of custody are excused so long as it can be shown by the prosecution that the arresting officers put in their best effort to comply with the same and the justifiable ground for non-compliance is proven as a fact.

6. **REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; CANNOT PREVAIL WHEN THERE HAS BEEN A CLEAR AND DELIBERATE DISREGARD OF PROCEDURAL SAFEGUARDS BY THE POLICE OFFICERS THEMSELVES.—** Even the presumption as to regularity in the performance by police officers of their official duties cannot prevail when there has been a clear and deliberate disregard of procedural safeguards by the police officers themselves. The Court's ruling in *People v. Umipang* is instructive on the matter: Minor deviations from the procedures under R.A. 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted. This is especially true when the lapses in procedure were recognized and explained in terms of justifiable grounds. There must also be a showing that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason. However, when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties. As a result, the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.

7. **ID.; ID.; ID.; PRESUMPTION OF INNOCENCE; BURDEN TO OVERCOME THE PRESUMPTION THAT THE ACCUSED IS**

INNOCENT OF A CRIME RESTS ON THE PROSECUTION, OTHERWISE, ACCUSED DESERVES A JUDGMENT OF ACQUITTAL.— [I]t cannot be gainsaid that it is mandated by no less than the Constitution that an accused in a criminal case shall be presumed innocent until the contrary is proved. In *People of the Philippines v. Marilou Hilario y Diana and Laline Guadayo y Royo*, the Court ruled that the prosecution bears the burden to overcome such presumption. If the prosecution fails to discharge this burden, the accused deserves a judgment of acquittal. On the other hand, if the existence of proof beyond reasonable doubt is established by the prosecution, the accused gets a guilty verdict. In order to merit conviction, the prosecution must rely on the strength of its own evidence and not on the weakness of evidence presented by the defense.

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

On appeal[1] is the Decision[2] dated April 24, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01420-MIN which affirmed accused-appellant Minda Pantallano's (Pantallano) conviction for violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*. In a Decision[3] promulgated on March 27, 2015, the Regional Trial Court (RTC) of Iligan City, Branch 6, found Pantallano guilty beyond reasonable doubt of Illegal Possession and Illegal Sale of Dangerous Drugs and

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[1] CA *rollo*, pp. 22-23.

[2] Penned by Associate Justice Perpetua T. Atal-Paño, with Associate Justices Romulo V. Borja and Ronaldo B. Martin, concurring; *id*. at 104-124.

[3] Rendered by Judge Leonor S. Quiñones; *id*. at 49-61.

meted on her the penalty of life imprisonment and a fine of ₱300,000.00 and ₱500,000.00, respectively.

The Facts

In two separate Informations[4] dated March 2, 2012, Pantallano was charged with violation of Sections 5 and 11, Article II of R.A. No. 9165. The accusatory portions in the Informations read:

CRIM. CASE NO. 06-15918

That on or about March 1, 2012, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, without authority of law, did then and there willfully, unlawfully, and feloniously have in his (sic) possession, custody and control, four (4) small heat-sealed transparent plastic sachets each containing white crystalline substance commonly known as shabu, a dangerous drug, with a total weight of 0.350 gram, more or less.

Contrary to and in violation of Section 11 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

CRIM. CASE NO. 06-15919

That on or about March 1, 2012, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, without authority of law, did then and there willfully, unlawfully, and feloniously sell and deliver for the amount of ₱300.00 one (1) small heat-sealed transparent plastic sachet containing 0.03 gram of white crystalline substance commonly known as Shabu, a dangerous drug.

Contrary to law.[5]

On April 26, 2012, Pantallano was arraigned in both cases. The two Informations were separately read in Cebuano-Visayan dialect which is known to and spoken by her. She entered a plea of "Not Guilty" in both cases.[6]

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

[5] *Id*.

[6] *Id*. at 50.

Version of the Prosecution

The prosecution presented five witnesses, namely: Police Senior Inspector Mary Leocy Mag-abo (PSI Mag-abo), a Forensic Chemical Officer; Kagawad Evangeline Ebale (Kagawad Ebale) and Philippine Drug Enforcement Agency (PDEA) agents: Intelligence Officer 1 Remedios Patino (IO1 Patino), IO1 Rubylyn Alfaro (IO1 Alfaro), and IO1 Samuel Salang (IO1 Salang).

On March 1, 2012, a confidential agent reported to the PDEA Office, Tipanoy, Iligan City, that a certain Minda, who was later on identified as Pantallano, was engaged in the selling of methamphetamine hydrochloride. The PDEA Regional Director authorized the creation of a team to conduct a buy-bust operation. Said team included IO1 Patino, IO1 Salang and IO3 Alfaro, the team leader. IO1 Patino was designated as the poseur-buyer, while IO1 Salang was designated as the arresting officer. The rest of the team was tasked with securing the perimeter of the target area. During the briefing, the confidential informant provided information on the location and general layout of Pantallano's house as well as her physical appearance.[7]

At around 11:00 a.m., the team and their confidential informant proceeded to Barangay Saray, Iligan City. They parked at a distance from Pantallano's house (along Canaway Road near Iglesia ni Cristo Church). From there, IO1 Patino and the confidential informant took a pedicab and disembarked at Purok 5. Meanwhile, the rest of the team positioned themselves at more or less 50 meters away from Pantallano's house.[8]

Once they reached the house, the confidential informant called out to Pantallano. When Pantallano appeared, the informant asked her, "*Puede ba magtanong? Naa ba diha?*" (Can I ask? Do you have something?) Pantallano replied, "*Naa*." (There is.) The confidential informant indicated that his friend, IO1 Patino, wanted to purchase. Pantallano invited them inside and

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[7] *Id*. at 51.

[8] *Id*.

asked IO1 Patino how much she would like to purchase. IO1 Patino said she wished to buy ₱300.00 worth. IO1 Patino then handed over the buy-bust money of three 100-peso bills to Pantallano. Upon receiving the money, Pantallano went to an area of the house enclosed by a curtain. When she lifted the curtain, IO1 Patino saw a table from which Pantallano took something. When Pantallano returned, she handed one (1) sachet to IO1 Patino. The sachet contained white crystalline substance which IO1 Patino suspected to be *shabu*. IO1 Patino then discreetly rang Salang's phone to signal him that the sale of *shabu* has been consummated. IO1 Patino left the premises with the confidential informant in order to secure him in the service vehicle.[9]

IO1 Salang and the rest of the team rushed towards Pantallano's house to meet IO1 Patino and the confidential informant. When they reached the house, they announced that they are PDEA agents. IO1 Salang then informed Pantallano of her violation, as well as her constitutional rights, and arrested her. IO1 Alfaro searched the person of Pantallano but found nothing.[10]

Prior to the buy-bust operation, the confidential informant told the team that behind the curtain in Pantallano's house, there is a small make-shift room with a table. When IO1 Salang lifted the curtain during the buy-bust operation, the team then saw on top of the table four sachets of *shabu* and the buy-bust money. IO1 Salang marked the four sachets of *shabu* with "SS-1," "SS-2," "SS-3," and "SS-4," each with the date "3/01/12." IO1 Alfaro then called for the barangay official of Saray, media men and police officers from Precinct 5, Iligan City.[11]

The team commenced with the inventory of the seized items upon the arrival of Kagawad Ebale, as well as several police

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[9] *Id*.

[10] *Id*. at 57.

[11] *Id*. at 53.

officers from the precinct. IO1 Patino marked the sachet she purchased from Pantallano with "BB-RPP 3/01/12" and prepared the corresponding Certificate of Inventory. IO1 Salang also prepared the inventory of the sachets of *shabu* and the buy-bust money that was recovered inside Pantallano's house. IO1 Salang took photographs of IO1 Patino, while the latter prepared her inventory, and IO1 Patino did the same for IO1 Salang when it was his turn to prepare the inventory. Kagawad Ebale, thereafter, signed both inventories after they were completed.[12]

The team then proceeded to Police Station 5 to record the buy-bust operation in the police blotter. Thereafter, they went to the PDEA satellite office in Tipanoy, Iligan City, where IO1 Patino prepared two separate letter requests for laboratory examination of the purchased and seized sachets of *shabu*. IO1 Patino then personally delivered the sachet of *shabu* she purchased along with the corresponding letter-request to the Philippine National Police (PNP) Crime Laboratory in Camp Tomas Cabili, Iligan City.[13]

IO1 Salang, likewise, personally delivered the four sachets of *shabu* that he recovered from Pantallano's house with the corresponding letter-request, to the same PNP Crime Laboratory.

PSI Mag-abo, Forensic Chemical Officer and the Chief of Lanao Del Norte and Iligan City Crime Laboratory Office, testified that their office received requests for laboratory examination on the evidence obtained from the buy-bust operation and that recovered by the PDEA; that she herself conducted the laboratory examination of all five sachets submitted by IO1 Patino and IO1 Salang; and that the laboratory examination showed that all five sachets were positive for the presence of methamphetamine hydrochloride, otherwise known as *shabu*. Her positive findings are encapsulated in Chemistry Report No. D-19-2012 and Chemistry Report No. D-20-2012.[14]

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[12] *Id*. at 55.

[13] *Id*. at 58.

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

Version of the Defense

The defense presented two witnesses, Pantallano herself and her daughter Ria Pantallano (Ria).

Ria testified that at 11:00 a.m. of March 1, 2012, while she was attending to her younger brother and her mother was attending to her younger sister, a woman entered their house. This woman was later identified as IO1 Alfaro. Ria testified that IO1 Alfaro, who at that time was holding a firearm, immediately took hold of her mother's arm and handcuffed the latter.[15]

IO1 Alfaro then asked her mother if she is "Berondo." Her mother was not able to answer due to shock. Ria likewise testified that she was only 16 years old when it happened, her younger sister was 4 years old and her youngest brother was 2 years old.[16]

Immediately thereafter, a thin woman and five men, whom she later identified as PDEA agents, entered the house. They conducted a search, and IO1 Alfaro led Pantallano to a table inside the house. The PDEA woman got a white plastic sachet from her pocket and then poured its contents on the table, which appeared to be small transparent plastic cellophanes containing crystalline substance.[17]

The PDEA woman specifically ordered Ria not to observe what they were doing, and ordered her to go upstairs. Ria held on to her two other siblings and went upstairs, but opted to stay and be seated in the middle part of the staircase, where a PDEA armed agent guarded them.[18]

Ria saw the PDEA woman named IO1 Patino taking photographs, while one PDEA agent was writing on a paper.

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[15] *Id*. at 34.

[16] *Id*.

[17] *Id*. at 35.

[18] *Id*.

The witness also saw Kagawad Ebale enter their house and saw him writing on a paper and the PDEA agents also taking photographs of him.[19]

Ria also testified that she knows a certain "Berondo" who happens to be their lady neighbor, and is living at the back of their house.[20]

Pantallano, the last witness for the defense, denied the accusations hurled against her for Violation of Sections 5 and 11 of R.A. No. 9165. She testified that on March 1, 2012 at around 11:00 a.m., she was with her children Ria, Rizel, and Rex in their house. Her husband was working at that time. According to her, IO1 Alfaro immediately entered their house and held her left forearm, asking if she was a certain "Berondo." A thin woman thereafter entered followed by five PDEA agents who searched the house and found nothing.[21]

After the PDEA agents searched the person of Pantallano and found nothing, IO1 Alfaro brought Pantallano near a table in her house and then the thin woman pulled out a plastic cellophane in her pocket and poured the contents on top of the table. Inside the plastic were small plastic transparent cellophane containing white crystalline substance which looked like "*tawas*." Pantallano was then asked by the thin woman if she is Bebing Berondo. She shook her head. According to Pantallano, Bebing Berondo is her neighbor.[22]

The PDEA prepared the necessary documents and, likewise, placed the small transparent plastics containing "*tawas*" on the table. Kagawad Ebale arrived in the house and saw Pantallano sign the papers which she claims not to have read. Pantallano sought help from Kagawad Ebale and the latter told her there was no problem.[23]

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[19] *Id*. at 37.

[20] *Id*.

[21] *Id*. at 50.

[22] *Id*. at 43.

[23] *Id*. at 57.

According to Pantallano, the PDEA did not even make her sign the documents nor was she given a copy; that it was only Kagawad Ebale who signed the documents in her house. After the preparation of the papers, the PDEA took photographs and then Pantallano was brought outside her house and escorted towards the PDEA vehicle. When they arrived at the police precinct, she was again photographed.

In a Decision[24] dated March 12, 2015, the RTC found Pantallano guilty of the crime charged. The dispositive part of the RTC decision reads:

> **WHEREFORE,** premises considered, the Court hereby pronounces the accused GUILTY beyond reasonable doubt for violation of the provisions of Sec. 11, Article II of R.A. 9165 (possession) in Criminal Case No. 06-15918 and imposes upon her the penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine of ₱300,000.00, as provided under Section 11, Article II, paragraph 3 of R.A. 9165, without subsidiary imprisonment in case of insolvency.
>
> The four sachets of shabu marked as Exhibit I x x x and the eight (8) pieces of empty large rectangular-shaped plastic sachets marked as Exhibit J are hereby ordered forfeited in favor of the government.
>
> Moreover, the Court finds the accused GUILTY beyond reasonable doubt for violation of the provisions of [Section] 5, Art. II of R.A. 9165 (sale) in **Criminal Case No. 06-15919** and imposes upon her the penalty of life imprisonment and a fine of ₱500,000.00, as provided under Section 5, Article II, paragraph 1 of R.A. 9165, without subsidiary imprisonment in case of insolvency.
>
> The sachet of shabu weighing 0.03 gram [marked as Exhibit I], subject of the buy-bust is hereby forfeited in favor of the government.
>
> The preventive imprisonment of the accused shall be credited in full in the service of her sentence.
>
> **SO ORDERED.**[25]

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[24] *Id*. at 49-61.

[25] *Id*. at 61.

Pantallano moved for reconsideration,[26] but the same was denied by the trial court in a Resolution[27] dated May 4, 2015. The trial court, however, sought it proper to rectify the penalty earlier imposed. The amended penalty reads as follows:

> **WHEREFORE**, premises considered, the motion for reconsideration is hereby **DENIED**.
>
> However, as the Court inadvertently failed to apply the indeterminate sentence law in imposing the penalty in Criminal Case No. 06-15918, the March 12, 2015 Decision is hereby amended rectifying the penalty imposed in Criminal Case No. 06-15918 to read as follows:
>
> **Criminal Case No. 06-15918**
> **For : Violation of Sec. 11, Art. II of R.A. 9165 (possession)**
>
> The accused GUILTY beyond reasonable doubt for violation of the provisions of Sec. 11, Art. II of R.A. 9165 and imposes upon her the penalty of imprisonment ranging from ***twelve (12) years and one (1) day to fourteen (14) years*** and a fine of ₱300,000.00, as provided under Section 11, Article II, paragraph 3 of R.A. 9165, without subsidiary imprisonment in case of insolvency.
>
> The four sachets of shabu marked as Exhibit I [Nb: with a total weight of 0.350 gram] and the eight (8) pieces empty large rectangular shaped plastic sachets marked as Exhibit J are hereby ordered forfeited in favor of the government.
>
> **SO ORDERED.**[28]

On appeal, the appellate court affirmed the RTC decision. According to the CA, the elements of illegal sale and possession of dangerous drugs have been sufficiently established by the prosecution. It, likewise, opined that the integrity and evidentiary value of the seized drugs were preserved as shown by the categorical narration of IO1 Salang and IO1 Patino. The dispositive portion of the CA Decision[29] dated April 24, 2017 reads:

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[26] *Id*. at 62-72.

[27] *Id*. at 73-77.

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

[29] *Id*. at 104-124.

WHEREFORE, the appeal is hereby DENIED. The Decision dated March 12, 2015 of the [RTC], Branch 06, Iligan City, in Criminal Case Nos. 06-15918 and 06-15919 is AFFIRMED.

SO ORDERED.[30]

Hence, the present appeal.

The Issue

Whether or not the CA committed a reversible error in affirming Pantallano's conviction for violation of Sections 5 and 11 of R.A. No. 9165 notwithstanding the following:

I. Conviction of Pantallano on mere presumption of regularity in the performance of official duties of the arresting officers is improper in the case at bar;

II. The strict procedure under Section 21 of R.A. No. 9165 was not complied with;

III. The admission in evidence of the sachets of alleged *shabu* was in violation of appellant's right against unreasonable searches and seizures;

IV. The *corpus delicti* was not established with moral certainty.

Ruling of the Court

The appeal is meritorious.

To convict an accused who is charged with illegal possession of dangerous drugs, defined and penalized under Section 11, Article II of R.A. No. 9165, the prosecution must establish the following elements by proof beyond reasonable doubt: (a) that the accused was in possession of dangerous drugs; (b) such possession was not authorized by law; and (c) the accused was freely and consciously aware of being in possession of dangerous drugs.[31]

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[30] *Id*. at 123.

[31] *People v. Ismael*, 806 Phil. 21, 38 (2017); *Reyes v. Court of Appeals*, 686 Phil. 137, 148 (2012), citing *People v. Sembrano*, 642 Phil. 476, 490-491 (2010).

On the other hand, in order to secure a conviction for illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of R.A. No. 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.[32]

The prosecution must prove with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link in the chain of custody from the moment that the illegal drugs are seized up to their presentation in court as evidence of the crime.[33]

In this case, Pantallano was charged with the crime of Illegal Sale and Illegal Possession of Dangerous Drugs, defined and penalized under Sections 5 and 11,[34] Article II of R.A.

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[32] *People v. Ismael*, *supra*, at 29.

[33] *People of the Philippines v. Ronaldo Paz y Dionisio*, G.R. No. 229512, January 31, 2018, citing *People v. Viterbo*, 739 Phil. 593, 601 (2014); *People v. Alivio, et al.*, 664 Phil. 565, 580 (2011); *People v. Denoman*, 612 Phil. 1165, 1175 (2009).

[34] **Section 11.** *Possession of Dangerous Drugs.* – 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 possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x x x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x x x x x x

No. 9165. Pantallano insists that she should be acquitted for failure of the prosecution to establish every link in the chain of custody of the seized dangerous drugs and its failure to comply with the procedure outlined in Section 21 of R.A. No. 9165.

In *People v. Relato*,[35] the Court explained that in a prosecution for sale and possession of methamphetamine hydrochloride (*shabu*) prohibited under R.A. No. 9165, the State not only carries the heavy burden of proving the elements of the offense but also bears the obligation to prove the *corpus delicti*, failing in which the State will not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt. **It is settled that the State does not establish the *corpus delicti* when the prohibited substance subject of the prosecution is missing or when substantial gaps in the chain of custody of the prohibited substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court.** Any gap renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt.[36]

Section 21, Article II of R.A. No. 9165 laid down the procedure that must be observed and followed by police officers in the seizure and custody of dangerous drugs. Paragraph 1 not only provides the manner by which the seized drugs must be handled but likewise enumerates the persons who are required to be present during the inventory and taking of photographs, *viz.*:

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(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*" or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of *marijuana*.

[35] 679 Phil. 268 (2012).

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

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. (Emphasis and underscoring Ours)

In 2014, R.A. No. 10640[37] amended R.A. No. 9165, specifically Section 21 thereof, to further strengthen the anti-drug campaign of the government. Paragraph 1 of Section 21 was amended, in that the number of witnesses required during the inventory stage was reduced from three (3) to only two (2), to wit:

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:

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[37] 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 June 9, 2014.

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 for 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 by the apprehending officer/ team, shall not render void and invalid such seizures and custody over said items. (Emphasis and underscoring Ours)

A comparison of the cited provisions show that the amendments introduced by R.A. No. 10640 reduced the number of witnesses required to be present during the inventory and taking of photographs from three to two - an elected public official AND a representative of the National Prosecution Service (DOJ) OR the media. These witnesses must be present during the inventory stage and are likewise required to sign the copies of the inventory and be given a copy of the same, to ensure that the identity and integrity of the seized items are preserved and that the police officers complied with the required procedure. Failure of the arresting officers to justify the absence of any of the required witnesses, *i.e.*, the representative from the media or the DOJ and any elected official shall constitute as a substantial gap in the chain of custody.

Since the offenses subject of this appeal were committed before the amendment introduced by R.A. 10640, the old provisions of Section 21 and its Implementing Rules and Regulations (IRR) should apply, *viz.*:

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

The use of the word "shall" means that compliance with the foregoing requirements is mandatory. Section 21 (a) clearly states that physical inventory and the taking of photographs must be made in the presence of the accused or his/her representative or counsel and the following indispensable witnesses: **(1) an elected public official, (2) a representative from the DOJ and (3) a representative from the media**. The Court, in *People v. Mendoza*,[38] explained that the presence of these witnesses would preserve an unbroken chain of custody and prevent the possibility of tampering with or "planting" of evidence, *viz.*:

> [W]ithout the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, 'planting' or contamination of the evidence that had tainted the buy-busts conducted under the regime of [RA] 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.[39]

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[38] 736 Phil. 749 (2014).

[39] *Id.* at 764.

As culled from the records and highlighted by the testimonies of the witnesses themselves, only one out of three of the required witnesses was present during the inventory stage. There were no representatives from the DOJ and the media. Neither was it shown nor alleged by the arresting officers that earnest efforts were made to secure the attendance of these witnesses. To the Court's mind, the lower courts relied so much on the narration of the prosecution witnesses that the integrity and evidentiary value of the seized drugs were preserved without taking into account the weight of these procedural lapses.

The Court is well aware that a perfect chain of custody is almost always impossible to achieve and so it has previously ruled that minor procedural lapses or deviations from the prescribed chain of custody are excused so long as it can be shown by the prosecution that the arresting officers put in their best effort to comply with the same and the justifiable ground for non-compliance is proven as a fact.

In the recent case of *People of the Philippines v. Romy Lim y Miranda*,[40] the Court, speaking through Associate Justice Diosdado M. Peralta, reiterated that testimonies of the prosecution witnesses must establish in detail that earnest effort to coordinate with and secure the presence of the required witnesses were made. In addition, it pointed out that given the increasing number of poorly built up drug-related cases in the courts' docket, Section 1 (A.1.10) of the Chain of Custody IRR should be enforced as a mandatory policy. The pertinent portions of the decision read:

> To conclude, judicial notice is taken of the fact that arrest and seizures related to illegal drugs are typically made without a warrant; hence, subject to inquest proceedings. Relative thereto, Sections 1 (A.1.10) of the Chain of Custody [IRR] 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

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

> 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 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.[41]

Simply put, the prosecution cannot simply invoke the saving clause found in Section 21 – that the integrity and evidentiary value of the seized items have been preserved – without justifying their failure to comply with the requirements stated therein. Even the presumption as to regularity in the performance by police officers of their official duties cannot prevail when there

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[41] *Id*.

has been a clear and deliberate disregard of procedural safeguards by the police officers themselves. The Court's ruling in *People v. Umipang*[42] is instructive on the matter:

> Minor deviations from the procedures under R.A. 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted. This is especially true when the lapses in procedure were recognized and explained in terms of justifiable grounds. There must also be a showing that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason. However, when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties. As a result, the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.
>
> For the arresting officers' failure to adduce justifiable grounds, we are led to conclude from the totality of the procedural lapses committed in this case that the arresting officers deliberately disregarded the legal safeguards under R.A. 9165. These lapses effectively produced serious doubts on the integrity and identity of the *corpus delicti*, especially in the face of allegations of frame-up. Thus, for the foregoing reasons, we must resolve the doubt in favor of accused-appellant, as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt.
>
> As a final note, we reiterate our past rulings calling upon the authorities to exert greater efforts in combating the drug menace using the safeguards that our lawmakers have deemed necessary for the greater benefit of our society. The need to employ a more stringent approach to scrutinizing the evidence of the prosecution especially

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[42] 686 Phil. 1024 (2012).

when the pieces of evidence were derived from a buy-bust operation redounds to the benefit of the criminal justice system by protecting civil liberties and at the same time instilling rigorous discipline on prosecutors.[43] (Citations omitted)

In the present case, the prosecution failed to justify their non-compliance with the requirements found in Section 21, specifically, the presence of the three required witnesses during the actual inventory of the seized items. The unjustified absence of these witnesses during the inventory stage constitutes a substantial gap in the chain of custody. Such absence cannot be cured by the simple expedient of having them sign the certificate of inventory. There being a substantial gap or break in the chain, it casts serious doubts on the integrity and evidentiary value of the *corpus delicti*. As such, Pantallano must be acquitted.

Finally, it cannot be gainsaid that it is mandated by no less than the Constitution[44] that an accused in a criminal case shall be presumed innocent until the contrary is proved. In *People of the Philippines v. Marilou Hilario y Diana and Laline Guadayo y Royo*,[45] the Court ruled that the prosecution bears the burden to overcome such presumption. If the prosecution fails to discharge this burden, the accused deserves a judgment of acquittal. On the other hand, if the existence of proof beyond

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[43] *Id*. at 1053-1054.

[44] Article III, Section 14(2) of the Constitution mandates:

Sec. 14. x x x x x x x x x

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

[45] G.R. No. 210610, January 11, 2018.

reasonable doubt is established by the prosecution, the accused gets a guilty verdict. In order to merit conviction, the prosecution must rely on the strength of its own evidence and not on the weakness of evidence presented by the defense.

WHEREFORE, the present appeal is **GRANTED**. The Decision dated April 24, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 01420-MIN, convicting accused-appellant Minda Pantallano of violation of Sections 5 and 11, Article II of Republic Act No. 9165, is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Minda Pantallano is **ACQUITTED** of the crimes charged. The Superintendent of the Correctional Institution for Women is ordered to cause her immediate release, unless she is being lawfully held in custody for any other reason. Let entry of final judgment be issued immediately.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 237166. March 6, 2019]

FIRST GLORY PHILIPPINES, INC., *petitioner, vs.* **BRIAN L. LUMANTAO, STEVE J. PETARCO, ROY P. CABATINGAN, and ZYZAN T. LADRAZO,** *respondents.*

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

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF ADMINISTRATIVE OR QUASI-JUDICIAL BODIES; WHICH ARE DEEMED TO HAVE ACQUIRED EXPERTISE IN MATTERS WITHIN THEIR RESPECTIVE JURISDICTION ARE GENERALLY ACCORDED NOT ONLY RESPECT BUT EVEN FINALITY, AND BIND THE COURT WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE; EXCEPTIONS.— At the onset, it is settled that this Court is not a trier of facts, and this applies with greater force in labor cases. Corollary thereto, the Court has held in a number of cases that factual findings of administrative or quasi-judicial bodies, which are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind the Court when supported by substantial evidence. x x x However, for purposes of taking a second glance at the facts at hand in order to come to a proper determination of the rights and liabilities of the parties, the Court recognizes that while generally only questions of law may be entertained, the rule admits of certain exceptions, to wit: 1) the findings are grounded entirely on speculation, surmises or conjectures; (2) the inference made is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) in making its findings, the CA went beyond the issues of the case, or its findings are contrary to the admissions of both appellant and appellee; (7) the findings are contrary to those of the trial court; (8) the findings are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition, as well as in petitioner's main and reply briefs, are not disputed by respondent; (10) the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. Considering that the findings of fact and conclusions of law of the LA and the NLRC differ from those of the CA, and pursuant to the action of the Supreme Court in the case of *Noblado, et al. v. Alfonso* wherein the Court took another look at the records of the case due to the CA therein overturning the factual findings of the lower

courts, the Court finds it necessary to review the facts and evidence at hand in order to arrive at a just determination of the case and the attendant liabilities.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; FRAUD OR WILLFUL BREACH BY THE EMPLOYEE OF THE TRUST REPOSED IN HIM BY HIS EMPLOYER OR DULY AUTHORIZED REPRESENTATIVE, AS GROUND; ELEMENTS.— Fraud as a just ground for dismissal is provided under paragraph (d) of Article 297 (formerly 282) of the Labor Code. Thus: (d) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative. The following are thus the requisites in order to validate this ground: **First**, there must be an act, omission, or concealment; **second**, the act, omission or concealment involves a breach of legal duty, trust, or confidence justly reposed; **third**, it must be committed against the employer or his/her representative; and **fourth**, it must be in connection with the employee's work.

3. ID.; ID.; ID.; GROSS AND HABITUAL NEGLECT OF DUTIES, AS GROUND; POOR PERFORMANCE OR UNSATISFACTORY WORK MAY FALL UNDER GROSS AND HABITUAL NEGLECT OF DUTIES OR MAY CONSTITUTE GROSS INEFFICIENCY, HOWEVER, SUFFICIENT PROOF OF THE ALLEGEDLY INEFFICIENT WORK DONE BY AN EMPLOYEE NEEDS TO BE PRODUCED BEFORE DISMISSAL MAY BE DEEMED VALID; REQUISITES.— Article 296 (formerly 282) of the Labor Code allows an employer to dismiss an employee for gross and habitual neglect of duties. Particularly, jurisprudence provides that poor performance or unsatisfactory work may fall under gross and habitual neglect of duties under Article 296 (b) of the Code or may constitute gross inefficiency. In *Buiser, et al. v. Hon. Leogardo, etc., et al*., the Court ruled that failure to reach a standard set by an employer or other work goals may be considered a ground for the dismissal of an employee. This management prerogative of requiring standards can be availed of so long as they are exercised in good faith for the advancement of the employer's interest. However, sufficient proof of the allegedly inefficient work done by an employee needs to be produced before dismissal may be deemed valid. Such proof can be gleaned from several

requisites, expressly stated in *Sameer Overseas Placement Agency, Inc. v. Cabiles*. In that case, the requisites were held to be: 1) the employer must have set standards of conduct and workmanship against which the employee will be judged; 2) the standards of conduct and workmanship must have been communicated to the employee; and 3) the communication was made at a reasonable time prior to the employee's performance assessment.

APPEARANCES OF COUNSEL

Nonato Nonato Nonato-Luciano & Luciano Law Offices for petitioner.

Seno Mendoza & Associates Law Office for respondents.

D E C I S I O N

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

Challenged before this Court *via* this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court are the Decision[2] dated April 27, 2017 and the Resolution[3] dated November 20, 2017 of the Court of Appeals (CA) Twentieth Division, in CA-G.R. CEB-SP No. 08992, which reversed the Decision[4] dated September 30, 2014 of the National Labor Relations Commission (NLRC) Seventh Division, in NLRC Case No. VAC-06-000309-2014 insofar as it held that Brian L. Lumantao (Lumantao), Steve J. Petarco (Petarco), Roy P. Cabatingan (Cabatingan), and Zyzan T. Ladrazo (Ladrazo) (collectively referred to as the respondents) were dismissed for just cause.

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[1] *Rollo*, pp. 43-71.

[2] Penned by Associate Justice Gabriel T. Robeniol, with Associate Justices Pamela Ann Abella Maxino and Pablito A. Perez concurring; *id.* at 8-30.

[3] *Id*. at 33-38.

[4] Penned by Commissioner Julie C. Rendoque, with Presiding Commissioner Violeta Ortiz-Bantug and Commissioner Jose G. Gutierrez concurring; *id*. at 571-579A.

The Antecedent Facts

Petitioner First Glory Philippines, Inc. (FGPI) is a duly organized corporation engaged in the business of manufacturing and exporting garments.[5] The respondents are all former employees of FGPI as sewers. Aside from being former employees, the respondents are also officers and/or members of the FGPI Employees' Union - ALU-TUCP (the Union). Lumantao, Cabatingan, and Petarco are the Union's President, Vice-President, and Board Member, respectively, while Ladrazo is a member of the same.[6]

On August 16, 2013, FGPI issued a document termed "Memoranda" to the respondents, ascribing several offenses against them. The Memoranda also directed the respondents to submit their respective written explanations within five (5) days from receipt of the same, as well as to appear in an investigation to be conducted by FGPI's Human Resources department on August 24, 2013.[7]

Specifically, the Memoranda contained allegations that Cabatingan, Petarco, and Ladrazo manipulated and improperly used FGPI's Radio Frequency Identification System (RFID) by making it record a high but erroneous performance efficiency rating for them. Lumantao was also allegedly given an unsatisfactory rating for his failure to achieve the required level of performance efficiency.[8] All of these alleged acts and omissions were deemed violative of FGPI's Code of Conduct, as well as the directives on the proper use of the RFID, which, as consistently asserted by FGPI, the respondents were previously and consistently apprised with and were thus well-aware of.

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[5] *Id*. at 46.

[6] *Id*. at 9.

[7] *Id*. at 10.

[8] *Id*. Note: The RFID records the time a sewer employee starts working, the time he or she takes a break, and his or her output at every stage or level of the production process.

In order to prevent any impairment to the investigation, FGPI placed the respondents under preventive suspension for a period of thirty (30) days, beginning August 16, 2013. However, despite receipt of the Memoranda, none of the respondents submitted a written explanation nor did any of them attend the scheduled investigation.[9]

Instead, the Union filed a Notice of Strike on August 22, 2013 before the National Conciliation and Mediation Board (NCMB). The Union claimed that in suspending the respondents, FGPI committed unfair labor practice and union busting as the Memoranda was issued to the respondents two (2) days after the new issuance of the Union's charter certificate.[10]

On September 4, 2013, during the NCMB conciliation proceedings, FGPI gave the respondents another opportunity to submit their respective written explanations, while also scheduling another investigation on September 11, 2013 to hear the respondents' sides. However, the respondents once again failed to submit any written explanation nor attend the second investigation.

The investigation thus proceeded despite the lack of response from the respondents. Using the Investigation Reports[11] as basis, FGPI severed the respondents' employment with the company due to their respective violations:

Lumantao:

Repetitive violations of company policies
RE: Job Performance Standard (failed to pass the 70% efficiency grade 23 times from January to June 2013)
RE: Time Management (16 days unapproved absences, 17 approved absences, undertime for 10 times, and tardiness for 39 times, from January to July 2013)

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[9] *Id*. at 12.

[10] *Id*. at 10.

[11] *Id*. at 13.

Petarco:

Manipulation and/or improper use of the RFID System in violation of the RFID directives, specifically No. 4 of the General Provisions, committed last August 13, 2013. (2 instances)

Cabatingan:

Manipulation and/or improper use of the RFID System in violation of the RFID directives, specifically No. 4 of the General Provisions, committed last August 12, 2013. (8 instances)

Ladrazo:

Manipulation and/or improper use of the RFID System in violation of the RFID directives, specifically No. 4 of the General Provisions, committed last August 13, 2013. (2 instances)[12] (Citations omitted)

Respondents received the notice severing their employment on September 13, 2013. Due to what transpired, the Union withdrew its case before the NCMB, and instead the respondents filed complaints for unfair labor practice, union busting, and illegal dismissal against FGPI before the Regional Arbitration Branch of the NLRC in Cebu City.

On April 25, 2014, the Labor Arbiter (LA) issued a Decision[13] dismissing the respondents' complaints for lack of merit; the dispositive portion stating, to wit:

WHEREFORE, judgment is hereby rendered DISMISSING the instant cases for lack of merit.

SO ORDERED.[14]

After carefully considering the facts on record, the LA held that the respondents were dismissed validly for just cause and after observance of the requisite due process. In ruling upon the same, the LA found as merely speculative the respondents' allegations that they had been unfairly singled out due to their

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

[13] Rendered by LA Milagros B. Bunagan-Cabatingan; *id*. at 483-499.

[14] *Id*. at 499.

union activities.[15] For the LA, the fact that the respondents were either officers or members of the Union did not prevent them from being adjudged guilty of having committed violations of company policies, rules, and regulations, especially when they had committed prior offenses for which they were accordingly meted with penalties.[16] Respondents were also given more than one opportunity to explain their side and rebut the allegations against them, yet they failed to do so.

On appeal, the NLRC affirmed the decision of the LA *in toto*. The dispositive portion of the Decision[17] dated September 30, 2014 reads, to wit:

> WHEREFORE, premises considered, the Decision of the [LA] dated 25 April 2014 is, hereby, AFFIRMED.
>
> SO ORDERED.[18]

The NLRC likewise denied the respondents' Motion for Reconsideration in the assailed Resolution dated October 31, 2014.[19]

Aggrieved, the respondents subsequently filed a Petition for *Certiorari*[20] dated December 29, 2014 before the CA, alleging grave abuse of discretion on the part of the NLRC.

In its Decision[21] dated April 27, 2017, the CA reversed and set aside the decision of the NLRC. While sustaining the findings of fact of the lower court that there was no unfair labor practice nor union busting, and that procedural due process was indeed followed by FGPI,[22] the CA held that the respondents were

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[15] *Id*. at 48.

[16] *Id*.

[17] *Id*. at 571-579A.

[18] *Id*. at 579A.

[19] *Id*. at 115.

[20] *Id*. at 580-605.

[21] *Id*.at 110-131.

[22] *Id*. at 26-28.

illegally dismissed due in main part to FGPI's failure to prove that the outright dismissal of the respondents was not commensurate to their alleged offenses and also due to the lack of evidence. The dispositive portion of the decision reads, to wit:

> WHEREFORE, the petition is GRANTED. The Decision dated September 30, 2014, and the Resolution dated October 31, 2014, of the NLRC, 7th Division, Cebu City, in NLRC Case No. VAC-06-000309-2014, are REVERSED and SET ASIDE.
>
> [Respondents'] dismissal is declared illegal for want of just cause. Accordingly, private respondent FGPI is ORDERED:
>
> 1. To PAY [respondents] separation pay in lieu of reinstatement equivalent to one (1) month pay for every year of service, computed up to the finality of this Decision;
>
> 2. To PAY [respondents] full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the time [respondents] were illegally dismissed on September 13, 2013 up to the finality of this Decision;
>
> 3. To PAY [respondents] attorney's fees equivalent to 10% of the total monetary awards; and
>
> 4. To PAY legal interest of 6% per annum on the total monetary awards computed from the finality of this decision until full payment.
>
> The [LA] is ORDERED to compute the total monetary benefits awarded to the [respondents] in accordance with this Decision.
>
> SO ORDERED.[23]

FGPI's Motion for Partial Reconsideration[24] was likewise denied by the CA in a Resolution[25] promulgated on November 20, 2017. Hence, this Petition for Review on *Certiorari*, to which the respondents filed a Comment[26] on October 2, 2018.

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

[24] *Id*. at 679-713.

[25] *Id*. at 33-38.

[26] *Id*. at 612-671.

The Issue

The petition raises the singular issue of whether or not the CA erred in ruling that the respondents were not afforded substantive due process, and thus, that illegal dismissal was attendant in this case.

Ruling of the Court

The petition is partly meritorious.

At the onset, it is settled that this Court is not a trier of facts, and this applies with greater force in labor cases.[27] Corollary thereto, the Court has held in a number of cases that factual findings of administrative or quasi-judicial bodies, which are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind the Court when supported by substantial evidence.

In this case, the Court affords respect to the factual findings of both the LA and the NLRC, especially as both administrative bodies were one in their assessment of the facts and evidence appurtenant to the case.

However, for purposes of taking a second glance at the facts at hand in order to come to a proper determination of the rights and liabilities of the parties, the Court recognizes that while generally only questions of law may be entertained, the rule admits of certain exceptions, to wit:[28] 1) the findings are grounded entirely on speculation, surmises or conjectures; (2) the inference made is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) in making its findings, the CA went beyond the issues of the case, or its findings are contrary to the admissions of both appellant and appellee; (7) the findings are contrary to those

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[27] *Noblado, et al. v. Alfonso*, 773 Phil. 271, 279-280 (2015).

[28] *Id.* at 280.

of the trial court; (8) the findings are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition, as well as in petitioner's main and reply briefs, are not disputed by respondent; (10) the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

Considering that the findings of fact and conclusions of law of the LA and the NLRC differ from those of the CA, and pursuant to the action of the Supreme Court in the case of *Noblado, et al. v. Alfonso*[29] wherein the Court took another look at the records of the case due to the CA therein overturning the factual findings of the lower courts, the Court finds it necessary to review the facts and evidence at hand in order to arrive at a just determination of the case and the attendant liabilities.

In its assailed decision, the CA reversed the ruling of the lower courts that the respondents were validly dismissed for cause, rationalizing thus:

> The want of reliable evidence on record on the RFID Directives casts serious doubt as to the factual basis of the charge of violation thereof by petitioners. Without a copy of the RFID Directives, there is no gauge by which to determine whether or not petitioners committed violations thereof. The inevitable conclusion, therefore, is that there is no just cause for the termination of petitioners.[30]

The justification proffered by the CA for this conclusion was that FGPI failed to present the specific copy of the RFID Directives or the provisions chronicling the offenses of the respondents, supposedly embodied in the FGPI's Code of Conduct. After a review of the records, the Court finds this reason unsound and insufficient to reverse the factual findings

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[29] 773 Phil. 271 (2015).

[30] *Rollo*, p. 24.

of the LA as well as the NLRC. It is untrue that there was no gauge by which to determine whether or not respondents committed violations against FGPI, and the Court agrees with both adjudicatory bodies in finding that the provisions and directives referred to in the Memoranda issued by FGPI are more than sufficient.

To note, the LA, which had the opportunity to observe the parties as well as examine the evidence presented, ruled thus:

> Evidently, complainants were dismissed for just cause for having violated not only respondent corporation's Code of Conduct, but also the Radio Frequency Identification (RFID) Directives, under No. 4 of the General Provisions which states that "Any employee who altered, manipulated and/or improperly used the system or its device shall be a ground for termination without prejudice to payment of actual cost of damage suffered by the company."[31]

Likewise, for the NLRC, there was also no infirmity in the presentation of evidence substantiating the grounds, particularly as to the issue of the alteration of the RFID. In fact, the NLRC found that it was the respondents who had consistently failed to counter the allegations of FGPI, even when given the opportunity to do so. To reiterate:

> On the second issue. We also sustain the [LA's] finding that complainants were dismissed for just causes. The records of this case show that the grounds upon which complainants' termination from employment was predicated are substantiated by documentary evidence culled from [FGPI's] file. The, (sic) August 16, 2013, Memorandum served upon herein complainants will show that they were charged to have committed the following offenses provided for under Company rules:
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> x x x x x x x x x
>
> [Complainants] posit that the pieces of documentary evidence submitted by [FGPI] are all self-serving. Unfortunately, complainants did not present countervailing evidence to disprove the data contained in the said documents. It bears noting that complainants were given

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

ample opportunity to answer and explain their side on the accusation against them, as contained in the x x x August 16, 2013 x x x memorandum but they did not. On their failure to submit an answer/ explanation, they explained that they no longer filed an answer considering that they had already filed a notice of strike with the NCMB. Unfortunately for complainants the explanation they gave is far from convincing. Even granting that they had already filed a notice of strike with the NCMB, it did not preclude them from filing an answer to [FGPI's] memorandum. As a matter of fact, they were still given an opportunity to file an answer, even as the conciliation proceedings before the NCMB was ongoing. If complainants really believed that the charges against them, which caused their suspension for thirty days, were without basis, then it was with more reason that they should have been prompted to vindicate themselves by proving the [FGPI] wrong. x x x.

x x x As regards the rest of the complainants, they alleged, along with Lumantao and Pacances that the RFID system is not reflective of their actual situation, citing in particular, their so called "non-productive time (machine trouble, set-up, break time, etc.) which, allegedly consumes a substantial amount of their time, thereby, in effect, decreasing their efficiency rate.["] The [FGPI], however, [was] quick to rebut the complainants['] assertions, presenting in evidence machine copies of the standard cards (personal necessity card, machine repair card, machine set-up card, wait maintenance card), which they could insert in the reader of the RFID depending on the actual situation that they are in, such that, the time spent or consumed for non-productive activities could not be counted into their working time. As regards the alleged discrimination, where they [said] that they were the only ones subjected to such performance review and scrutiny, complainants also failed to persuade Us. [FGPI] categorically stated in [its] pleadings the names of employees who were alleged to have been meted with disciplinary sanctions by [FGPI], along with them (e.g. manipulation of RFID System), but complainants did not refute the truthfulness of [FGPI's] claim that these employee (sic) were also subjected to disciplinary action. From the facts availing. We find that [FGPI's] act of terminating [complainants] from employment is based on valid grounds, as provided for under the Company policies and the rules governing the use and operation of the RFID System.[32] (Citations omitted)

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[32] *Id*. at 576-578.

Not only did the LA and the NLRC fail to find any infirmity in the presentation of the evidence, the Court finds that the respondents never even brought out the question of the same in any of their pleadings, such as the respondents' Position Paper[33] or Petition for *Certiorari*.[34] In actuality, the respondents never questioned the actual existence of the Company's rules or directives on the matter, only the implementation of such[35] and its alleged use to discriminate respondents as "oppressive to labor."[36]

While this in itself does not automatically indicate grave abuse of discretion on the part of the CA, it does indicate that even the respondents themselves concede the presence of the rules and regulations and the possibility that the same may be violated, lending credence to the belief that the respondents were well apprised of the rules and regulations that they were supposed to follow.

The absence of the actual Code of Discipline or the RFID Directives is not fatal, especially as the relevant provisions therein are properly cited in the Memoranda sent to the respondents, informing them of the allegations against them. The *Acebedo Optical v. NLRC*[37] case relied on by the CA actually highlights that the non-presentation of the authenticated copy of the company rules, while ideal and considered the best evidence, is not fatal, but only "casts skepticism on the factual basis of the charge of violation thereof."[38]

In this case, while there is no doubt as regards the factual basis of the charge being levied against the respondents which, as constantly reiterated, was never questioned by the respondents,

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[33] *Id*. at 440-451.

[34] *Id*. at 580-605.

[35] *Id*. at 589, 592.

[36] *Id*. at 595.

[37] 554 Phil. 524 (2007).

[38] *Id*. at 545.

the Court believes that there is no infirmity in the non-presentation. Indeed, the concurrence of the LA and the NLRC, among others, removes tiny doubt in this Court's mind as to the existence of the rules and the RFID Directives.

Notwithstanding the correct appreciation of the LA and the NLRC, a perusal of the documents and evidence at hand convinces this Court that the proof of valid dismissal has been properly substantiated. Respondents, save for Lumantao, were proven to have committed fraudulent acts which rendered them unfit to continue employment with FGPI.

Fraud as a just ground for dismissal is provided under paragraph (d) of Article 297 (formerly 282) of the Labor Code.[39] Thus: (d) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative. The following are thus the requisites in order to validate this ground: **First**, there must be an act, omission, or concealment; **second**, the act, omission or concealment involves a breach of legal duty, trust, or confidence justly reposed; **third**, it must be committed against the employer or his/her representative; and **fourth**, it must be in connection with the employee's work.

The Court finds that the foregoing elements are attendant to the case at bar. The respondents, save for Lumantao, committed clear acts that involved a breach of trust and confidence by directly deceiving their employer by making it seem that they worked with greater speed and efficiency than they actually did. Once again, the Court sees no reason to disturb the findings of fact of the lower tribunals that there was a clear discrepancy between the time goals purportedly accomplished by the respondents –except Lumantao– and the regular time goals, as recorded.

Crucially, the fraud committed by respondents Cabatingan, Petarco, and Ladrazo is work-related and renders them unfit

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[39] Department Order No. 147-15, Series of 2015, Amending the Implementing Rules and Regulations of Book VI of the Labor Code of the Philippines, as Amended.

to work for FGPI. While the CA found that the penalty of dismissal was far from being fair and reasonable, and that FGPI failed to show any instance when any of the respondents actually received unwarranted advantage due to the altered efficiency rating,[40] the Court finds that it is the act of misleading FGPI which shows the respondents' inability to continue working for it, and which gave them undue advantages in terms of their reputation in FGPI and thus their treatment by peer and superior alike. Once again, the acts of fraud were uncontroverted by the respondents, who do not even deny the discrepancies, but only questioned the validity of the system and exclaimed that the system itself was "oppressive in labor."[41] This seems to this Court to be a flimsy justification posited on the part of the respondents, especially because the RFID System is a valid management prerogative to which the respondents likewise were unable to pinpoint any abuse or instance of bad faith in the implementation thereof.

Thus, the Court holds that the CA committed grave abuse of discretion in reversing the findings of the lower courts based on the non-presentation of the actual provisions or the Directives. The Court finds it appropriate to rely on the findings of the lower courts, as the tribunals first tasked to receive the evidence at hand, instead of affirming the CA's reversal of the rulings based solely on the advocated lack of documentary evidence, especially when it is clear that the respondents liable for fraud were justly charged and are guilty of the commission of the alleged acts which constitute palpable attempts at deceiving their employer and making it seem as if they were efficient at the workplace when in fact they were not.

However, the Court cannot rule the same in the case of Lumantao. While the Court's view differs with the logic of the CA that the dismissal of respondents Cabatingan, Petarco, and Ladrazo was illegal and not commensurate to their violations, the Court agrees with the finding of the CA that meting the

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[40] *Rollo*, p. 25.

[41] *Id*. at 595.

supreme penalty of dismissal is not proportionate to the offenses committed by Lumantao.

In finding that Lumantao's dismissal was not proportionate to his offense, the CA held thus:

> For purposes of assessing the employees' performance output, FGPI has set 70% as the passing grade as determined through the RFID System. Employees whose output fall (sic) below the passing percentage are subjected to the prescribed disciplinary measures.
>
> Lumantao failed to comply with the required 70% efficiency rating for five (5) consecutive days in January 2013, and in February 2013. Although there were other days where he failed to achieve a passing grade, they were not for a consecutive period of 5 days and, hence, these instances were not punishable per company rules.
>
> Under the circumstances, We find that the outright dismissal of Lumantao is grossly disproportionate to the two (2) instances when he failed to comply with FGPI's Inter-Office Memorandum No. 010-002. Based on the same Inter-Office Memorandum, a 7-day suspension for his second violation would have sufficed.
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> x x x x x x x x x
>
> Concomitantly, on the measure of applicable penalties, Article V, Chapter One (General Guidelines) of the same Code of Conduct, provides:
>
> ARTICLE V. PENALTIES
>
> SECTION 1. KINDS OF PENALTIES
>
> The type of penalty which will be imposed will depend on the gravity of the offense.
>
> The following are the types of penalties:
>
> TYPE "A" PENALTY
>
> First Violation : Verbal Warning/Written Warning
> Second Violation : Three (3) working days suspension
> Third Violation : Seven (7) working days suspension
> Fourth Violation : Fifteen (15) working days suspension
> Fifth Violation : Separation

TYPE "B" PENALTY

First Violation : Three (3) working days suspension
Second Violation : Seven (7) working days suspension
Third Violation : Fifteen (15) working days suspension
Fourth Violation : Separation

TYPE "C" PENALTY

First Violation : Seven (7) working days suspension
Second Violation : Fifteen (15) working days suspension
Third Violation : Separation

TYPE "D" PENALTY

First Violation : Separation

From January to July 2013, Lumantao incurred 16 days of unapproved absences, 17 days of approved but excessive absences, 10 instances of undertime, and 39 times of tardiness.

Based on FGPI's Code of Conduct infractions on tardiness, undertime and absences do not warrant the immediate imposition of the supreme penalty of dismissal at the first instance. There is likewise no evidence on record showing that Lumantao incurred ten (10) consecutive absences without leave, which would have justified the imposition of the type "D" penalty of dismissal.

In immediately dismissing Lumantao, FGPI failed to follow the progression of disciplinary measures prescribed in Section 1, Article V of its Code of Conduct. FGPI failed to show that it imposed the less severe penalties first before imposing the ultimate penalty of dismissal. Where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe as dismissal. Hence, We find Lumantao's dismissal to be unwarranted under the circumstances.[42] (Citations omitted)

FGPI cited Lumantao's failure to pass the 70% job performance standard, his repetitive violations of company policies, as well as his poor time management[43] as the grounds for his termination of employment. According to the Investigation Report, the FGPI

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[42] *Id*. at 84-89.

[43] *Id*. at 78.

found that "Lumantao's numerous unauthorized and unjustified absences, absences beyond the allowed number, several tardiness and undertimes clearly show a habitual pattern of negligence in the performance of his duties[,]"[44] and that the "same is gross considering that he has consistently failed to meet the company's efficiency rating of 70%."[45] In Lumantao's Notice of Termination[46] dated September 13, 2013, FGPI stated that "[Lumantao's] above-mentioned numerous unauthorized, unjustified and excessive absences, undertimes, and tardiness which resulted in poor work performance or inefficiency constitute gross and habitual neglect of duties which under Article 282 of the Labor Code is also punishable with termination."[47]

Accordingly, Article 296 (formerly 282) of the Labor Code allows an employer to dismiss an employee for gross and habitual neglect of duties.[48] Particularly, jurisprudence provides that poor performance or unsatisfactory work may fall under gross and habitual neglect of duties under Article 296 (b) of the Code or may constitute gross inefficiency.

In *Buiser, et al. v. Hon. Leogardo, etc., et al.*,[49] the Court ruled that failure to reach a standard set by an employer or other work goals may be considered a ground for the dismissal of an employee. This management prerogative of requiring standards can be availed of so long as they are exercised in good faith for the advancement of the employer's interest.[50]

However, sufficient proof of the allegedly inefficient work done by an employee needs to be produced before dismissal may be deemed valid. Such proof can be gleaned from several requisites, expressly stated in *Sameer Overseas Placement*

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[44] *Id*. at 258

[45] *Id*.

[46] *Id*. at 295.

[47] *Id*.

[48] LABOR CODE OF THE PHILIPPINES, *Presidential Decree No. 442*, as amended, Article 282.

[49] 216 Phil. 144 (1984).

[50] *Id*. at 152.

Agency, Inc. v. Cabiles.[51] In that case, the requisites were held to be: 1) the employer must have set standards of conduct and workmanship against which the employee will be judged; 2) the standards of conduct and workmanship must have been communicated to the employee; and 3) the communication was made at a reasonable time prior to the employee's performance assessment.[52]

These requisites are wanting in Lumantao's case. While FGPI properly set standards of conduct and workmanship, the evidence is lacking to show that these standards were duly communicated to the respondent, especially during the times he had already alleged to be guilty of poor performance. There is no record that Lumantao was even warned about his work, or apprised as to what he had to do to improve the same. In fact, in Lumantao's 201 File, there was no mention of his failure to achieve the requisite performance standard, shown by FGPI in its petition. To wit:[53]

Date	Offenses	Penalties
May 05, 2009	Failure to carry assigned duties	Verbal Warning
May 24, 2011	AWOL	Written Warning
September 17, 2011	Excessive Tardiness	Written Warning
November 7, 2011	AWOL	3 days suspension
April 2, 2012	AWOL	Written Warning
May 24, 2012	AWOL	3 days suspension
August 2012	Excessive Tardiness	Written Warning
January 2013	Excessive Tardiness	Written Warning

[51] 740 Phil. 403 (2014).

[52] *Id*. at 424.

[53] *Rollo*, pp. 67-68.

A perusal of Lumantao's file shows that there is not even a record of the supposed failure to meet the performance standards, lending credence to the assertion that FGPI failed to properly apprise Lumantao regarding the same. As such, this takes away from the sincerity of FGPI in informing Lumantao about his supposed failing grade, and in helping him reach an acceptable standard, as well as FGPI's allegation that Lumantao was previously dismissed for prior offenses he committed.

As mentioned, the Court has almost invariably upheld an employer's management prerogative to dismiss an employee for gross negligence and carelessness so long as it is exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements.[54] The Court finds lack of good faith and absence of valid cause on the part of FGPI in this regard, so as to properly state that Lumantao was illegally dismissed.

As for the allegations of tardiness, the Court agrees with the reasoning of the CA that, according to FGPI's own Code of Conduct, Lumantao's infractions on tardiness, undertime, and absences do not warrant the immediate imposition of dismissal at the first instance, and that there is a lack of evidence of record showing that Lumantao's absences justified the imposition of the type "D" penalty of dismissal.[55] It must especially be noted that FGPI even admitted in its petition that its own Code of Conduct contains a "loophole" which only punishes the accumulation of consecutive absences by employees, and thus Lumantao's accumulated absences without official leave of 16 days and absences of 17 days from January to July 2013 are not *per se* punishable with the supreme penalty of dismissal.[56] Thus, this Court must rely on the provisions on discipline themselves, and FGPI only has itself to blame that there is an

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[54] *San Miguel Corporation v. Layoc, Jr.*, 562 Phil. 670, 687 (2007).

[55] *Rollo*, p. 21.

[56] *Id*. at 65.

infirmity in its own rules. Lumantao's security of tenure must not be prejudiced by the fault of the Company.

If the Court had previously relied on FGPI's guidelines to find that the other respondents were validly dismissed, so must this Court do the same in this instance. Thus, the finding of the CA that FGPI failed to follow its own disciplinary measures with respect to Lumantao must stand.

Based on the foregoing, while the Court holds that the CA committed grave abuse of discretion in rendering the assailed decision and reversing the previous findings of the lower courts, and finding that the employment of respondents Cabatingan, Petarco, and Ladrazo was terminated for just cause, the Court finds that the CA did not err in finding that Lumantao was illegally dismissed.

WHEREFORE, the Decision dated April 27, 2017 and Resolution dated November 20, 2017 of the Court of Appeals Twentieth Division in CA-G.R. CEB-SP No. 08992 are **AFFIRMED WITH MODIFICATION**.

With regard to respondents Roy P. Cabatingan, Steve J. Petarco, and Zyzan Ladrazo, the Decision dated April 25, 2014 of the Labor Arbiter, as affirmed by the National Labor Relations Commission in its Decision dated September 30, 2014 finding that the aforementioned respondents were dismissed for just cause, is **REINSTATED**. The decision of the Court of Appeals stating that they were illegally dismissed is **REVERSED** and **SET ASIDE**.

With regard to respondent Brian L. Lumantao, the decision of the Court of Appeals that his dismissal is illegal for want of cause is **AFFIRMED**. Accordingly, petitioner First Glory Philippines, Inc. is **ORDERED**:

1. To pay respondent Lumantao separation pay in lieu of reinstatement equivalent to one (1) month pay for every year of service, computed up to the finality of this Decision;

2. To pay respondent Lumantao full backwages, inclusive of allowances, and other benefits or their monetary equivalent,

computed from the time respondent Lumantao was illegally dismissed on September 13, 2013 up to the finality of this Decision;

3. To pay respondent Lumantao attorney's fees equivalent to 10% of the total monetary awards; and

4. To pay legal interest of six percent (6%) *per annum* on the total monetary award computed from the date of finality of this Decision until full payment.

Let this case be **REMANDED** to the Labor Arbiter for computation, within thirty (30) days from the receipt of this Decision, of respondent Lumantao's separation pay, backwages, and ten percent (10%) of the total sum as and for attorney's fees as stated above; and for immediate execution.

SO ORDERED.

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

THIRD DIVISION

[A.C. No. 7169. March 11, 2019]

SPOUSES RAY and MARCELINA ZIALCITA, *complainants, vs.* **ATTY. ALLAN LATRAS,** *respondent.*

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

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; NOTARIES PUBLIC; 2004 RULES ON NOTARIAL PRACTICE; REQUIRES PARTIES TO PERSONALLY APPEAR BEFORE THE NOTARY PUBLIC; VIOLATED IN CASE AT BAR.—** The *2004 Rules on Notarial Practice emphasizes the necessity of the parties to personally appear before the notary public*. x x x In the instant case, it is undisputed that Atty. Latras notarized the subject document without the personal appearance of the spouses. In fact, in his Comment, he admitted that he indeed notarized the deed. Atty. Latras, however, reasoned out that he only followed the instruction of Ray Zialcita to notarize the same without their presence and that he merely relied on the alleged assurance of the spouses that they would be present on that weekend. Atty. Latras' contention that there has been substantial compliance with the notarial law holds no water. It is of no moment that he talked with the spouses over the phone and that, through the presence of witnesses, he was able to verify that the signatures in the said document were those of the spouses. This Court has repeatedly stressed in a number of cases the requirement for the parties to personally appear before the notary public in the notarization of documents. The purpose of the requirement of personal appearance by the acknowledging party before the notary public is to enable the latter to verify the genuineness of the signature of the former.

2. **ID.; ID.; DISBARMENT OR SUSPENSION OF ATTORNEYS; IN ADMINISTRATIVE COMPLAINTS THEREFOR, THE REQUIRED QUANTUM OF PROOF IS CLEAR AND PREPONDERANT EVIDENCE; CASE AT BAR.—** As regards the alleged conspiracy of Atty. Latras and Servacio to substitute the first page of the deed, it is elementary that in administrative complaints for disbarment and suspension against lawyers, the required quantum of proof is clear and preponderant evidence. In this case, however, the complainants failed to present any evidence to substantiate their claim of forgery and fraud on the part of Atty. Latras. Hence, the same shall fail.

APPEARANCES OF COUNSEL

Jose Vicente M. Arnado for complainants.

R E S O L U T I O N

PERALTA, *J.*:

The case stemmed from an administrative complaint[1] for disbarment filed by spouses Ray and Marcelina Zialcita against Atty. Allan Latras for violation of the notarial law.

The spouses obtained a loan from a certain Ester Servacio to aid in the construction of their commercial building. As security for the loan, a Deed of Sale with Right to Repurchase, for a period of one year, over a commercial land and building, was executed by the spouses in favor of Servacio in the amount of ₱11 Million. The spouses alleged that Servacio and Atty. Latras fraudulently substituted the first page of the Deed of Sale with Right to Repurchase with a Deed of Absolute Sale for ₱2 Million. Furthermore, the spouses contended that Atty. Latras acted as legal counsel and notary public for Servacio, and notarized the deed of absolute sale without their knowledge and appearance in his office.

In his Comment, Atty. Latras denied having substituted the first page of the notarized document. He contended that the burden to prove the allegation of such fraud rests upon the complainants. To bolster his defense, he added that it was one of the spouses, Ray Zialcita, who asked for the dispensation of their appearance. He further contended that as long as there was the affirmation as to the contents and truth of what are stated in the document, then such notarization may be considered as substantial compliance with the requirements under the notarial law.

On July 19, 2013, the Commission on Bar Discipline of the Integrated Bar of the Philippines (*IBP*) found that insofar as the violation of the notarial law by Atty. Latras is concerned, there is no doubt that he did not act in accordance with the law. The Commission agreed with the spouses that the notarial act must be done in the presence of the parties personally appearing.

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

However, the complainants failed to show that Atty. Latras acted fraudulently nor was with connivance with anyone in notarizing the document; hence, the Commission recommended that mere reprimand is sufficient.[2]

On September 27, 2014, a Resolution[3] was passed by the IBP Board of Governors which reads:

> *RESOLVED* to *ADOPT* and *APPROVE*, as it is hereby *ADOPTED* and *APPROVED*, with modification, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and for violation of the 2004 Rules of Notarial Practice, Atty. Allan Latras' notarial commission if presently commissioned is immediately *REVOKED*.
>
> *FURTHER*, he is ***DISQUALIFIED*** from being commissioned as Notary Public for two (2) years and ***SUSPENDED*** from the practice of law for six (6) months. (Emphases and italics supplied.)

Atty. Latras moved for reconsideration of the above resolution, but the same was denied.

The Court's Ruling

The Court upholds the findings and recommendation of the IBP Board of Governors.

The 2004 Rules on Notarial Practice emphasizes the necessity of the parties to personally appear before the notary public. Rule II, Section 1 and Rule IV, Section 2 (b) provide:

> SECTION 1. Acknowledgment. – "Acknowledgment" refers to an act in which an individual on a single occasion:
>
> (a) appears in person before the notary public and presents an integrally complete instrument or document;
>
> (b) is attested to be personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and

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[2] *Id.* at 332-335; Report and Recommendation submitted by Commissioner Maria Editha A. Go-Binas.

[3] *Id.* at 331.

(c) represents to the notary public that the signature on the instrument or document was voluntarily affixed by him for the purposes stated in the instrument or document, declares that he has executed the instrument or document as his free and voluntary act and deed, and, if he acts in a particular representative capacity, that he has the authority to sign in that capacity.

x x x x x x x x x

SEC. 2. Prohibitions. — x x x

(b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document —

(1) is **not in the notary's presence personally at the time of the notarization**; and

(2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules. (Emphasis supplied.)

In the instant case, it is undisputed that Atty. Latras notarized the subject document without the personal appearance of the spouses. In fact, in his Comment,[4] he admitted that he indeed notarized the deed. Atty. Latras, however, reasoned out that he only followed the instruction of Ray Zialcita to notarize the same without their presence and that he merely relied on the alleged assurance of the spouses that they would be present on that weekend.

Atty. Latras' contention that there has been substantial compliance with the notarial law holds no water. It is of no moment that he talked with the spouses over the phone and that, through the presence of witnesses, he was able to verify that the signatures in the said document were those of the spouses. This Court has repeatedly stressed in a number of cases the requirement for the parties to personally appear before the notary public in the notarization of documents. The purpose of the requirement of personal appearance by the acknowledging party before the notary public is to enable the latter to verify the genuineness of the signature of the former.[5]

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[4] *Id.* at 38-55.

[5] *Orola, et al. v. Baribar*, A.C. No. 6927, March 14, 2018.

Thus, in *Agagon v. Bustamante*,[6] the Court explained that notarization of documents is not an empty, meaningless or routinary act:

> It cannot be overemphasized that notarization of documents is not an empty, meaningless or routinary act. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. It is through the act of notarization that a private document is converted into a public one, making it admissible in evidence without need of preliminary proof of authenticity and due execution. Indeed, a notarial document is by law entitled to full faith and credit upon its face, and for this reason, notaries public must observe utmost care in complying with the elementary formalities in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined.[7]

Clearly, Atty. Latras failed to exercise the due diligence required of him as a notary public when he notarized the document without the spouses personally appearing before him.

As regards the alleged conspiracy of Atty. Latras and Servacio to substitute the first page of the deed, it is elementary that in administrative complaints for disbarment and suspension against lawyers, the required quantum of proof is clear and preponderant evidence.[8] In this case, however, the complainants failed to present any evidence to substantiate their claim of forgery and fraud on the part of Atty. Latras. Hence, the same shall fail.

In *Gonzales v. Bañares*,[9] the respondent lawyer was meted a penalty of revocation of notarial commission and suspension from the practice of law for six (6) months. The Court held the respondent lawyer administratively liable for notarizing the subject deed of sale without the affiant personally appearing before

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[6] 565 Phil. 581 (2007).

[7] *Id.* at 587.

[8] *Cruz v. Atty. Centron*, 484 Phil. 671 (2004).

[9] A.C. No. 11396, June 20, 2018.

him. In *Orola v. Baribar*,[10] the Court deemed it proper to impose the penalty of suspension from the practice of law for one (1) year, revocation of incumbent commission as a notary public, and disqualification from being commissioned as a notary public for a period of two (2) years.

In line with the foregoing principles, the Court finds Atty. Latras administratively liable for notarizing the subject document without the spouses personally appearing before him. He cannot avoid responsibility by pointing out that he merely complied with the instruction of the complainants to notarize the document without their presence.

WHEREFORE, in view of the foregoing, the Court **SUSPENDS** Atty. Allan Latras from the practice of law for six (6) months, **REVOKES** his notarial commission, if presently commissioned, and **DISQUALIFIES** him from being commissioned as a notary public for a period of two (2) years, all effective upon receipt of this Resolution. The Court further **WARNS** him that a repetition of the same or similar offense shall be dealt with more severely.

Let copies of this Resolution be included in the personal records of Atty. Allan Latras and entered in his file in the Office of the Bar Confidant. Further, let copies of this Resolution be disseminated to all lower courts by the Office of the Court Administrator, as well as to the Integrated Bar of the Philippines, for their information and guidance.

SO ORDERED.

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

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[10] *Supra* note 5.

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

SECOND DIVISION

[G.R. No. 212471. March 11, 2019]

MARIA LUZ AVILA BOGNOT, *petitioner, vs.* **PINIC INTERNATIONAL (TRADING) CORPORATION/ CD-R KING, NICHOLSON SANTOS, and HENRY T. NGO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE SUPREME COURT'S JURISDICTION IS GENERALLY LIMITED TO REVIEWING ERRORS OF LAW; RATIONALE.—** Basic is the rule that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, the Court's jurisdiction is generally limited to reviewing errors of law. The Court is not a trier of facts, and this applies with greater force in labor cases. Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality, especially so when the labor arbiter and the NLRC have uniform findings, which were affirmed by the appellate court. Thus, this Court will not review such findings of the appellate court and tribunals unless the recognized exceptions to such rule are present, which we do not find in this case.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; ILLEGAL DISMISSAL; BEFORE EMPLOYERS ARE BURDENED TO PROVE THAT THEY DID NOT COMMIT ILLEGAL DISMISSAL, IT IS INCUMBENT UPON THE EMPLOYEE TO FIRST ESTABLISH BY SUBSTANTIAL EVIDENCE THE FACT OF HIS/HER DISMISSAL.—** The Court is not unaware of the rule that in illegal dismissal cases, the employer has the burden of proving that the termination was for a valid or authorized cause. However, there are cases wherein the facts and the evidence do not establish *prima facie* that the employee was dismissed from employment. Thus, it is likewise incumbent upon the employees that they should first

establish by substantial and competent evidence the fact of their dismissal from employment. Fair evidentiary rule dictates that before employers are burdened to prove that they did not commit illegal dismissal, it is incumbent upon the employee to first establish by substantial evidence the fact of his or her dismissal. In this case, the established facts and evidence show that petitioner was not dismissed from employment. The records are clear that petitioner was merely pulled out from respondents' Robinson's Place Manila branch to be given another assignment. As correctly pointed out by the tribunals and court *a quo*, petitioner was pulled out from her assignment on May 9, 2010 and instructed to "be ready for the next company assignment" that PAMS will give her. However, only four days thereafter, petitioner already filed this illegal dismissal case. Clearly, at that point, there was no dismissal to speak of yet.

3. ID.; ID.; ID.; "OFF-DETAILING" IS NOT EQUIVALENT TO DISMISSAL, IT IS ONLY WHEN SUCH "FLOATING STATUS" LASTS FOR MORE THAN SIX (6) MONTHS THAT THE EMPLOYEE MAY BE CONSIDERED TO HAVE BEEN CONSTRUCTIVELY DISMISSED; CASE AT BAR.— The rule is settled that "off-detailing" is not equivalent to dismissal, so long as such status does not continue beyond a reasonable time and that it is only when such "floating status" lasts for more than six months that the employee may be considered to have been constructively dismissed. A complaint for illegal dismissal filed prior to the lapse of the said six-month period and/or the actual dismissal of the employee is generally considered as prematurely filed. Such principle finds legal basis in Article 286 of the Labor Code, which allows employers to put employees on floating status for a period not exceeding six months as a consequence of a *bona fide* suspension of the operation of a business or undertaking. As found by the tribunals and court *a quo*, this Court finds no fault against PAMS in opting to suspend its undertaking with respondents by pulling out petitioner from the latter's branch so as not to incur contractual liabilities to respondents. To our mind, this is a legitimate concern, which does not, in any way, indicate any bad faith or arbitrariness on PAMS' part.

4. ID.; ID.; ID.; THE RIGHT OF EMPLOYEES TO SECURITY OF TENURE DOES NOT GIVE THEM VESTED RIGHTS TO THEIR POSITIONS TO THE EXTENT OF DEPRIVING MANAGEMENT

OF ITS PREROGATIVE TO CHANGE THEIR ASSIGNMENTS OR TO TRANSFER THEM.— The right of employees to security of tenure does not give them vested rights to their positions to the extent of depriving the management of its prerogative to change their assignments or to transfer them. It should be emphasized that absent showing of illegality, bad faith, or arbitrariness, courts often decline to interfere in employers' legitimate business decisions considering that our labor laws also discourage intrusion in employers' judgment concerning the conduct of their business. As mentioned above, PAMS had a *bona fide* reason to re-assign petitioner to another client. To be sure, the premature filing of the illegal dismissal case deprived PAMS the latitude given to it by law to re-assign petitioner to another client. This Court, therefore, sustains the uniform rulings of the LA, NLRC, and the CA that the complaint for illegal dismissal was prematurely filed and, thus, should be dismissed.

APPEARANCES OF COUNSEL

Agustin Chiong Agustin Law Office for petitioner.
Ong Meneses Gonzales & Gupit for respondents.

D E C I S I O N

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

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated December 5, 2013 of the Court of Appeals (CA) in CA-G.R. SP. No. 120719. The CA's Resolution[3] dated May 5, 2014, denying petitioner's motion for reconsideration is likewise impugned herein.

This petition is rooted from a complaint for illegal dismissal, and other monetary claims filed by Maria Luz Avila Bognot

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[1] *Rollo*, pp. 9-39.

[2] Penned by Associate Justice Michael P. Elbinias, with Associate Justices Isaias P. Dicdican and Nina G. Antonio-Valenzuela, concurring; *id*. at 40-53.

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

(petitioner) against Pinic International Trading Corporation/CD-R King, Nicholson C. Santos, and Henry Ngo (respondents).

Petitioner alleges that respondents employed her as a branch head in 2003. She was assigned to different CD-R King branches, the last of which was at Robinson's Place Manila. As branch head, she was responsible for the inventory, adjustment and monitoring of stocks; deposit of daily sales to the bank; and supervision of store operations.[4]

Petitioner narrates that sometime in April, she was accused of allowing unauthorized persons to enter CD-R King's *bodega* at Robinson's Place, for which she was suspended for three days.[5]

On May 7, 2010, petitioner was allegedly informed that she will be pulled out of the branch for no given reason and was told not to report for work anymore. According to petitioner, she was also threatened to be brought to the police on false charges of theft.[6]

On May 9, 2010, petitioner was pulled out from the branch. Few days thereafter, or on May 13, 2010, petitioner filed the illegal dismissal complaint against respondents.[7]

For their part, respondents aver that sometime in 2004, the company entered into a service contract agreeement with People's Arm Manpower Services, Inc. (PAMS). Pursuant to the said contract, PAMS assigned petitioner to respondents' company to perform sales and marketing services. Petitioner's salary and other benefits such as Social Security Service (SSS) were given by PAMS. It was also PAMS which deals with disciplinary measures and controls petitioner's work matters. Hence, contrary to petitioner's claim, respondents did not have the power to dismiss her from employment.[8] For this reason, PAMS was

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[4] *Id*. at 225-226.

[5] *Id*. at 226.

[6] *Id*.

[7] *Id*. at 238.

[8] *Id*. at 227-229.

impleaded as a co-respondent upon respondents' motion.[9] Notably, PAMS presented the same allegations and arguments as those of respondents.[10]

Respondents allege that sometime in the early part of 2010, they notified PAMS of some issues that they encountered due to petitioner's actions and/or inactions. Acting upon said complaints from respondents, PAMS Human Resource Manager and Marketing Officer issued memoranda, requiring petitioner to submit a written explanation on the report that she allowed strangers to enter the restricted area of the store premises and that she failed to organize and display store merchandise.[11]

On April 29, 2010, it was discovered that petitioner's negligence led to a huge discrepancy in CD-R King's inventory. This prompted respondents to submit an incident report to PAMS. Thus, PAMS issued another memorandum to petitioner, requiring her to explain the reported complaint. Petitioner submitted her handwritten response. PAMS was, however, not satisfied with petitioner's explanation. Thus, considering the contractual liabilities to respondents that PAMS may incur due to petitioner's infractions, PAMS decided to recall petitioner's assignment with respondents.[12]

In a Memorandum dated May 7, 2010, PAMS wrote:

> We regret to inform you that we have to pull-out your contract of services with our Client, CD-R King, due to negligence of duty resulting to huge discrepancy.
>
> In this regard, we have to pull-out you [sic] on this day of May 09, 2010. Kindly make a proper turn-over of your duties and responsibilities to your head.
>
> Thank you for being part of CDR king [sic], **and be ready for the next company assignment we will give you**.[13] (Emphasis supplied)

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[9] *Id*. at 225.

[10] *Id*. at 232.

[11] *Id*. at 229-230.

[12] *Id*. at 230-231.

[13] *Id*. at 231.

Respondents, thus, maintain that petitioner was never dismissed from work but was merely pulled out from their company to be re-assigned by PAMS to another client.[14]

In its November 30, 2010 Decision,[15] the Labor Arbiter (LA) dismissed the complaint, finding that, in the first place, there was no employer-employee relationship between petitioner and respondents. Instead, records show that it was PAMS which engaged petitioner's services, paid her salary and benefits, and had the power to discipline and control her conduct in accordance with its undertaking in the service contract agreement. Petitioner's dismissal, if at all, cannot be imputed against respondents according to the LA.

Proceeding to the issue of illegal dismissal, the LA found the records to support respondents' contention that petitioner was never dismissed. Petitioner was merely pulled out from respondents to be re-assigned to another PAMS client. Petitioner, however, filed the illegal dismissal case only four days after her pull out for re-assignment, which makes the institution of the complaint premature.[16]

Anent petitioner's monetary claims, the LA found evidence showing that during petitioner's assignment with respondents, PAMS deducted certain amounts from her salary as a form of cash bond. Evidence were also found proving that petitioner was not paid her salary for certain days. Hence, the LA granted said claims and made respondent Pinic International Corporation/CD-R King solidarily liable with PAMS for the payment thereof, citing Section 7[17] of the

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[14] *Id*. at 232.

[15] *Id*. at 224-241.

[16] *Id*. at 238.

[17] SEC. 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. x x x

Rules Implementing Articles 106 to 109 of the Labor Code.[18]

The LA disposed, thus:

> **WHEREFORE**, premises considered, the instant complaint for illegal dismissal is hereby dismissed for lack of merit. However, respondents CD-R King/Pinic International Corporation and People's Arm Manpower Services, Inc. are hereby ordered to jointly and severally pay [petitioner] the following amounts:
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> a. Five Thousand Forty Pesos (₱5,040.00), as and by way of unpaid salary;
>
> b. Thirteen Thousand Nine Hundred Pesos (₱13,900.00), as and by way of refund of the cash bond deducted by PAMS.
>
> All other claims are hereby dismissed for lack of merit.
>
> **SO ORDERED.**[19]

On appeal, the National Labor Relations Commission (NLRC), in its Decision[20] dated May 16, 2011, affirmed the LA's ruling in its entirety. After re-evaluating the arguments and evidence presented by both parties, the NLRC found that indeed, petitioner was under the employ of PAMS, not of the respondents, and more importantly, there was no dismissal from employment to speak of at the time of the institution of the complaint for illegal dismissal. The NLRC also upheld the grant of the refund of cash bond and unpaid salaries in favor of petitioner. It disposed, thus:

> **WHEREFORE**, the assailed Decision is hereby **AFFIRMED**.
>
> **SO ORDERED.**[21]

In its assailed December 5, 2013 Decision, the CA sustained the findings and conclusion of the NLRC altogether, thus:

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[18] *Rollo*, p. 240.

[19] *Id.* at 241.

[20] *Id.* at 285-313.

[21] *Id.* at 312.

IN VIEW OF ALL THESE, the Petition is **DENIED**.

SO ORDERED.[22]

In its May 5, 2014 assailed Resolution, the CA denied petitioner's motion for reconsideration:

IN VIEW OF ALL THESE, the Motion for Reconsideration is **DENIED**.

SO ORDERED.[23]

Hence, this petition.

The core issue in this case is whether petitioner was illegally dismissed from employment. This petition, however, focuses on the argument that PAMS is a mere labor-only contractor, having no substantial capital or investment and direct supervision over her. As such, petitioner argues that the employer-employee relationship between her and respondents remained until her alleged illegal dismissal in April 2010. It is the petitioner's theory that the May 7, 2010 pull out memorandum was merely a ploy to sever her employment with respondents. In fine, petitioner maintains that her employment with respondents was illegally terminated.

We resolve.

The issues of whether or not an employer-employee relationship existed between petitioner and respondents, and whether or not PAMS have substantial capital or investment and direct supervision of petitioner to be considered a legitimate independent contractor, are essentially questions of fact.[24] Basic is the rule that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, the Court's jurisdiction is generally limited to reviewing errors of law. The Court is not a trier of facts, and this applies with greater force in labor cases. Findings

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[22] *Id*. at 52.

[23] *Id*. at 56.

[24] See *Valencia v. Classique Vinyl Products Corporation*, G.R. No. 206390, January 30, 2017, 816 SCRA 144, 159.

of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality,[25] especially so when the labor arbiter and the NLRC have uniform findings, which were affirmed by the appellate court. Thus, this Court will not review such findings of the appellate court and tribunals unless the recognized exceptions[26] to such rule are present, which we do not find in this case.

Verily, this Court finds no reason to deviate from the uniform findings of the LA, the NLRC, and the CA that an employer-employee relationship existed between petitioner and respondents; and that PAMS was petitioner's employer, PAMS being a legitimate independent contractor, having substantial capital and direct supervision over petitioner's work.

At any rate, what is more relevant at this point and necessary to determine at the onset is whether or not there was a dismissal to speak of in this case. Both the LA and the NLRC, as well as the CA, found none.

We agree.

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[25] *Doctor v. NII Enterprises*, G.R. No. 194001, November 22, 2017, 846 SCRA 53, 65-66.

[26] These exceptions are: (1) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) [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 the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) the findings of the Court of Appeals are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) the findings of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. (*Pascual v. Burgos*, 776 Phil. 167, 182-183 [2016]).

The Court is not unaware of the rule that in illegal dismissal cases, the employer has the burden of proving that the termination was for a valid or authorized cause. However, there are cases wherein the facts and the evidence do not establish *prima facie* that the employee was dismissed from employment.[27] Thus, it is likewise incumbent upon the employees that they should first establish by substantial and competent evidence the fact of their dismissal from employment. Fair evidentiary rule dictates that before employers are burdened to prove that they did not commit illegal dismissal, it is incumbent upon the employee to first establish by substantial evidence the fact of his or her dismissal.[28]

In this case, the established facts and evidence show that petitioner was not dismissed from employment. The records are clear that petitioner was merely pulled out from respondents' Robinson's Place Manila branch to be given another assignment. As correctly pointed out by the tribunals and court *a quo*, petitioner was pulled out from her assignment on May 9, 2010 and instructed to "be ready for the next company assignment" that PAMS will give her. However, only four days thereafter, petitioner already filed this illegal dismissal case. Clearly, at that point, there was no dismissal to speak of yet.

Traditionally invoked by security agencies when guards are temporarily sidelined from duty while waiting to be transferred or assigned to a new post or client, the same principle in temporary displacement, "off-detailing" or putting an employee on floating status is also applied to other industries. The rule is settled that "off-detailing" is not equivalent to dismissal, so long as such status does not continue beyond a reasonable time and that it is only when such "floating status" lasts for more than six months that the employee may be considered to have been constructively dismissed. A complaint for illegal dismissal filed prior to the lapse of the said six-month period and/or the

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[27] *Doctor v. NII Enterprises*, *supra* note 25, at 67.

[28] *Tri-C General Services v. Matuto*, 770 Phil. 251, 254 (2015).

actual dismissal of the employee is generally considered as prematurely filed.[29]

Such principle finds legal basis in Article 286[30] of the Labor Code, which allows employers to put employees on floating status for a period not exceeding six months as a consequence of a *bona fide* suspension of the operation of a business or undertaking. As found by the tribunals and court *a quo*, this Court finds no fault against PAMS in opting to suspend its undertaking with respondents by pulling out petitioner from the latter's branch so as not to incur contractual liabilities to respondents. To our mind, this is a legitimate concern, which does not, in any way, indicate any bad faith or arbitrariness on PAMS' part.

Relatively, petitioner's unsupported theory that the pull out is actually a form of constructive dismissal does not persuade this Court. The right of employees to security of tenure does not give them vested rights to their positions to the extent of depriving the management of its prerogative to change their assignments or to transfer them. It should be emphasized that absent showing of illegality, bad faith, or arbitrariness, courts often decline to interfere in employers' legitimate business decisions considering that our labor laws also discourage intrusion in employers' judgment concerning the conduct of their business.[31] As mentioned above, PAMS had a *bona fide* reason to re-assign petitioner to another client. To be sure, the premature filing of the illegal dismissal case deprived PAMS the latitude given to it by law to re-assign petitioner to another client.

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[29] *Nippon Housing Phils. Inc. v. Leynes*, 670 Phil. 495, 507 (2011).

[30] Art. 286. When employment not deemed terminated. The *bona fide* suspension of the operation of a business undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

[31] *Nippon Housing Phils. Inc. v. Leynes*, *supra* note 29, at 506.

This Court, therefore, sustains the uniform rulings of the LA, NLRC, and the CA that the complaint for illegal dismissal was prematurely filed and, thus, should be dismissed.

The monetary claims granted to the petitioner were likewise supported by substantial evidence and, thus, will not be disturbed by this Court.

WHEREFORE, premises considered, the instant petition is **DENIED**. The Decision dated December 5, 2013 and the Resolution dated May 5, 2014 of the Court of Appeals in CA-G.R. SP. No. 120719 are hereby **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 218097. March 11, 2019]

GOVERNMENT SERVICE INSURANCE SYSTEM *petitioner, vs.* **APOLINARIO K. DAYMIEL, substituted by his heirs MADELINE D. VILORIA, YOLANDA D. DE CASTRO, JOVENA D. ACOJEDO, ALBERTO DAYMIEL, MA. IMELDA D. GANDOLA, MARIDEL D. MORANDANTE[*] and MA. NYMPHA DAYMIEL,** *respondents.*

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[*] Also referred to as "Maridel D. Morandarte" in some parts of the *rollo*.

SYLLABUS

1. POLITICAL LAW; EXECUTIVE DEPARTMENT; ADMINISTRATIVE AGENCIES; ADMINISTRATIVE AGENCIES MAY BE BESTOWED WITH QUASI-JUDICIAL OR QUASI-LEGISLATIVE POWERS; IN THE EXERCISE OF QUASI-JUDICIAL POWERS; THE DOCTRINE OF PRIMARY JURISDICTION MAY BE INVOKED; CASE AT BAR.— Jurisdiction over a subject matter is conferred by the Constitution or the law, and rules of procedure yield to substantive law. Otherwise stated, jurisdiction must exist as a matter of law. Only a statute can confer jurisdiction on courts and administrative agencies. Administrative agencies may be bestowed with quasi-judicial or quasi-legislative powers. In the exercise of an administrative agency's quasi-judicial powers, the doctrine of primary jurisdiction may be invoked. x x x In this case, Section 30 of R.A. No. 8291 vests upon the GSIS the original and exclusive jurisdiction to hear disputes arising from said law or related issuances. Section 14.3 (now Section 27.1) of the Implementing Rules and Regulations (IRR) of R.A. No. 8291 provides that such quasi-judicial power lies with the GSIS Board of Trustees, x x x An appeal of the decision of the GSIS Board of Trustees may be filed with the CA *via* Rule 43 of the Rules of Court.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; ACTION FOR DECLARATORY RELIEF; REQUIREMENTS.— The requirements of an action for declaratory relief are as follows: (1) there must be a justiciable controversy; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy; and (4) the issue involved must be ripe for judicial determination. Certainly, it is the RTC which is vested with jurisdiction to try such petition. In the case of *Commissioner of Customs v. Hypermix Feeds Corporation*, we reiterated that the determination of whether a rule is issued by an administrative agency contravenes the law or the Constitution is within the jurisdiction of the regular courts.

3. POLITICAL LAW; EXECUTIVE DEPARTMENT; ADMINISTRATIVE AGENCIES; ADMINISTRATIVE ISSUANCES MAY BE CLASSIFIED INTO LEGISLATIVE RULE AND ADMINISTRATIVE RULE; DISTINGUISHED.—

Administrative issuances may be classified into two, *i.e.*, legislative rule and administrative rule. The former is in the matter of subordinate legislation, designed to implement a primary legislation by providing the details thereof. On the other hand, the latter is designed to provide guidelines to the law which the administrative agency is in charge of enforcing.

4. ID.; ID.; ID.; ID.; THE POLICY AND PROCEDURAL GUIDELINES NO. 171-03 (PPG NO. 171-03) DATED MARCH 24, 2003, ISSUED BY THE FORMER GSIS PRESIDENT AND APPROVED BY THE GSIS BOARD OF TRUSTEES IN RESOLUTION NO. 90, DATED APRIL 2, 2003, ARE LEGISLATIVE RULES, WHICH REQUIRES PUBLICATION, THEIR NON-PUBLICATION NECESSITATED THEM TO BE STRUCK DOWN FOR BEING UNCONSTITUTIONAL.— Clearly, PPG No. 171-03 is a legislative rule. It does not merely provide guidelines to R.A. No. 8291, but in fact creates a burden upon those who are governed in its implementation. Specifically, PPG No. 171-03 supplies the conditions for the starting point when services are rendered, for the purposes of computing all benefits under R.A. No. 8291 and the same requires: (a) the member was receiving a fixed basic monthly compensation; and (b) monthly contributions were timely and correctly paid or remitted. However, there was no condition and definition provided under R.A. No. 8291; "services" was neither defined nor delineated for the purposes of computing benefits. In other words, PPG No. 171-03 provides the details for the starting point of the computation of GSIS benefits. It effectively supplants the period prescribed under R.A. No. 8291. Parenthetically, Regulation No. 90, which approved PPG No. 171-03 is, likewise, of the same character. As PPG No. 171-03 and the subsequent Resolution No. 90 are legislative rules, publication is indispensable. Publication of statutes satisfies the constitutional right of the people to due process. It keeps the citizenry informed and notified of various laws which are to regulate their actions and conduct. Without such notice and publication, there would be no basis for the application of the *ignorantia legis non excusat*. Considering that PPG No. 171-03 and the subsequent Resolution No. 90 are legislative issuances, necessitating publication for their effectivity and the undisputed fact of their non-publication, the assailed issuances must be struck down for being unconstitutional.

APPEARANCES OF COUNSEL

GSIS Legal Services Group for petitioner.
Peter Y. Co for Madeleine D. Viloria, *et al.*

D E C I S I O N

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

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated February 25, 2014 and the Resolution[2] dated April 28, 2015 of the Court of Appeals-Cagayan De Oro City (CA) in CA-G.R. CV No. 01773-MIN, reversing the ruling of the Regional Trial Court (RTC) of Dipolog City, Branch 8 which dismissed the case for lack of merit.

Relevant Antecedents

On August 18, 1969, Apolinario K. Daymiel (respondent) served as a casual laborer of the Provincial Engineering Office of the Provincial Government of Zamboanga del Norte. Eventually, respondent assumed the position of Accounting Clerk III until his retirement on July 1, 2003.[3]

Thereupon, respondent applied for retirement benefits before the Government Service Insurance System (GSIS). A Tentative Computation was made pursuant to respondent's application. Initially, GSIS granted respondent a total of 33.65678 years of creditable service. The lump sum payment was equivalent to ₱542,325.00 and the monthly pension amounted to ₱9,038.75,[4] *viz.*:

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[1] Penned by Associate Justice Marie Christine Azcarraga-Jacob, with Associate Justices Edgardo T. Lloren and Edward B. Contreras, concurring; *rollo*, pp. 41-57.

[2] Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Romulo V. Borja and Edward B. Contreras, concurring; *id.* at 78-79.

[3] *Id.* at 42.

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

LAST NAME: DAYMIEL FIRST NAME: APOLINARIO

DATE OF RET: 07012003 YEARS OF SERVICE: 33.656678
DATE OF BIRTH: 07011938 AMC: 10,043.67

x x x x x x x x x

RA 8291: 5-YR LUMP SUM PAYMENT
542,325.00-5-YR LS
9,038.75 PENSION TO START
5 YRS FROM DOR

x x x x x x x x x

However, a re-computation was made wherein GSIS credited respondent only with 23.85082 years of service instead of the initial 33.65678. Accordingly, respondent's lump sum payment was decreased to ₱384,295.80 and his monthly pension was pegged at ₱5,886.77.[5]

Unsatisfied with the computation, respondent wrote a letter to the GSIS and inquired as to the legal basis for such computation.

It appears that the re-computation was made as a result of the implementation of Policy and Procedural Guidelines No. 171-03 (PPG No. 171-03) dated March 24, 2003 issued by then GSIS President and General Manager Winston F. Garcia. PPG No. 171-03 was subsequently approved by the GSIS Board of Trustees in Resolution No. 90 dated April 2, 2003.[6]

Declaratory Relief, *Mandamus*, and Damages.[7] In his petition, respondent interpreted the provisions of PPG No. 171-03 as gravely prejudicial to him since the starting point in the computation of the creditable service of a retiree shall be the date of the payment of monthly contributions,[8] whereas the starting point

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[5] *Id*. at 43.

[6] *Id*.

[7] *Id.* at 102.

[8] 2. Services, for purposes of computing all the benefits that a member may secure from GSIS shall mean only such services rendered by a member in any government agency, whether national, local or government-owned or controlled corporation under the following conditions:

as regards Republic Act (R.A.) No. 8291 or The Government Service Insurance System Act of 1997 is the date of original appointment.[9]

Instead of filing an answer, GSIS filed a Motion to Dismiss, citing the grounds of failure to state a cause of action and lack of jurisdiction over the subject matter. GSIS argued that respondent failed to establish how his right was violated and that R.A. No. 8291 vests in the GSIS Board of Trustees the original and exclusive jurisdiction to hear disputes on laws administered by it.[10]

Proceedings before the RTC

The RTC granted the Motion to Dismiss in a Resolution dated November 8, 2004.[11]

However, the RTC reversed its earlier Resolution upon respondent's filing of a Motion for Reconsideration. In an Order[12] dated February 10, 2005, the RTC ruled on the invalidity of Resolution No. 90 and PPG No. 171-03 as the same were not published in the Official Gazette or any newspaper of general circulation. The RTC, likewise, refused to apply the doctrine of primary jurisdiction because it considered the issue raised as a question of law.[13]

The member was receiving a fixed basic monthly compensation for such services.

The corresponding monthly premium contributions were timely and currently remitted or paid to the GSIS

[9] SEC. 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.

[10] *Rollo*, pp. 88-101.

[11] *Id*. at 44.

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

[13] *Id*.

GSIS filed its Answer to the petition. Thereafter, trial on the merits ensued.[14]

In a Decision[15] dated July 29, 2008, the RTC dismissed the petition for lack of jurisdiction pursuant to Section 30[16] of R.A. No. 8291. The RTC maintained that the GSIS has jurisdiction over the subject matter as the computation of respondent's retirement benefits was in the exercise of its quasi-judicial function. The *fallo* thereof reads:

> WHEREFORE, premises considered, the instant complaint/petition is hereby **DISMISSED** without pronouncement as to costs.
>
> SO ORDERED.[17]

A Motion for Reconsideration filed by respondent was denied in a Resolution dated December 22, 2008.[18]

Respondent filed an appeal before the CA.

Proceedings before the CA

In a Decision[19] dated February 25, 2014, the CA reversed and set aside the ruling of the RTC and declared PPG No. 171-03 and Resolution No. 90 null and void. In ruling so, the CA reasoned that since the petition filed before the RTC is one for declaratory relief, the RTC has jurisdiction over the same. On the invalidity of the issuances, the CA reasoned that the same were not published in the Official Gazette or in any newspaper of general circulation. The dispositive portion states:

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[14] *Id*. at 45.

[15] Penned by Judge Porferio E. Mah; *id.* at 102-109.

[16] SEC. 30. *Settlement of Disputes*. – The GSIS shall have original and exclusive jurisdiction to settle any disputes arising under this Act and any other laws administered by the GSIS. x x x

[17] *Id*. at 109.

[18] *Id*. at 47.

[19] *Supra* note 1.

WHEREFORE, premises considered, the 29 July 2008 *Decision* rendered by the Regional Trial Court, Branch 8, 9th Judicial Region, Dipolog City is hereby **REVERSED** and **SET ASIDE**.

PPG No. 171-03 and Resolution No. 90 are hereby declared **NULL** and **VOID** for lack of publication.

Accordingly, GSIS is hereby **DIRECTED** to re-compute petitioner's retirement benefits to be reckoned from the date of his original appointment in government service beginning in 1969 till his retirement in 2003.

SO ORDERED.[20]

Undaunted, petitioner filed its Motion for Reconsideration, which was denied for lack of merit in a Resolution[21] dated April 28, 2015.

The Issue

The core issue in this case is whether the regular court has jurisdiction over the subject matter of the case.

The Court's Ruling

Jurisdiction over a subject matter is conferred by the Constitution or the law, and rules of procedure yield to substantive law. Otherwise stated, jurisdiction must exist as a matter of law. Only a statute can confer jurisdiction on courts and administrative agencies.[22] Administrative agencies may be bestowed with quasi-judicial or quasi-legislative powers.

In the exercise of an administrative agency's quasi-judicial powers, the doctrine of primary jurisdiction may be invoked. In the case of *Smart Communications, Inc. v. National Telecommunications Commission*,[23] we explained the import of this doctrine, to wit:

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[20] *Rollo*, p. 56.

[21] *Supra* note 2.

[22] *Fernandez v. Fulgueras*, 636 Phil. 178, 182 (2010).

[23] 456 Phil. 145, 158 (2003).

Thus, in cases involving specialized disputes, the practice has been to refer the same to an administrative agency of special competence pursuant to the doctrine of primary jurisdiction. The courts will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the premises of the regulatory statute administered. x x x

In this case, Section 30 of R.A. No. 8291 vests upon the GSIS the original and exclusive jurisdiction to hear disputes arising from said law or related issuances. Section 14.3 (now Section 27.1) of the Implementing Rules and Regulations (IRR) of R.A. No. 8291 provides that such quasi-judicial power lies with the GSIS Board of Trustees, thus:

SEC. 30. *Settlement of Disputes*. — The GSIS shall have original and exclusive jurisdiction to settle any dispute arising under this Act and any other laws administered by the GSIS.

The Board may designate any member of the Board, or official of the GSIS who is a lawyer, to act as hearing officer to receive evidence, make findings of fact and submit recommendations thereon. The hearing officer shall submit his findings and recommendations, together with all documentary and testimonial evidence to the [B]oard within thirty (30) working days from the time the parties have closed their respective evidence and filed their last pleading. The Board shall decide the case within thirty (30) days from the receipt of the hearing officer's findings and recommendations. The cases heard directly by the Board shall be decided within thirty (30) working days from the time they are submitted by the parties for decision.

x x x x x x x x x

SEC. 14.3. *Body Vested with Quasi-Judicial Functions.* — The quasi-judicial function of the GSIS shall be vested in its Board of Trustees.

Section 14.1 (now Section 27) of the IRR provides in detail the coverage of such quasi-judicial power, to wit:

SEC. 14.1. *Quasi-Judicial Functions of the GSIS.* — x x x settle any dispute arising under Republic Act No. 8291, Commonwealth Act No. 186, as amended, and other laws administered by the GSIS with respect to:

x x x x x x x x x

2. Entitlement of members to the following benefits under these Rules:

(a) Separation benefits

(b) Unemployment or involuntary separation benefits

(c) Retirement benefits

(d) Disability benefits

x x x x x x x x x

An appeal of the decision of the GSIS Board of Trustees may be filed with the CA *via* Rule 43 of the Rules of Court.[24]

However, the records of the case reveal that what the respondent is seeking for is the nullification of PPG No. 171-03 and Resolution No. 90 on the ground of illegality. While respondent's contention deals with a dispute as to the computation of his retirement benefits, his petition mainly attacks the legality of the assailed issuances, to wit:

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[24] SEC. 1. *Scope.* This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, **Government Service Insurance System**, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law. (Emphasis supplied)

A. A mere policy of the president of a GOCC or Board Resolution cannot supplement, alter, amend or modify a law passed by Congress[;]

B. A mere policy of the president of a GOCC or Board Resolution cannot provide for new conditions for the availment of the benefits, or delimit the benefits, already granted by law;

C. A mere policy of the president of a GOCC or Board [R]esolution cannot supplant the wisdom of Congress in the passage of law

D. Even laws cannot impair vested rights and should not have any effect[;]

E. A mere policy of the president of a GOCC or Board Resolution does not partake of a law, rule or regulation, hence, and especially so if it is not consistent with the law, cannot be utilized as basis for the implementation of the law;

F. It is the implementing Rules and Regulations, not a mere policy or Board Resolution, which shall be used as a basis in implementing a law passed by Congress; [and]

G. The said [PPG] No. 171-03 and Board Resolution No. 90 do not appear to have been published.[25]

x x x x x x x x x

Consistent with the petition filed, the allegations partake of a petition for declaratory relief under Rule 63 of the Rules of Court, to wit:

SEC. 1. *Who may file petition.* — Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

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[25] *Rollo*, pp. 134-135.

The requirements of an action for declaratory relief are as follows: (1) there must be a justiciable controversy; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy; and (4) the issue involved must be ripe for judicial determination.[26] Certainly, it is the RTC which is vested with jurisdiction to try such petition. In the case of *Commissioner of Customs v. Hypermix Feeds Corporation*,[27] we reiterated that the determination of whether a rule is issued by an administrative agency contravenes the law or the Constitution is within the jurisdiction of the regular courts.

We find that respondent's petition is sufficient to meet all the requirements.

Firstly, there is justiciable controversy as respondent questions the legality and constitutionality of PPG No. 171-03 and Resolution No. 90, both of which were issued by the GSIS. On this note, we emphasize that the courts are vested by the Constitution with the power of judicial review, including the authority of the regular courts to determine in an appropriate action the validity of the acts of political departments.[28]

Secondly, the issue is between the GSIS, which implements the assailed issuances and the respondent who seeks to claim his retirement benefits.

Thirdly, respondent has legal interest over the case since the amount he seeks to claim would differ because the implementation of R.A. No. 8291 and PPG No. 171-03 and Regulation No. 90 provide for different starting point for the computation of retirement benefits. Application of the latter would decrease his retirement benefits from ₱542,325.00 to

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[26] *Commissioner of Customs v. Hypermix Feeds Corporation*, 680 Phil. 681, 688-689 (2012).

[27] *Id.* at 689, citing *Smart Communications v. National Telecommunications Commission*, *supra* note 23, at 158-159.

[28] *Id.*

₱342,295.80 considering the varying starting point for the computation of retirement benefits. Under R.A. No. 8291, the reckoning period is the date of original appointment while in PPG No. 171-03 and Resolution No. 90, the starting point is the date of the payment of monthly contributions by a member who was receiving a fixed basic monthly compensation for his services rendered.

Finally, the issue is ripe for judicial determination because litigation is inevitable for the reason that respondent's retirement benefits would be substantially reduced by the implementation of the assailed issuances.[29]

GSIS tried to brush aside the issue of legality of the assailed issuances by focusing on the ultimate consequence should such issuances be declared invalid, *i.e.*, the re-computation of the retirement benefits. However, this is pure incidental to the outcome of the relief prayed for in the action for declaratory relief. It is so precisely because the primary issue was the starting point of the computation of the retirement benefits.

As to the invalidity of the issuances, we affirm the ruling of the CA.

Administrative issuances may be classified into two, *i.e.*, legislative rule and administrative rule. The former is in the matter of subordinate legislation, designed to implement a primary legislation by providing the details thereof. On the other hand, the latter is designed to provide guidelines to the law which the administrative agency is in charge of enforcing.[30]

As to the import of these issuances, the case of *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.*[31] is instructive:

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[29] *Id.*

[30] *BPI Leasing Corporation v. Court of Appeals*, 461 Phil. 451, 459 (2003).

[31] 453 Phil. 1043, 1058 (2003).

When an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed. When, on the other hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law.

Clearly, PPG No. 171-03 is a legislative rule. It does not merely provide guidelines to R.A. No. 8291, but in fact creates a burden upon those who are governed in its implementation. Specifically, PPG No. 171-03 supplies the conditions for the starting point when services are rendered, for the purposes of computing all benefits under R.A. No. 8291 and the same requires: (a) the member was receiving a fixed basic monthly compensation; and (b) monthly contributions were timely and correctly paid or remitted. However, there was no condition and definition provided under R.A. No. 8291; "services" was neither defined nor delineated for the purposes of computing benefits. In other words, PPG No. 171-03 provides the details for the starting point of the computation of GSIS benefits. It effectively supplants the period prescribed under R.A. No. 8291. Parenthetically, Regulation No. 90, which approved PPG No. 171-03 is, likewise, of the same character.

As PPG No. 171-03 and the subsequent Resolution No. 90 are legislative rules, publication is indispensable.

Publication of statutes satisfies the constitutional right of the people to due process. It keeps the citizenry informed and notified of various laws which are to regulate their actions and conduct. Without such notice and publication, there would be no basis for the application of the *maxim ignorantia legis non excusat*.[32]

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[32] *Tañada v. Tuvera*, 220 Phil. 422, 432-433 (1985).

Considering that PPG No. 171-03 and the subsequent Resolution No. 90 are legislative issuances, necessitating publication for their effectivity and the undisputed fact of their non-publication, the assailed issuances must be struck down for being unconstitutional.

WHEREFORE, premises considered, the instant petition is hereby **DENIED**. Accordingly, the Decision dated February 25, 2014 and the Resolution dated April 28, 2015 of the Court of Appeals-Cagayan de Oro City in CA-G.R. CV No. 01773-MIN are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 229775. March 11, 2019]

LILIBETH ESPINAS-LANUZA, ONEL ESPINAS, as heirs of LEOPOLDO ESPINAS, and THE MUNICIPAL ASSESSOR OF DARAGA, ALBAY, *petitioners, vs.* **FELIX LUNA, JR., ARMANDO VELASCO and ANTONIO VELASCO, as heirs of SIMON VELASCO,** *respondents.*

SYLLABUS

1. CIVIL LAW; SUCCESSION; PARTITION; A PUBLIC INSTRUMENT IS NEITHER CONSTITUTIVE NOR AN INHERENT ELEMENT OF A CONTRACT OF PARTITION THUS AN ORAL PARTITION BY THE HEIRS IS VALID IF NO CREDITORS ARE AFFECTED.— Partition is the separation, division and assignment of a thing held in common among those

to whom it may belong. It may be effected extrajudicially by the heirs themselves through a public instrument filed before the register of deeds. However, as between the parties, a public instrument is neither constitutive nor an inherent element of a contract of partition. Since registration serves as constructive notice to third persons, an oral partition by the heirs is valid if no creditors, are affected. Moreover, even the requirement of a written memorandum under the statute of frauds does not apply to partitions effected by the heirs where no creditors are involved considering that such transaction is not a conveyance of property resulting in change of ownership but merely a designation and segregation of that part which belongs to each heir. Every act which is intended to put an end to indivision among co-heirs and legatees or devisees is deemed to be a partition, although it should purport to be a sale, an exchange, a compromise, or any other transaction. x x x Actual possession and exercise of dominion over definite portions of the property in accordance with an alleged partition are considered strong proof of an oral partition.

2. **ID.; PROPERTY; OWNERSHIP; A POSSESSOR OF REAL ESTATE PROPERTY IS PRESUMED TO HAVE TITLE THERETO UNLESS THE ADVERSE CLAIMANT ESTABLISHES A BETTER RIGHT.—** [A] possessor of real estate property is presumed to have title thereto unless the adverse claimant establishes a better right. Also, under Article 541 of the Civil Code, one who possesses in the concept of an owner has in his favor the legal presumption that he possesses with a just title, and he cannot be obliged to show or prove it. Moreover, Article 433 of the Civil Code provides that actual possession under a claim of ownership raises a disputable presumption of ownership. Here, aside from respondents' bare claim that they are co-owners of the subject property, they failed to adduce proof that the heirs of Simon did not actually partition his estate.

3. **ID.; LACHES; LACHES HAS BEEN DEFINED AS SUCH NEGLECT OR OMISSION TO ASSERT A RIGHT, TAKEN IN CONJUNCTION WITH LAPSE OF TIME AND OTHER CIRCUMSTANCES CAUSING PREJUDICE TO AN ADVERSE PARTY, AS WILL OPERATE AS A BAR IN EQUITY; ELEMENTS.—** [L]aches has set in against respondents, precluding their right to recover the subject property. In *De Vera-Cruz v. Miguel*, the Court declared: Laches has been

> defined as such neglect or omission to assert a right, taken in conjunction with lapse of time and other circumstances causing prejudice to an adverse party, as will operate as a bar in equity. It is a delay in the assertion of a right which works disadvantage to another because of the inequity founded on some change in the condition or relations of the property or parties. It is based on public policy which, for the peace of society, ordains that relief will be denied to a stale demand which otherwise could be a valid claim. It is different from and applies independently of prescription. While prescription is concerned with the fact of delay, laches is concerned with the effect of delay. x x x The elements of laches are: (1) conduct on the part of the defendant, or one under whom he claims, giving rise to the situation that led to the complaint and for which the complaint seeks a remedy; (2) delay in asserting the complainant's rights, having had knowledge or notice of the defendant's conduct and 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 on which he bases his 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.

APPEARANCES OF COUNSEL

Arnulfo L. Perete for petitioners.

The Law Offices Of Ian Ll. Macasinag & Associates for respondents.

D E C I S I O N

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

Assailed in this petition for review on *certiorari* are the June 13, 2016 Decision[1] and the January 26, 2017 Resolution[2]

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[1] Penned by Associate Justice Renato C. Francisco, with Associate Justice Apolinario D. Bruselas, Jr. and Associate Justice Danton Q. Bueser, concurring; *rollo*, pp. 34-43.

[2] *Id*. at 69-71.

of the Court of Appeals (CA) in CA-G.R. CV No. 104306 which affirmed the December 2, 2014 Decision[3] of the Regional Trial Court (RTC), Legazpi City, Branch 1 in Civil Case No. 10955, a case for annulment of extrajudicial settlement.

The Antecedents

During his lifetime, Simon Velasco (Simon) was the owner of several properties including the land covered by Original Certificate of Title (OCT) No. 20630, situated in Namantao, Daraga, Albay (subject property). Simon had four children, namely, Heriberto Velasco (Heriberto), Genoviva Velasco (Genoviva),[4] Felisa Velasco (Felisa),[5] and Juan Velasco (Juan). Felix Luna, Jr. (Felix), is the son of Genoviva, while Armando Velasco and Antonio Velasco are the children of Heriberto (collectively, respondents).

Respondents allege that Juan and Felisa, through deceit, connivance, and misrepresentation, executed a Deed of Extrajudicial Settlement and Sale dated May 14, 1966, which adjudicated the subject property to Leopoldo Espinas (Leopoldo), son of Felisa. They further contend that they discovered the fraud in 2010 when they came to know that Tax Declaration No. 02-040-0147 was issued in Leopoldo's name.

In their defense, Lilibeth Espinas-Lanuza and Onel Espinas (petitioners), children of Leopoldo, argue that when Simon died intestate, his children agreed to partition his estate such that the property situated in Magogon, Camalig, Albay went to Genoviva and the parcel of land located in Ting-ting, Taloto, Camalig, Albay went to Heriberto. On the other hand, the subject property was the joint share of Juan and Felisa who subsequently executed a Deed of Extrajudicial Settlement and Sale on May 14, 1966, conveying the subject property to Leopoldo.

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[3] Penned by Judge Solon B. Sison; *id*. at 45-55.

[4] Also referred to as "Genoveva" in some parts of the *rollo*.

[5] Also referred to as "Feliza" in some parts of the *rollo*.

The RTC Ruling

In a Decision dated December 2, 2014, the RTC ruled that the co-owners of Simon's properties were his children, Genoviva, Felisa, Juan and Heriberto. It held that as co-owners of the subject property, Felisa and Juan enjoyed full ownership of their portions and they had the right to alienate the same. The trial court added that the sale by Felisa and Juan of their respective undivided shares in the co-ownership was valid and the vendee, Leopoldo, became the owner of the shares sold to him. It concluded that the heirs of Heriberto and Genoviva were co-owners of Leopoldo in the subject property. The *fallo* reads:

> WHEREFORE, the evidence for the [petitioners] not having been preponderant on their claim, the court rules in favor of the [respondents] and now declare that [respondents] **FELIX LUNA, JR., ARMANDO VELASCO and ANTONIO VELASCO, are co-owners with [petitioners] LILIBETH ESPINAS-LANUZA and ONEL ESPINAS, of Cadastral Lot No. 13507** situated in the Municipality of Daraga, Albay.
>
> By whatever manner Cadastral Lot No. 13507 is listed for tax purposes in the Office of the Municipal Assessor of Daraga, Albay the same does not alter the fact that it is a parcel of land in co-ownership.
>
> Defendants' counterclaim is dismissed for lack of merit.
>
> SO ORDERED.[6]

The CA Ruling

In a Decision dated June 13, 2016, the CA adjudged that Heriberto and Genoviva were excluded in the execution of the Deed of Extrajudicial Settlement entered into by Juan and Felisa as there was no showing that Heriberto and Genoviva were already deceased when the deed was executed. It noted that the extrajudicial settlement adjudicated and sold properties which still formed part of the estate of Simon and were, therefore, co-owned by his heirs. The appellate court emphasized that

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[6] *Rollo*, p. 55.

under Section 1, Rule 74 of the Rules of Court, no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof. It opined that fraud had been committed against the excluded heirs, thus, the Deed of Extrajudicial Settlement and Sale must be annulled. The CA disposed the case in this wise:

> **WHEREFORE**, premises considered, the instant appeal is **DENIED** for lack of merit.
>
> **SO ORDERED.**[7]

Petitioners moved for reconsideration, but the same was denied by the CA in a Resolution dated January 26, 2017. Hence, this petition for review on *certiorari*, wherein petitioners raised the following errors:

> I. THE [CA] ERRED AND GRAVELY ABUSED ITS DISCRETION IN UPHOLDING THE FINDINGS OF THE RTC-ALBAY, BRANCH 1 THAT FELIX LUNA, JR., ARMANDO VELASCO AND ANTONIO VELASCO ARE CO-OWNERS WITH [PETITIONERS] LILIBETH ESPINAS-LANUZA AND ONEL ESPINAS OF CADASTRAL LOT NO. 13507 SITUATED IN THE MUNICIPALITY OF DARAGA, ALBAY[;]
>
> II. THAT THE [CA] ERRED AND GRAVELY ABUSED ITS DISCRETION IN IGNORING THE ACTUAL PARTITION ALREADY DONE BY GENOVIVA, HERIBERTO, FELISA AND JUAN, ALL SURNAMED VELASCO LONG BEFORE THE SALE OF LOT NO. 13507 IN FAVOR OF LEOPOLDO ESPINAS ON MAY 14, 1966[; and]
>
> III. THAT THE [CA] ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN IT IGNORED THE PRESENCE OF LACHES AND PRESCRIPTION IN PETITIONERS' FAVOR ALLEGING FRAUD HAS BEEN COMMITTED AGAINST THE EXCLUDED HEIRS.[8]

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[7] *Id*. at 43.

[8] *Id*. at 10.

Petitioners argue that all of Simon's children were given their respective hereditary shares from the estate; that the property situated in Magogon, Camalig, Albay went to Genoviva, while the property situated in Ting-ting, Taloto, Camalig, Albay went to Heriberto; that the subject property was given to Juan and Felisa as their share in the estate; that Juan and Felisa knew that their brother and sister had already been given their due shares in the estate of Simon, thus, when they sold the subject property to Leopoldo, they no longer deemed it necessary to have Genoviva and Heriberto sign the Deed of Extrajudicial Settlement and Sale; that the land given to Juan and Felisa was under the name of Simon, thus, they had to execute a deed of extrajudicial settlement in order to transfer the subject property to Leopoldo; that the distribution of Simon's properties shows that there had been a partition; that the heirs of Simon had been in possession of their respective hereditary shares; and that Genoviva and Heriberto never questioned the ownership of Juan and Felisa during their lifetime nor the sale made in favor of Leopoldo.[9]

In their Comment,[10] respondents counter that a deed of extrajudicial partition executed without including some of the heirs, who had no knowledge of and consent to the same, is fraudulent and vicious; and that after the death of Simon, his children never partitioned his estate.

In their Reply,[11] petitioners contend that "a parol partition may also be sustained on the ground that the parties thereto have acquiesced in and ratified the partition by taking possession in severalty, exercising acts of ownership with respect thereto, or otherwise recognizing the existence of the partition:"[12] that for more than 44 years, no one among the heirs of Simon ever bothered to question Leopoldo's open possession of the subject

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

[10] *Id*. at 73-81.

[11] *Id*. at 85-93.

[12] *Hernandez v. Andal*, 78 Phil. 196, 203 (1947).

property which was the joint hereditary share of Felisa and Juan; that Leopoldo's open and notorious possession of the subject property for 44 years supports the presumption that there was already an actual partition among the heirs of Simon.

The Court's Ruling

The petition is meritorious.

Partition is the separation, division and assignment of a thing held in common among those to whom it may belong.[13] It may be effected extrajudicially by the heirs themselves through a public instrument filed before the register of deeds.[14]

However, as between the parties, a public instrument is neither constitutive nor an inherent element of a contract of partition.[15] Since registration serves as constructive notice to third persons, an oral partition by the heirs is valid if no creditors, are affected.[16] Moreover, even the requirement of a written memorandum under the statute of frauds does not apply to partitions effected by the heirs where no creditors are involved considering that such transaction is not a conveyance of property resulting in change of ownership but merely a designation and segregation of that part which belongs to each heir.[17]

Every act which is intended to put an end to indivision among co-heirs and legatees or devisees is deemed to be a partition, although it should purport to be a sale, an exchange, a compromise, or any other transaction.[18] Furthermore, in *Hernandez v. Andal*,[19] the Court explained that:

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[13] CIVIL CODE, Art. 1079.

[14] RULES OF COURT, Rule 74, Sec. 1.

[15] *Hernandez v. Andal*, *supra* note 12, at 205.

[16] *Id*. at 208-209.

[17] *Id*. at 208.

[18] CIVIL CODE, Art. 1082.

[19] *Supra* note 12.

On general principle, independent and in spite of the statute of frauds, courts of equity have enforced oral partition when it has been completely or partly performed.

> Regardless of whether a parol partition or agreement to partition is valid and enforceable at law, equity will in proper cases, where the parol partition has actually been consummated by the taking of possession in severalty and the exercise of ownership by the parties of the respective portions set off to each, recognize and enforce such parol partition and the rights of the parties thereunder. Thus, it has been held or stated in a number of cases involving an oral partition under which the parties went into possession, exercised acts of ownership, or otherwise partly performed the partition agreement, that equity will confirm such partition and in a proper case decree title in accordance with the possession in severalty.
>
> In numerous cases it has been held or stated that parol partitions may be sustained on the ground of estoppel of the parties to assert the rights of a tenant in common as to parts of land divided by parol partition as to which possession in severalty was taken and acts of individual ownership were exercised. And a court of equity will recognize the agreement and decree it to be valid and effectual for the purpose of concluding the right of the parties as between each other to hold their respective parts in severalty.
>
> A parol partition may also be sustained on the ground that the parties thereto have acquiesced in and ratified the partition by taking possession in severalty, exercising acts of ownership with respect thereto, or otherwise recognizing the existence of the partition.
>
> A number of cases have specifically applied the doctrine of part performance, or have stated that a part performance is necessary, to take a parol partition out of the operation of the statute of frauds. It has been held that where there was a partition in fact between tenants in common, and a part performance, a court of equity would have regard to and enforce such partition agreed to by the parties.

In *Maglucot-Aw v. Maglucot*,[20] the Court declared, *viz.*:

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[20] 385 Phil. 720, 736-737 (2000).

Partition may be inferred from circumstances sufficiently strong to support the presumption. Thus, after a long possession in severalty, a deed of partition may be presumed. It has been held that recitals in deeds, possession and occupation of land, improvements made thereon for a long series of years, and acquiescence for 60 years, furnish sufficient evidence that there was an actual partition of land either by deed or by proceedings in the probate court, which had been lost and were not recorded.

In the case at bar, it has been shown that upon the death of Simon, his children, Genoviva, Heriberto, Juan and Felisa, orally partitioned the estate among themselves, with each one of them possessing their respective shares and exercising acts of ownership. Respondents did not dispute that the property situated in Magogon, Camalig, Albay went to Genoviva while the property situated in Ting-ting, Taloto, Camalig, Albay went to Heriberto. Further, they did not raise any objection to the fact that the subject property was given to Juan and Felisa as their share in Simon's estate. It must be emphasized that no one among the children of Simon disturbed the *status quo* which has been going on from the year 1966. To be sure, Genoviva and Heriberto were not without knowledge that the subject property was transferred to Leopoldo and that the latter had introduced improvements thereon. They could have easily questioned the transfer, but they chose to remain silent precisely because they were already given their respective shares in the estate. Hence, it can be gleaned unerringly that the heirs of Simon agreed to orally partition his estate among themselves, as evinced by their possession of the inherited premises, their construction of improvements thereon, and their having declared in their names for taxation purposes their respective shares. Actual possession and exercise of dominion over definite portions of the property in accordance with an alleged partition are considered strong proof of an oral partition.[21]

In addition, a possessor of real estate property is presumed to have title thereto unless the adverse claimant establishes a

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[21] *Heirs of Mario Pacres v. Heirs of Cecilia Ygoña*, 634 Phil. 293, 309 (2010).

better right.[22] Also, under Article 541 of the Civil Code, one who possesses in the concept of an owner has in his favor the legal presumption that he possesses with a just title, and he cannot be obliged to show or prove it. Moreover, Article 433 of the Civil Code provides that actual possession under a claim of ownership raises a disputable presumption of ownership. Here, aside from respondents' bare claim that they are co-owners of the subject property, they failed to adduce proof that the heirs of Simon did not actually partition his estate.

Finally, laches has set in against respondents, precluding their right to recover the subject property. In *De Vera-Cruz v. Miguel*,[23] the Court declared:

> Laches has been defined as such neglect or omission to assert a right, taken in conjunction with lapse of time and other circumstances causing prejudice to an adverse party, as will operate as a bar in equity. It is a delay in the assertion of a right which works disadvantage to another because of the inequity founded on some change in the condition or relations of the property or parties. It is based on public policy which, for the peace of society, ordains that relief will be denied to a stale demand which otherwise could be a valid claim. It is different from and applies independently of prescription. While prescription is concerned with the fact of delay, laches is concerned with the effect of delay. Prescription is a matter of time; laches is principally a question of inequity of permitting a claim to be enforced, this inequity being founded on some change in the condition of the property or the relation of the parties. Prescription is statutory; laches is not. Laches applies in equity, whereas prescription applies at law. Prescription is based on a fixed time, laches is not. Laches means 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 the presumption that the party entitled to assert it either has abandoned or declined to assert it. (Citations omitted)

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[22] *Heirs of Jose Casilang, Sr. v. Casilang-Dizon*, 704 Phil. 397, 419 (2013).

[23] 505 Phil. 591, 602-603 (2005).

The elements of laches are: (1) conduct on the part of the defendant, or one under whom he claims, giving rise to the situation that led to the complaint and for which the complaint seeks a remedy; (2) delay in asserting the complainant's rights, having had knowledge or notice of the defendant's conduct and 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 on which he bases his 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.[24]

In this case, there is no question on the presence of the first element of laches. The object of respondents' complaint before the trial court was to annul the extrajudicial settlement in order to recover their shares in the subject property, which is presently in the hands of petitioners. The second element of delay is also present in the case at bar. Respondents' suit was instituted in 2010, 44 years after the property was conveyed to Leopoldo in 1966. Again, respondents' predecessors-in-interest, Genoviva and Heriberto, could not have been unaware of Leopoldo's open and continuous possession of the subject property. The third element is also present in this case. Petitioners had no inkling of respondents' intent to possess the subject property considering that Simon's children never contested the conveyance of the subject property to Leopoldo. As to the fourth element of laches, it goes without saying that petitioners will be prejudiced if respondents' complaint is accorded relief, or not held barred. Needless to say, laches has set in against respondents, precluding their right to recover the subject property.

Accordingly, considering that Felisa and Juan already owned the subject property at the time they sold the same to Leopoldo on May 14, 1966, having been assigned such property pursuant to the oral partition of the estate of Simon effected by his heirs, petitioners are entitled to actual possession thereof.

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[24] *Metropolitan Waterworks and Sewerage System v. Court of Appeals*, 357 Phil. 966, 984 (1998).

WHEREFORE, the petition is **GRANTED**. The June 13, 2016 Decision and the January 26, 2017 Resolution of the Court of Appeals in CA-G.R. CV No. 104306 are **REVERSED and SET ASIDE**. A new judgment is hereby entered:

1) Declaring the land covered by Original Certificate of Title (OCT) No. 20630, situated in Namantao, Daraga, Albay as the share of Juan Velasco and Felisa Velasco in the estate of Simon Velasco; and

2) Declaring petitioners as lawful possessors of the property covered by Original Certificate of Title (OCT) No. 20630, situated in Namantao, Daraga, Albay by virtue of the Deed of Extrajudicial Settlement and Sale executed by Juan Velasco and Felisa Velasco in favor of Leopoldo Espinas, petitioners' predecessor-in-interest.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 231773. March 11, 2019]

CESAR C. PELAGIO, *petitioner, vs.* **PHILIPPINE TRANSMARINE CARRIERS, INC., CARLOS SALINAS, and NORWEGIAN CREW MANAGEMENT A/S,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; PETITION FOR REVIEW ON *CERTIORARI*; GRAVE ABUSE OF DISCRETION; MAY BE ASCRIBED TO THE NATIONAL LABOR RELATIONS COMMISSION WHEN ITS FINDINGS AND CONCLUSIONS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE; CASE AT BAR.—** "Case law states that grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law." "In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition." Guided by the foregoing considerations, the Court finds that the CA erred in ascribing grave abuse of discretion on the part of the NLRC, as its finding that Pelagio is entitled to permanent and total disability benefits is in accord with the evidence on record, as well as settled legal principles of labor law.

2. **LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); DISABILITY COMPENSATION; GUIDELINES GOVERNING SEAFARER'S CLAIMS FOR PERMANENT AND TOTAL DISABILITY BENEFITS; CASE AT BAR.—** [G]uidelines that govern seafarers' claims for permanent and total disability benefits, to wit: 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him; 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable

reason, then the seafarer's disability becomes permanent and total; 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.*, seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and 4. **If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.** x x x In the absence of a final and definite disability assessment of the company-designated physician, Pelagio is conclusively presumed to be suffering from a permanent and total disability, and thus, is entitled to the benefits corresponding thereto. In this light, the Court deems it proper to reverse the CA ruling and reinstate that of the NLRC, with modification imposing on the monetary awards due to Pelagio legal interest of six percent (6%) per annum from finality of this Decision until full payment, in accordance with prevailing jurisprudence.

3. REMEDIAL LAW; RULES OF PROCEDURE; STRICT COMPLIANCE THERETO IS NOT REQUIRED IN LABOR CASES BUT LIBERAL POLICY SHOULD STILL BE PURSUANT TO EQUITABLE PRINCIPLES OF LAW; CASE AT BAR.— Besides, even assuming *arguendo* that the August 5, 2010 Medical Report indeed contains Pelagio's final disability grading as posited by respondents, it must be noted that the same was belatedly adduced in evidence when it was attached to respondents' motion for reconsideration before the NLRC, even if it appears to be readily available. Case law instructs that "while strict compliance to technical rules is not required in labor cases, liberal policy should still be pursuant to equitable principles of law. In this regard, belated submission of evidence may be allowed only if the delay in its presentation is sufficiently justified; the evidence adduced is undeniably material to the cause of a party; and the subject evidence should

sufficiently prove the allegations sought to be established." Here, respondents did not explain the reasons for their failure to present the August 5, 2010 Medical Report at the earliest opportunity, and it was only after the NLRC rendered an unfavorable decision that the same was presented. Verily, respondents' belated submission thereof without any explanation casts doubt on its credibility especially since it does not appear to be a newly discovered evidence.

APPEARANCES OF COUNSEL

Valmores and Valmores Law Office for petitioner.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] filed by petitioner Cesar C. Pelagio (Pelagio) assailing the Decision[2] dated January 16, 2017 and the Resolution[3] dated May 22, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 122771, which annulled and set aside the Decision[4] dated August 24, 2011 and the Resolution[5] dated October 4, 2011 of the National Labor Relations Commission (NLRC) in NLRC-LAC Case No.

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[1] *Rollo*, pp. 8-24.

[2] *Id*. at 228-240 & 246-254. Penned by Associate Justice Magdangal M. De Leon with Associate Justices Myra V. Garcia-Fernandez and Renato C. Francisco, concurring.

[3] *Id*. at 262-263.

[4] *Id*. at 140-156. Penned by Commissioner Numeriano D. Villena with Presiding Commissioner Herminio V. Suelo and Commissioner Angelo Ang Palaña, concurring.

[5] *Id*. at 158-161.

M-05-000458-11, and accordingly, reinstated the Decision[6] dated April 29, 2011 of the Labor Arbiter (LA) awarding Pelagio the amount of US$13,437.00 representing permanent partial disability benefits.

The Facts

Respondent Philippine Transmarine Carriers, Inc. (PTCI) for and on behalf of its foreign principal, Norwegian Crew Management A/S, hired Pelagio as a Motorman on board the vessel M/V Drive Mahone for a period of six (6) months, under a Philippine Overseas Employment Administration (POEA)-approved contract of employment[7] dated September 29, 2009 and a collective bargaining agreement[8] (CBA) between Norwegian Crew Management A/S and Associated Marine Officers' and Seamen's Union of the Philippines. After being declared fit for employment,[9] Pelagio boarded M/V Drive Mahone on November 3, 2009.[10]

Sometime in February 2010, Pelagio experienced difficulty in breathing and some pains on his nape, lower back, and joints while at work. Pelagio was then referred to a port doctor in Said, Egypt where he was diagnosed with "Myositis"[11] and declared unfit to work.[12] On March 2, 2010, Pelagio was repatriated back to the Philippines for further medical treatment, and thereafter, promptly sought the medical attention of the company-designated physician, Dr. Roberto Lim, at Metropolitan Medical Center.[13]

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[6] *Id*. at 115-120. Penned by Labor Arbiter Jose G. De Vera.

[7] *Id*. at 25.

[8] *Id*. at 26-40.

[9] See medical examination records dated September 25, 2009; *id*. at 42.

[10] See *id*. at 141 and 229.

[11] See indorsement letter dated May 18, 2010; CA *rollo*, p. 203.

[12] See *rollo*, p. 141.

[13] See *id*. at 142.

After a series of medical and laboratory examinations,[14] including chest x-ray, pulmonary function tests, electroencephalogram, and other related physical examinations, Pelagio was finally diagnosed with Carpal Tunnel Syndrome, Bilateral L5-S1 Radiculopathy, Mild Degenerative Changes, and Lumbosacral Spine[15] with an interim assessment of a Grade 11 disability rating – "slight loss of lifting power of the trunk."[16]

On August 18, 2010, Pelagio sought a second opinion from a private orthopedic surgery physician, Dr. Manuel Fidel M. Magtira (Dr. Magtira), who assessed him with a Grade 8 disability – moderate rigidity or two-thirds loss of motion or lifting power of the trunk – and declared him "permanently UNFIT TO WORK in any capacity at his previous occupation."[17]

Pelagio then sought to avail of permanent total disability benefits from respondents PTCI, Carlos Salinas, and Norwegian Crew Management A/S (respondents), to no avail. Hence, he filed a claim[18] for permanent total disability benefits, reimbursement of medical expenses, illness allowance, damages, and attorney's fees against petitioners before the Arbitration Branch of the NLRC, docketed as NLRC-NCR No. (M) 09-13299-10. Essentially, Pelagio contends that his inability to work for more than 120 days from repatriation entitles him to permanent total disability benefits.[19]

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[14] See Pelagio's medical examination reports; *id*. at 43-50.

[15] See the 3rd Medical Report dated March 11, 2010 of Metropolitan Medical Center Assistant Medical Coordinator Dr. Mylene Cruz-Balbon and Medical Coordinator Dr. Robert D. Lim; CA *rollo*, pp. 207-208.

[16] See Private and Confidential Medical Report dated July 27, 2010; *id*. at 375-376.

[17] *Rollo*, p. 142. See also Medical Report dated August 18, 2010 of Dr. Magtira; CA *rollo*, pp. 274-276.

[18] See Complaint dated September 17, 2010 (*id*. at 54-55) and Position Paper for Complainant dated January 24, 2011 (*id*. at 56-75).

[19] See *id*. at 143-144. See also *id*. at 230-231.

For their part,[20] respondents countered that Pelagio is not entitled to permanent total disability benefits, considering that the independent physician, Dr. Magtira, merely assessed him with a Grade 8 impediment. In this relation, respondents likewise claimed that on August 5, 2010, the company-designated physician assessed Pelagio with a Grade 11 disability – slight loss of lifting power of the trunk (August 5, 2010 Medical Report).[21] In view of the conflicting findings of the company-designated and the independent physicians, respondents suggested that they seek a third mutually-appointed doctor to comply with the provisions of the POEA Standard Employment Contract, but Pelagio refused. Finally, respondents averred that they offered Pelagio the amount of US$13,437.00, the corresponding benefit to a Grade 11 impediment pursuant to the CBA, but he rejected such offer.[22]

The LA Ruling

In a Decision[23] dated April 29, 2011, the LA found Pelagio to be suffering from a permanent partial disability, and accordingly, ordered respondents to jointly and solidarity pay him the amount of US$13,437.00.[24] The LA ruled that Pelagio's mere inability to work for 120 days from his repatriation did not *ipso facto* mean that he is suffering from a permanent total disability, especially in view of the disability assessments given by both the company-designated and the independent physicians. On this note, the LA gave weight to the findings of the company-designated physician that Pelagio was suffering from a Grade 11 impediment, and thus, must only be awarded disability benefits corresponding thereto.[25]

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[20] See Respondent's Position Paper dated March 2, 2011 (erroneously written as March 2, 2010); *id*. at 77-113.

[21] See *id*. at 144. See also Private and Confidential Medical Report dated August 5, 2010; *id*. at 157.

[22] See *id*. at 144-145

[23] *Id*. at 115-120.

[24] *Id*. at 120.

[25] See *id*. at 118-120.

Dissatisfied, Pelagio appealed to the NLRC.[26]

The NLRC Ruling

In a Decision[27] dated August 24, 2011, the NLRC reversed and set aside the LA ruling, and accordingly, awarded Pelagio the amounts of US$70,000.00 representing permanent total disability benefits and US$7,000.00 as attorney's fees, or a total of US$77,000.00, at their peso equivalent at the time of actual payment.[28]

The NLRC found that in the absence of the purported August 5, 2010 Medical Report in the case records, there is nothing that would support respondents' claim that the company-designated physician indeed issued Pelagio a final disability rating of Grade 11. Thus, the NLRC deemed that there was no final assessment made on Pelagio. In view thereof, the NLRC ruled that Pelagio's disability went beyond 240 days without a declaration that he is fit to resume work or an assessment of disability rating, and as such, he is already entitled to permanent total disability benefits as stated under the CBA.[29]

Respondents filed a motion for reconsideration,[30] attaching thereto a copy of the August 5, 2010 Medical Report. However, the same was denied in a Resolution[31] dated October 4, 2011. Aggrieved, respondents filed a petition for *certiorari* before the CA.[32]

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[26] See Memorandum of Appeal dated May 20, 2011; *id*. at 121-138.

[27] *Id*. at 140-156.

[28] See *id*. at 154-156.

[29] See *id*. at 148-155.

[30] Dated September 20, 2011. Records, pp. 399-424.

[31] *Rollo*, pp. 158-161.

[32] Dated November 23, 2011. *Id*. at 164-192.

The CA Ruling

In a Decision[33] dated January 16, 2017, the CA annulled the NLRC ruling and reinstated that of the LA. It opined that the company-designated physician indeed gave Pelagio a disability rating of Grade 11 within 240 days from his repatriation, as evinced by the July 27, 2010 Medical Report[34] which was later on affirmed by the August 5, 2010 Medical Report. Hence, the CA concluded that the company-designated physician's findings should prevail considering that he extensively examined and treated Pelagio's medical condition.[35]

Dissatisfied, Pelagio moved for reconsideration,[36] but was denied in a Resolution[37] dated May 22, 2017; hence, this petition.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA correctly reinstated the LA ruling which only deemed Pelagio to be suffering from a Grade 11 impediment, and must only receive permanent partial disability benefits corresponding thereto.

The Court's Ruling

The petition is meritorious.

"Preliminarily, the Court stresses the distinct approach in reviewing a CA's ruling in a labor case. In a Rule 45 review, the Court examines the correctness of the CA's Decision in contrast with the review of jurisdictional errors under Rule 65. Furthermore, Rule 45 limits the review to questions of law. In ruling for legal correctness, the Court views the CA Decision

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[33] *Id*. at 228-240 & 246-254.

[34] CA *rollo*, pp. 375-376.

[35] See *rollo*, pp. 236-240, 246-252.

[36] See motion for reconsideration dated February 9, 2017; *id*. at 255-261.

[37] *Id*. at 262-263.

in the same context that the petition for *certiorari* was presented to the CA. Hence, the Court has to examine the CA's Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision."[38]

"Case law states that grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law."[39]

"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."[40]

Guided by the foregoing considerations, the Court finds that the CA erred in ascribing grave abuse of discretion on the part of the NLRC, as its finding that Pelagio is entitled to permanent and total disability benefits is in accord with the evidence on record, as well as settled legal principles of labor law.

In *Jebsens Maritime, Inc. v. Rapiz*,[41] the Court explained that a seafarer's failure to obtain any gainful employment for more than 120 days after his medical repatriation does not *ipso facto* deem his disability to be permanent and total as the

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[38] *University of Santo Tomas (UST) v. Samahang Manggagawa ng UST*, G.R. No. 184262, April 24, 2017, 824 SCRA 52, 60, citing *Quebral v. Angbus Construction, Inc.*, 798 Phil. 179, 187 (2016).

[39] *Id*. at 60-61; citation omitted.

[40] *Id*. at 61.

[41] G.R. No. 218871, January 11, 2017, 814 SCRA 303.

company designated physician may be given an additional 120 days, or a total of 240 days from such repatriation, to give the seafarer further treatment, and thereafter, make a declaration as to the nature of the latter's disability.[42] It was then clarified, however, that for the company-designated physician to avail of the extended 240-day period, he must first perform some significant act to justify an extension (*e.g.*, that the illness still requires medical attendance beyond the initial 120 days but not to exceed 240 days); otherwise, the seafarer's disability shall be ***conclusively presumed*** to be permanent and total.[43] Hence, it reiterated the guidelines that govern seafarers' claims for permanent and total disability benefits, to wit:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;

2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;

3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.*, seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and

4. **If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.**[44] (Emphasis and underscoring supplied)

Otherwise stated, the company-designated physician is required to issue a ***final and definite assessment*** of the seafarer's

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[42] See *id*. at 308-309; citation omitted.

[43] See *id*. at 309-310; citations omitted.

[44] *Id*. at 310; citing *Elburg Shipmanagement Phils., Inc. v. Quiogue*, 765 Phil. 341, 362-363 (2015).

disability rating within the aforesaid 120/240-day period;[45] otherwise, the opinions of the company-designated and the independent physicians are ***rendered irrelevant*** because the seafarer is already conclusively presumed to be suffering from a permanent and total disability, and thus, is entitled to the benefits corresponding thereto.[46]

To recapitulate, the CA's finding that the company-designated physician gave Pelagio a disability rating is largely based on the July 27, 2010 Medical Report[47] which was seconded by the August 5, 2010 Medical Report,[48] which respondents claim to contain the company-designated physician's final disability grading of Pelagio's condition.[49] However, a more circumspect review of these documents show that these do not constitute the ***final and definite assessment*** required by law, considering that: (*a*) the July 27, 2010 Medical Report expressly provided that the findings therein are only interim;[50] whereas (*b*) the August 5, 2010 Medical Report only provided for a "potential disability grading."[51]

Besides, even assuming *arguendo* that the August 5, 2010 Medical Report indeed contains Pelagio's final disability grading as posited by respondents, it must be noted that the same was

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[45] See *Sharpe Sea Personnel, Inc. v. Mabunay*, G.R. No. 206113, November 6, 2017, citing *Magsaysay Maritime Corp. v. Cruz*, 786 Phil. 451, 464 (2016) and *Kestrel Shipping Co., Inc. v. Munar*, 702 Phil. 717, 731 (2013).

[46] See *Magsaysay Maritime Corp. v. Cruz*, *id*., citing *Alpha Ship Management Corp. v. Calo*, 724 Phil. 106, 125-126 (2014).

[47] CA *rollo*, pp. 375-376.

[48] *Rollo*, p. 157.

[49] See *id*. at 116, 144, and 231-232.

[50] Pertinent portion of the July 27, 2010 Medical Report reads: "His closest interim assessment is Grade 11 – slight loss of lifting power of the trunk." (CA *rollo*, p. 376.)

[51] Pertinent portion of the August 5, 2010 Medical Report reads: "Based on his present condition, the potential disability grading is Grade 11 – slight loss of lifting power of the trunk." (*Rollo*, p. 157.)

belatedly adduced in evidence when it was attached to respondents' motion for reconsideration before the NLRC, even if it appears to be readily available. Case law instructs that "while strict compliance to technical rules is not required in labor cases, liberal policy should still be pursuant to equitable principles of law. In this regard, belated submission of evidence may be allowed only if the delay in its presentation is sufficiently justified; the evidence adduced is undeniably material to the cause of a party; and the subject evidence should sufficiently prove the allegations sought to be established."[52] Here, respondents did not explain the reasons for their failure to present the August 5, 2010 Medical Report at the earliest opportunity, and it was only after the NLRC rendered an unfavorable decision that the same was presented. Verily, respondents' belated submission thereof without any explanation casts doubt on its credibility especially since it does not appear to be a newly discovered evidence.[53]

In the absence of a final and definite disability assessment of the company-designated physician, Pelagio is conclusively presumed to be suffering from a permanent and total disability, and thus, is entitled to the benefits corresponding thereto. In this light, the Court deems it proper to reverse the CA ruling and reinstate that of the NLRC, with modification imposing on the monetary awards due to Pelagio legal interest of six percent (6%) per annum from finality of this Decision until full payment, in accordance with prevailing jurisprudence.[54]

WHEREFORE, the petition is **GRANTED**. The Decision dated January 16, 2017 and the Resolution dated May 22, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 122771 are **REVERSED** and **SET ASIDE**. Accordingly, the Decision dated

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[52] *Magsaysay Maritime Corp v. Cruz*, *supra* note 45, at 462-463, citing *Misamis Oriental II Electric Service Cooperative v. Cagalawan*, 694 Phil. 268, 281 (2012).

[53] *Id.* at 463.

[54] See *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

August 24, 2011 and the Resolution dated October 4, 2011 of the National Labor Relations Commission in NLRC-LAC Case No. M-05-000458-11, which awarded petitioner Cesar C. Pelagio the amounts of US$70,000.00 representing permanent total disability benefits and US$7,000.00 as attorney's fees, or a total of US$77,000.00, at their peso equivalent at the time of actual payment, are hereby **REINSTATED**, with **MODIFICATION** imposing on said awards legal interest of six percent (6%) per annum from finality of this Decision until full payment.

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Caguioa, Reyes, J. Jr.*, and *Lazaro-Javier, JJ.*, concur.

FIRST DIVISION

[G.R. No. 233209. March 11, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **HEROFIL OLARTE *y* NAMUAG,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; WARRANTLESS ARREST; *IN FLAGRANTE DELICTO* ARREST, ELEMENTS OF.— The first instance in Sec. 5 of Rule 113, on which the subject arrest was premised, is known as an *in flagrante delicto* arrest where the accused was **caught in the act** or **attempting to commit,** already committing or having committed an offense. For a warrantless arrest of *in flagrante delicto* to be effected, two elements must concur: (a) the person to be arrested must **execute** an **overt act** indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (b) such overt act is **done in the presence** or **within the view**

of the arresting officer. Failure to comply with the overt act test renders an *in flagrante delicto* arrest constitutionally infirm.

2. ID.; ID.; ID.; *IN FLAGRANTE DELICTO* ARREST DISTINGUISHED FROM WARRANTLESS ARREST BASED ON PROBABLE CAUSE; PROBABLE CAUSE IN THE CONTEXT OF WARRANTLESS ARRESTS, DEFINED AND EXPLAINED.— The concept of ***in flagrante delicto* arrests** should not be confused with **warrantless arrests based on probable cause** as contemplated in the second instance of Sec. 5 of Rule 113. In the latter type of warrantless arrest, an accused may be arrested when there is probable cause which is discernible by a peace officer or private person that an offense "has just been committed." Here, the offense had already been consummated but **not in the presence** of the peace officer or private person who, nevertheless, should have personal knowledge of facts or circumstances that the person to be arrested had committed it. More importantly, there is durational immediacy between the offense that had just been committed and the peace officer or private person's perception or observation of the accused's presence at the incident or immediate vicinity. Such is why probable cause is required to justify a warrantless arrest in cases where the peace officer or private person **did not catch or witness** the accused **in the act of committing** an offense. "Probable cause" (in the context of warrantless arrests) has been understood to mean **a reasonable ground of suspicion supported by circumstances** sufficiently strong to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged. While probable cause to justify a warrantless arrest is required only in instances where the peace officer or private person who was present only at the time when the offense was committed believes (based on his/her immediate perception) that an offense had just been committed, some of its yardsticks for determination may be of help **in ascertaining whether** an accused is ***attempting* to commit** an offense. This is because the probable cause needed to justify a warrantless arrest ordinarily involves a certain degree of suspicion, in the absence of actual belief of the arresting officers, that the person to be arrested is **probably guilty** of committing the offense based on actual facts. And such determination of reasonable suspicion "must be based on commonsense judgments and inferences about human behavior."

3. ID.; ID.; ID.; THE POLICE OFFICERS IN THIS CASE HAD A REASONABLE SUSPICION TO ARREST THE ACCUSED WHEN HE WAS SEEN TO HAVE DRAWN A GUN DESPITE THE FACT SUCH FIREARM TURNED OUT TO BE A REPLICA.— Under the circumstances, PO2 Intud and PO2 Monilar had a reasonable suspicion to arrest accused-appellant who was seen to have drawn a gun as he was about to enter LBC. Common sense dictates that police officers need not wait for a serious crime, such as robbery, to be consummated before they move in and make the arrest because it will definitely endanger the lives and safety of the public, as well as their own. This is consistent with the jurisprudential *dictum* that the obligation to make an arrest by reason of a crime does not presuppose, as a necessary requisite for the fulfillment thereof, the indubitable existence of a crime. Moreover, even if the firearm drawn turned out to be a replica, the police officers were not expected to know on sight whether the firearm was genuine or not, considering they had only a split second to act on any indication of danger. What was necessary was **the presence of reasonably sufficient ground to believe the existence of an act having the characteristics of a crime;** and that the same grounds exist to believe that the person sought to be detained participated in it. As a result of the validity of the accused-appellant's warrantless arrest, the incidental search and seizure of the items in his possession is also valid "to protect the arresting officer from being harmed by the person arrested and to prevent the latter from destroying evidence within reach."

4. ID.; ID.; ID.; ACCUSED'S OVERT ACT OF DRAWING A GUN IS SUFFICIENT TO JUSTIFY HIS WARRANTLESS ARREST.— [A]ccused-appellant's argument that the CCTV footage cannot be considered as a valid basis for his arrest fails to persuade. While it is a long-standing rule that reliable information alone (such as footage from a CCTV recording) is not sufficient to justify a warrantless arrest, the rule only requires that the accused perform some overt act that would indicate that he has committed, is actually committing, or is attempting to commit an offense. Therefore, it does not matter that accused-appellant was previously identified only from a CCTV footage supposedly covering his previous criminal conduct because **he was seen** by PO2 Intud and PO2 Monilar **performing an *overt act* of drawing a gun** as he was about to enter LBC.

5. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONIES OF THE ARRESTING OFFICERS GIVEN MORE WEIGHT IN VIEW OF THE ACCUSED'S FAILURE TO REBUT THE SAME.— [A]ccused-appellant failed to rebut with affirmative evidence the testimonies of PO2 Intud and PO2 Monilar that he was caught in the act of drawing a gun as he was about to enter LBC. He never substantiated his claim, save for his self-serving account, that he was arrested without any reason. Moreover, the arresting officers' credibility was reinforced even more with their consistent corroborating statements under intense cross-examination. This reinforces the oft-repeated principle that trial courts are in the best position to weigh the evidence presented during trial and to ascertain the credibility of the police officers who testified. Thus, the CA and the RTC properly gave more weight to the positive testimonies of the prosecution's witnesses over accused-appellant's defenses of denial and frame-up because these remained consistent even under the crucible of cross-examination.

6. ID.; CRIMINAL PROCEDURE; THE ILLEGAL ARREST OF AN ACCUSED IS NOT SUFFICIENT TO SET ASIDE A VALID JUDGMENT; ACCUSED IS ESTOPPED FROM ASSAILING ANY IRREGULARITY IN HIS ARREST IF HE FAILS TO RAISE THIS ISSUE OR TO MOVE TO QUASH THE INFORMATION AGAINST HIM BEFORE HIS ARRAIGNMENT; PRINCIPLE, APPLIED IN CASE AT BAR.— [T]he illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error; and will not even negate the validity of the conviction of the accused. The legality of an arrest affects only the jurisdiction of the court over the person of the accused. Furthermore, "[i]t is much too late in the day to complain about the warrantless arrest after a valid information had been filed, the accused arraigned, trial commenced and completed, and a judgment of conviction rendered against him." It has been ruled time and again that an accused is estopped from assailing any irregularity with regard to his arrest if he *fails* to raise this issue or to move for the quashal of the information against him on this ground *before* his arraignment. Besides, only those pieces of evidence obtained after an unreasonable search and seizure are inadmissible in evidence for any purpose in any proceeding. In this case, accused-appellant failed to timely question the illegality of his

arrest and to present evidence (or at least some reasonable explanation) to substantiate his alleged wrongful detention. This renders the warrantless arrest and the accompanying search valid; thus, affirming the RTC's jurisdiction over his person and making all the items, confiscated from accused-appellant, admissible in evidence.

7. ID.; ID.; AMENDMENT OF INFORMATION; SUBSTANTIAL AMENDMENT DISTINGUISHED FROM FORMAL AMENDMENT; INSTANCES OF FORMAL AMENDMENT, REITERATED; SUBSTANTIAL AMENDMENT IS PERMISSIBLE AS LONG AS THE DUE PROCESS REQUIREMENTS ARE COMPLIED WITH.— To date, there is no precise definition of what constitutes a substantial amendment; although it was held that "it consists of the recital of facts constituting the offense charged and determinative of the jurisdiction of the court"—all other matters are merely of form. As to formal amendments, the Court first held in ***People v. Casey, et al.*** that an amendment is merely formal and *not* substantial *if:* (a) it does not change the nature of the crime alleged therein; (b) it does not expose the accused to a charge which could call for a higher penalty; (c) it does not affect the essence of the offense; or (d) it does not cause surprise or deprive the accused of an opportunity to meet the new averment. Moreover, the following have also been held to be mere formal amendments, *viz:* (a) new allegations which **relate only to the range of the penalty** that the court might impose in the event of conviction; (b) an amendment which does **not charge another offense** different or distinct from that charged in the original one; (c) additional allegations which **do not alter the prosecution's theory of the case so as to cause surprise to the accused** and affect the form of defense he has or will assume; (d) an amendment which **does not adversely affect any substantial right** of the accused; and (e) an amendment that **merely adds specifications to eliminate vagueness** in the information and not to introduce new and material facts, and merely **states with *additional precision* something which is *already contained*** in the original information and which **adds nothing essential for conviction** for the crime charged. Notwithstanding the contrast between substantial and formal amendments, substantial amendments to the information are even permissible as long as the requirements of due process—that the accusation be in due form and the accused be given

notice and an opportunity to answer the charge—are complied with.

8. CRIMINAL LAW; LAWS ON ILLEGAL POSSESSION OF FIREARMS AND EXPLOSIVES (PD 1866) AS AMENDED BY RA 9516 AND RA 10591 (COMPREHENSIVE FIREARMS AND AMMUNITION REGULATION ACT); ILLEGAL POSSESSION OF FIREARMS AND EXPLOSIVES, ELEMENTS OF.— The essential elements in the prosecution for the crime of illegal possession of firearms, which include explosives, ammunitions or incendiary devices, are: (a) the existence of subject firearm, and (b) the fact that the accused who possessed or owned the same does not have the corresponding license for it. Associated with the essential elements of the crime, the term "*corpus delicti*" means the "body or substance of the crime and, in its primary sense, refers to the fact that the crime has been actually committed." Its elements are: (a) that a certain result has been proved *(e.g.,* a man has died); and (b) that some person is criminally responsible for the act. In the crime of illegal possession of firearms, the *corpus delicti* is the accused's ***lack* of *license* or *permit* to possess or carry** the firearm, as possession itself is not prohibited by law. To establish the *corpus delicti,* the prosecution has the burden of proving that the **firearm exists** and that the accused who owned or possessed it does not have the corresponding license or permit to possess or carry the same. However, even if the existence of the firearm must be established, the firearm itself need not be presented as evidence for it may be established by testimony, even without the presentation of the said firearm.

9. REMEDIAL LAW; CRIMINAL PROCEDURE; AMENDMENT OF INFORMATION; AMENDMENT OF HAND GRENADE MODEL AS STATED IN THE ORIGINAL INFORMATION IS MERELY FORMAL, NOT SUBSTANTIAL; THE ASSAILED AMENDMENT WHICH REFLECTED THE CORRECT MODEL OF THE SUBJECT HAND GRENADE MERELY ADDED PRECISION TO THE FACTUAL ALLEGATIONS ALREADY CONTAINED IN THE ORIGINAL INFORMATION.— A casual appreciation of the allegations in the original and amended informations immediately shows that accused-appellant had been carrying a hand grenade without a corresponding license; such effectively covering all the elements of the crime of illegal possession of an explosive device. It does not matter whether

the model of the grenade's fuse assembly was inaccurately alleged in the original information. The same argument still supports the conclusion that the questioned amendment does not prejudice accused-appellant's rights; it does ***not:*** (a) charge another offense different or distinct from the charge of illegal possession of an explosive averred in the original information; (b) alter the prosecution's theory of the case that he was caught possessing a hand grenade without a license or permit so as to cause him surprise and affect the form of defense he has or will assume; (c) introduce new and material facts; and (d) add anything which was essential for conviction. In effect, **the assailed amendment which reflected the correct model of the subject hand grenade merely added precision to the factual allegations already contained in the original information.** Besides, a change of the subject marking from "M204**X**2" to "M204**A**2" is an obvious correction of *a clerical error*—one which is visible to the eye or *obvious to the understanding;* an error made by a clerk or a transcriber; or a *mistake in copying* or writing. Accordingly, any amendment as to the discrepancy in the description of an element alleged in the information is evidentiary in nature and only amounts to a mere formal amendment.

10. ID.; EVIDENCE; OBJECT EVIDENCE; CLASSIFICATION.— Object evidence is classified into: (a) **actual, physical** or **"autoptic" evidence:** those which have a direct relation or part in the fact or incident sought to be proven and those brought to the court for personal examination by the presiding magistrate; and (b) **demonstrative evidence:** those which *represent* the actual or physical object (or event in the case of pictures or videos) being offered to support or draw an inference or to aid in comprehending the verbal testimony of a witness. Further, actual evidence is subdivided into three categories: (a) those that have readily identifiable marks **(unique objects);** (b) those that are made readily identifiable **(objects *made* unique)** and (c) those with no identifying marks **(non-unique objects).**

11. ID.; ID.; ID.; ID.; UNIQUE OBJECTS AND NON-UNIQUE OBJECTS, DISTINGUISHED; NON-UNIQUE OBJECTS HAVE TO BE MADE UNIQUE BY THE LAW ENFORCERS UPON RETRIEVAL OR CONFISCATION IN ORDER TO BE AUTHENTICATED BY THE WITNESS SO THAT THE COURT CAN DETERMINE THEIR RELEVANCE OR PROBATIVE

VALUE.— During the initial stage of evidence gathering, the *only* readily available types of actual evidence reasonably obtainable by law enforcers are unique objects and non-unique objects. On one hand, unique objects either: (a) *already exhibit identifiable visual or physical peculiarities* such as a particular paint job or an accidental scratch, dent, cut, chip, disfigurement or stain; or (b) *have a readily distinguishable mark* such as a unit-specific serial number in case of an industrially manufactured item. On the other hand, non-unique objects such as narcotic substances, industrial chemicals, and body fluids cannot be distinguished and are not readily identifiable; that is why they present an inherent problem of fungibility or substitutability and contamination which adversely affects their relevance or probative value. This is the reason why non-unique objects have to be made unique by law enforcers upon retrieval or confiscation in order for these articles to be authenticated by a sponsoring witness so that trial and reviewing courts can determine their relevance or probative value.

12. ID.; JUDICIAL AFFIDAVIT RULE; OBJECT EVIDENCE NOW REQUIRES AUTHENTICATION OR TESTIMONIAL SPONSORSHIP BEFORE IT MAY BE ADMITTED BY THE COURT.— [T]he Court promulgated the Judicial Affidavit Rule which mandates parties to file, not later than five days before pre-trial or preliminary conference, judicial affidavits executed by their witnesses which shall take the place of their direct testimonies. Here, parties seeking to offer documentary and/or object evidence are now required to describe, authenticate, and make the same evidence form part of the witness' judicial affidavit under the said Rule. Therefore, as a rule, object evidence now requires authentication or testimonial sponsorship before it may be admitted or considered by the court.

13. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY RULE; APPLIED BY THE COURT AS A MODE OF AUTHENTICATING ILLEGAL DRUGS SUBSTANCES TO DETERMINE ITS ADMISSIBILITY BUT HAS NOT YET BEEN EXTENDED TO OTHER SUBSTANCES OR OBJECTS; RATIONALE.— [T]he Court has applied the "chain of custody" rule as a mode of authenticating illegal drug substances in order to determine its admissibility. However, such rule has not yet been extended to other substances or objects for it is only a

variation of the principle that real evidence must be authenticated prior to its admission into evidence. At this point, it becomes necessary to point out that the *degree of fungibility* of *amorphous objects* without an inherent unique characteristic capable of scientific determination, *i.e.*, DNA testing, is *higher* than stably structured objects or those which retain their form because the likelihood of tracing the former objects' source is more difficult, if not impossible. Narcotic substances, for example, are relatively easy to source because they are readily available in small quantities thereby allowing the buyer to obtain them at lower cost or minimal effort. It makes these substances highly susceptible to being used by corrupt law enforcers to plant evidence on the person of a hapless and innocent victim for the purpose of extortion. Such is the reason why narcotic substances should undergo the tedious process of being authenticated in accordance with the chain of custody rule.

14. ID.; ID.; ID.; ID.; WHETHER THE FOUNDATION OF THE PROFFERED EVIDENCE MAY BE PROPERLY LAID ONLY BY A WITNESS OR THE CHAIN OF CUSTODY RULE HAS TO BE RESORTED TO AND COMPLIED WITH BY THE PROPONENT DEPENDS ON THE NATURE OF SUCH EVIDENCE; AT ALL TIMES, THE SOURCE OF AMORPHOUS AS WELL AS FIRMLY STRUCTURED OBJECTS BEING OFFERED AS EVIDENCE MUST BE TETHERED TO AND SUPPORTED BY A WITNESS.— [T]he Court emphasizes that if the proffered evidence is unique, readily identifiable, and relatively resistant to change, that foundation need only consist of testimony by a witness with knowledge that the evidence is what the proponent claims; otherwise, the chain of custody rule has to be resorted to and complied with by the proponent to satisfy the evidentiary requirement of relevancy. And at all times, the ***source*** of amorphous as well as firmly structured **objects** being offered as evidence **must be tethered to and supported by a testimony.** Here, the determination whether a proper foundation has been laid for the introduction of an exhibit into evidence refits within the discretion of the trial court; and a higher court reviews a lower court's authentication ruling in a deferential manner, testing only for mistake of law or a clear abuse of discretion. In other words, the credibility of authenticating witnesses is for the trier of fact to determine.

15. ID.; ID.; ID.; THE CHAIN OF CUSTODY RULE DOES NOT APPLY TO AN UNDETONATED GRENADE; THE IDENTITY AND THE EVIDENTIARY VALUE OF THE SUBJECT GRENADE HAD BEEN ESTABLISHED IN CASE AT BAR.— In the case at hand, the chain of custody rule does not apply to an undetonated grenade *(an object made unique),* for it is not amorphous and its form is relatively resistant to change. A witness of the prosecution need only identify the hand grenade, a structured object, based on personal knowledge that the same contraband or article is what it purports to be—that it came from the person of accused-appellant. Even assuming *arguendo* that the chain of custody rule applies to dispel supposed doubts as to the grenade's existence and source, the integrity and evidentiary value of the explosive had been sufficiently established by the prosecution. x x x The [Court of Appeals'] factual finding clearly shows that the source and existence of the subject grenade were authenticated by the prosecution's witness to be the very same explosive recovered from 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

GESMUNDO, *J.*:

The State's bounden duty to keep its people and those who sojourn within its territory safe from harm includes its obligation to protect their rights from any bureaucratic abuse. Striking a balance between utilizing sovereign police power and safeguarding mandated civil liberties has plagued adjudicators worldwide and has invited differing and sometimes divisive opinions. Nonetheless, courts are called upon to temper any philosophical debates and conflicting interests between law enforcement and protection of civil rights. This they can accomplish with lucid and objective decisions imbued with the wisdom of the Constitution and reflecting the majesty of the law and jurisprudence.

The Case

This is an appeal by accused-appellant Herofil N. Olarte *(accused-appellant)* seeking to reverse the April 6, 2017 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 01501-MIN which affirmed the January 27, 2016 Joint Judgment[2] of the Regional Trial Court, Cagayan de Oro City, Misamis Oriental, Branch 21 *(RTC),* in Crim. Case Nos. 2014-830 and 2014-831. Accused-appellant was convicted for violation of Republic Act *(RA)* No. 9516[3] which amended Sections 3 and 4 of Presidential Decree *(P.D.)* No. 1866,[4] and of Section 35, Article V of Republic Act No. 10591.[5] The RTC *acquitted* accused-appellant of the charge of using an imitation firearm (.25 caliber pistol) in the commission of a crime *(R.A. No. 10591)* but *convicted* him of unlawfully carrying an M61 fragmentation grenade with an M204A2 fuse[6] assembly without the necessary license or permit to possess it *(R.A. No. 9516).*

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[1] *Rollo,* pp. 3-33; penned by Associate Justice Rafael Antonio M. Santos, with Associate Justice Oscar V. Badelles and Associate Justice Ruben Reynaldo G. Roxas, concurring.

[2] CA *rollo,* pp. 39-55; penned by Presiding Judge Gil G. Bollozos.

[3] An Act Further Amending the Provisions of P.D. No. 1866, as amended, entitled "Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition, of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof and for Relevant Purposes (December 22, 2008).

[4] Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition, of Firearms, Ammunition or Explosives or Instruments Used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations Thereof and for Relevant Purposes (June 29, 1983).

[5] Comprehensive Firearms and Ammunition Regulation Act (May 29, 2013).

[6] Also spelled and referred to as "fuze."

Antecedents

Accused-appellant was separately charged for illegal or unauthorized possession of a hand grenade and an unlicensed pistol (later found to be a replica). The relevant portions of the Informations[7] are as follows:

Criminal Case No. 2014-830

That on July 19, 2014, at more or less 1:30 o'clock in the afternoon at LBC Pabayo-Chavez Streets, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, permit or license to possess or carry [an] explosive, did then and there willfully, unlawfully, criminally and knowingly have in his possession, custody and control, one (1) Fuze M204A2 Grenade without first securing the necessary license or permit to possess the same from the proper authorities.

Contrary to law.[8]

Criminal Case No. 2014-831

That on July 19, 2014, at more or less 1:30 o'clock in the afternoon at LBC Pabayo-Chavez Streets, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, permit or license to possess or carry [a] firearm, did then and there willfully, unlawfully, criminally and knowingly have in his possession, custody and control, One (1) Caliber .25 Pistol (Replica) without first securing the necessary license or permit to possess the same from the proper authorities.

Contrary to law.[9]

Version of the Prosecution

Police Officer 2 Reggie M. Intud *(PO2 Intud)* and Police Officer 2 Pablo B. Monilar, Jr. *(PO2 Monilar)* were members

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[7] CA *rollo,* p. 39.

[8] *Id*.

[9] *Id*.

of Task Force "Boy Solo," a team formed in response to reports that a lone gunman was believed to be responsible for several robbery incidents at Pabayo and Chavez Streets in Cagayan de Oro City. On July 19, 2014, at around 1:30 P.M., PO2 Intud and PO2 Monilar were conducting discreet monitoring operations in the area.[10] During their watch, they noticed a man walking towards a branch of LBC Express, Inc. *(LBC),* a commercial establishment. His features resembled "Boy Solo" whose image was shown in closed circuit television *(CCTV)* footages of past robberies in the area.[11] As "Boy Solo" was about to enter the establishment, he pulled out a firearm.[12] This prompted PO2 Intud and PO2 Monilar to immediately run towards the suspect.[13] "Boy Solo," however, noticed the police officers running towards him so he ran away.[14] "Boy Solo's" companions – Randy P. Tandoy, Dexter D. Caracho and Rodel B. Rubilla,[15] acting as his lookouts, also fled from their posts. They all boarded a Cugman Liner, a public utility jeepney heading towards the Cogon Market.[16] Eventually, accused-appellant was arrested near Ororama Superstore in Cogon after a chase by PO2 Intud and PO2 Monilar. His three companions were caught in a follow-up operation.[17]

During the arrest, PO2 Intud and PO2 Monilar searched accused-appellant's person and recovered a .25 caliber pistol replica, a fragmentation grenade with an M204A2 fuse assembly, a flathead screwdriver, and a transparent heat-sealed plastic sachet containing a white crystalline substance believed to be

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[10] *Rollo,* pp. 6, 13 and 15-17.

[11] *Id*. at 6 and 13-14.

[12] *Id*. at 6, 14 and 18.

[13] *Id*. at 6 and 14.

[14] *Id.*

[15] CA *rollo,* p. 44.

[16] *Rollo,* pp. 6 and 13-14.

[17] *Id*. at 6.

methamphetamine hydrochloride.[18] PO2 Intud then wrapped the grenade with masking tape and marked it with his initials RMI2.[19] Thereafter, the police officers brought accused-appellant to Police Station 1-Divisoria where the incident was recorded in the police blotter.[20] PO2 Intud then turned over the grenade to the prosecutor but the latter refused to take custody of It. He handed it to Chief Investigator Senior Police Officer 2 Allan Radaza *(SPO2 Radaza)* who, in turn, entrusted it to the PNP Explosive Ordnance Disposal *(EOD)* Team headed by SPO2 Dennis Allan Poe L. Tingson *(SPO2 Tingson).*[21] SPO2 Tingson inspected the grenade and identified it as an M61 fragmentation hand grenade with an M204A2 fuse assembly. He issued an acknowledgement receipt[22] and a certification[23] to the same."[24] Finally, the police officers found out that accused-appellant had no license or permit to possess the M61 hand grenade as well as the .25 caliber pistol, though a replica.[25]

Version of Accused-Appellant

On July 19, 2014, accused-appellant boarded a passenger jeepney bound for Tablon, Cagayan de Oro City.[26] When the jeepney stopped in front of Ororama Superstore, two civilian-dressed persons suddenly approached. They bear-hugged and handcuffed him, then told him to go with them.[27] Startled, accused-appellant resisted, saying he did nothing wrong.[28] He was then

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[18] *Id*. at 14; see also: CA *rollo,* p. 43.

[19] *Id*. at 6 and 29.

[20] *Id*. at 7.

[21] *Id*. at 6-7 and 29.

[22] *Id*. at 29, dated July 23, 2014.

[23] *Id*. at 30, dated July 28, 2014.

[24] *Id.* at 7-8 and 30-31.

[25] *Id*. at 8.

[26] *Id*.

[27] *Id*.

[28] *Id*.

brought by his captors to Police Station 1-Divisoria where his bag was confiscated.[29] Afterwards, another person came to the police station with a grenade and a pistol replica claiming that these were found inside accused-appellant's bag.[30] Accused-appellant was then forced by the police officers to admit to illegally possessing the grenade and imitation pistol.[31]

The RTC Ruling

On January 30, 2015, the Hall of Justice of Cagayan de Oro City was razed by a fire which burned all the records therein including those pertaining to the original information and arraignment of accused-appellant, as well as some of the evidence presented by the prosecution.[32]

On April 27, 2015, accused-appellant was re-arraigned. The prosecution undertook the retaking of the testimonies and the refiling of judicial affidavits already executed by some of its witnesses, as part of the efforts to reconstitute the lost records.[33]

In the course of reconstituting the records, the prosecution moved for the amendment of the Information in Criminal Case No. 2014-830 (illegal possession of hand grenade) seeking to change the reflected fuse assembly marking from "M204**X**2" to "M204**A**2." This was eventually granted by the RTC.[34]

On January 27, 2016, the RTC rendered a joint judgment[35] finding accused-appellant guilty beyond reasonable doubt of illegal possession of a hand grenade, for the following reasons: (a) an accused may be arrested and searched without warrant

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[29] *Id*.

[30] *Id*.

[31] *Id*.

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

[33] *Id*.

[34] *Id*. at 33.

[35] *Id*. at 39-55.

when he/she is attempting to commit an offense;[36] and (b) frame-up, denial, and alibi are weak and self-serving defenses which cannot overcome the affirmative and straightforward allegations of the prosecution's witnesses.[37] However, it dismissed the case of illegal possession of a .25 caliber pistol replica against accused-appellant because the Information in Criminal Case No. 2014-831 was defective. It only alleged that the pistol replica was merely possessed and not used in the commission of a crime as contemplated in Section 35, Article V of R.A. No. 10591.[38] The dispositive portion of the Joint Judgment reads:

WHEREFORE, premises considered, the charge under Crim. Case No. 2014-831 is DISMISSED.

In Crim. Case No. 2014-830, this Court finds proof beyond reasonable doubt to find the accused GUILTY. The accused therefore is meted a penalty of imprisonment of *Reclusion Perpetua*. He is credited of (sic) the period that he is under preventive detention.

The following are forfeited and confiscated in favor to (sic) the government:

1. One (1) Fuze M204A2 Grenade; and
2. One (1) Caliber .25 Pistol (Replica).

SO ORDERED.[39] (italics supplied)

The CA Ruling

On April 6, 2017, the CA rendered a decision[40] affirming the ruling in Crim. Case No. 2014-830 of the RTC, ratiocinating that: (a) accused-appellant never questioned the legality of his arrest until his appeal;[41] (b) accused-appellant was validly arrested and searched without a warrant as he was caught

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[36] *Id*. at 52-53.

[37] *Id*. at 54.

[38] *Id*.

[39] *Id*. at 55.

[40] *Id*. at 91-12*; rollo,* pp. 3-33.

[41] *Rollo,* p. 11.

attempting to commit a robbery, making the hand grenade admissible in evidence as it was validly obtained;[42] (c) all the elements of the offense were adequately proven by the prosecution;[43] (d) the defenses of bare denial or frame-up are invariably viewed by courts with disfavor for they can easily be concocted;[44] (e) it does not matter if the fuse assembly marking on the grenade, as stated in the information (Criminal Case No. 2014-830), differs from that stated in the arresting officers' judicial affidavits; the alleged discrepancy being "clearly a clerical error" as supported by other documentary evidence (July 28, 2014 Certification, Seizure Receipt, and Extract Blotter), thereby justifying the amendment of the information;[45] (f) the identity of the grenade from the accused-appellant was not compromised even if the marking "RMI2" was not on the same grenade presented before the RTC; the prosecution adequately explained that the chain of custody remained unbroken as testified by all witnesses; (g) that the masking tape containing the same marking had been "removed and/or overlapped" with another strip of masking tape as per the July 28, 2014 Certification;[46] and (h) the RTC's assessment of the credibility of a witness is entitled to great weight and, sometimes, even finality which the appellate courts should not disturb because the trial judge had personally heard and observed the demeanor of the witnesses. The decretal portion of the CA decision reads, thus:

> WHEREFORE, the conviction of the accused-appellant for the offense charged in Criminal Case No. 2014-830 in the assailed Joint Judgment dated 27 January 2016 rendered by the Regional Trial Court, Branch 21 of Cagayan de Oro City is hereby AFFIRMED.
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> SO ORDERED.[47]

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[42] *Id*. at 11-21.

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

[44] *Id*. at 23.

[45] *Id*. at 23-31.

[46] *Id*. at 31-32.

[47] *Id*. at 32.

Hence, this appeal.

In its Resolution,[48] dated September 25, 2017, the Court required both parties to file their respective supplemental briefs, if they so desired.

On December 21, 2017, the Office of the Solicitor General, in its Manifestation and Motion,[49] opted the brief it filed before the CA as its supplemental brief. Accused-appellant, on the other hand, filed his Manifestation in lieu of Supplemental Brief,[50] stating that he is adopting *in toto* appellant's brief filed before the CA as it sufficiently and ably discussed the issues in the present case.

In his brief, accused-appellant presented the following arguments:

THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT THE ARREST OF ACCUSED-APPELLANT WAS LAWFUL.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE OFFENSE CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[51]

Parties' Arguments

Accused-appellant, who adopted his brief before the CA,[52] insists that: (a) his arrest was illegal because PO2 Intud and PO2 Monilar merely assumed that he was "Boy Solo" based on CCTV footages and that "[o]ne cannot, without a warrant, arrest anyone based on similarities of [p]hysical attributes;"[53] (b) "[a] waiver of an illegal warrantless arrest does not carry

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[48] *Id*. at 40-41.

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

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

[51] CA *rollo,* p. 23.

[52] *Rollo,* pp. 51-52; CA *rollo,* pp. 16-38.

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

with it a waiver of the inadmissibility of evidence seized during the illegal warrantless arrest;"[54] (c) the *corpus delicti* is doubtful because, when the subject hand grenade was presented in court, the marking "RMI2" was not found on it and the fuse assembly marking stated in the original information did not match the grenade's serial number;[55] and (d) the RTC should not have allowed the amendment of the original information to change the fuse assembly marking from "M204**X**2" to "M204**A**2" because it "affects the very identity of the grenade" and, thus, is clearly prejudicial to the accused.[56]

On the other hand, the prosecution argues that accused-appellant was lawfully arrested and searched without a warrant because he was caught in the act of pulling out a firearm, even if it turned out to be a mere replica. Such act, absent any provocation, would pose an imminent danger to the people in the vicinity.[57] The prosecution's witnesses (PO2 Intud, PO2 Monilar, SPO1 Tiongson, and SPO2 Radaza), who have held or in any manner dealt with the hand grenade, clearly testified as to the manner of its handling and the unbroken chain of custody.[58] It has already been clarified that the discrepancy as to the markings on the grenade's fuse assembly, "M204**X**2" and "M204**A**2," in both the original and amended informations as well as in the judicial affidavits, was merely a clerical error brought about by a misreading of the handwritten inventory of the confiscated items. This had been duly corrected with the permission of the RTC to conform to the evidence presented during trial.[59] Accused-appellant's unsubstantiated defenses of denial, frame-up, and alibi are weak and have been invariably viewed by the courts with disfavor.[60] Lastly, accused-appellant

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

[55] *Id*. at 28-35.

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

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

[58] *Id*. at 82.

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

[60] *Id*. at 83.

failed to present any ill motive on the part of the police officers who arrested him. Neither did he file any case against them for alleged frame-up and torture.[61]

ISSUES

The issues for the Court's resolution are:

WHETHER THE WARRANTLESS ARREST IS VALID AND THE HAND GRENADE SEIZED FROM ACCUSED-APPELLANT IS ADMISSIBLE IN EVIDENCE;

WHETHER THE ORIGINAL INFORMATION COULD BE VALIDLY AMENDED BY THE PROSECUTION TO REFLECT THE PROPER MARKING INSCRIBED ON THE HAND GRENADE'S FUSE ASSEMBLY;

WHETHER THE IDENTITY AND INTEGRITY OF THE *CORPUS DELICTI* HAVE BEEN COMPROMISED CAUSING ACCUSED-APPELLANT'S GUILT TO BE TAINTED WITH REASONABLE DOUBT.

THE COURT'S RULING

Legality of the Warrantless Arrest

A person may be validly arrested without warrant, as provided under Section 5, Rule 113 of the Revised Rules of Criminal Procedure, *viz.:*

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

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

(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 paragraph (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. (emphases supplied)

The first instance in Sec. 5 of Rule 113, on which the subject arrest was premised, is known as an *in flagrante delicto* arrest where the accused was **caught in the act** or **attempting to commit,** already committing or having committed an offense. For a warrantless arrest of *in flagrante delicto* to be effected, two elements must concur: (a) the person to be arrested must **execute** an **overt act** indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (b) such overt act is **done in the presence** or **within the view** of the arresting officer.[62] Failure to comply with the overt act test renders an *in flagrante delicto* arrest constitutionally infirm.[63]

The concept of ***in flagrante delicto* arrests** should not be confused with **warrantless arrests based on probable cause** as contemplated in the second instance of Sec. 5 of Rule 113. In the latter type of warrantless arrest, an accused may be arrested when there is probable cause which is discernible by a peace officer or private person that an offense "has just been committed." Here, the offense had already been consummated but **not in the presence** of the peace officer or private person who, nevertheless, should have personal knowledge of facts or circumstances that the person to be arrested had committed it. More importantly, there is durational immediacy between the offense that had just been committed and the peace

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[62] *People v. Cogaed,* 740 Phil. 212, 238 (2014); emphases supplied; citations omitted.

[63] *Veridiano v. People,* G.R. No. 200370, June 7, 2017.

officer or private person's perception or observation of the accused's presence at the incident or immediate vicinity. Such is why probable cause is required to justify a warrantless arrest in cases where the peace officer or private person **did not catch or witness** the accused **in the act of committing** an offense.

"Probable cause" (in the context of warrantless arrests) has been understood to mean **a reasonable ground of suspicion supported by circumstances** sufficiently strong to warrant a cautious man's belief that the person accused is guilty of the offense with which he is charged.[64] While probable cause to justify a warrantless arrest is required only in instances where the peace officer or private person who was present only at the time when the offense was committed believes (based on his/her immediate perception) that an offense had just been committed, some of its yardsticks for determination may be of help **in ascertaining whether** an accused is ***attempting* to commit** an offense. This is because the probable cause needed to justify a warrantless arrest ordinarily involves a certain degree of suspicion, in the absence of actual belief of the arresting officers, that the person to be arrested is **probably guilty** of committing the offense based on actual facts.[65] And such determination of reasonable suspicion "must be based on commonsense judgments and inferences about human behavior."[66]

Under the circumstances, PO2 Intud and PO2 Monilar had a reasonable suspicion to arrest accused-appellant who was seen to have drawn a gun as he was about to enter LBC. Common sense dictates that police officers need not wait for a serious crime, such as robbery, to be consummated before they move in and make the arrest because it will definitely

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[64] *People v. Villareal,* 706 Phil. 511, 522 (2013); emphasis supplied, citation omitted.

[65] See *Judge Abelita, III v. P/Supt. Doria, et al.,* 612 Phil. 1127, 1134 (2009); citation omitted.

[66] *Illinois v. Wardlow,* 528 U.S. 119 (2000); citations omitted.

endanger the lives and safety of the public, as well as their own. This is consistent with the jurisprudential *dictum* that the obligation to make an arrest by reason of a crime does not presuppose, as a necessary requisite for the fulfillment thereof, the indubitable existence of a crime.[67] Moreover, even if the firearm drawn turned out to be a replica, the police officers were not expected to know on sight whether the firearm was genuine or not, considering they had only a split second to act on any indication of danger. What was necessary was **the presence of reasonably sufficient ground to believe the existence of an act having the characteristics of a crime;** and that the same grounds exist to believe that the person sought to be detained participated in it.[68] As a result of the validity of the accused-appellant's warrantless arrest, the incidental search and seizure of the items in his possession is also valid "to protect the arresting officer from being harmed by the person arrested and to prevent the latter from destroying evidence within reach."[69]

Additionally, accused-appellant's argument that the CCTV footage cannot be considered as a valid basis for his arrest fails to persuade. While it is a long-standing rule that reliable information alone (such as footage from a CCTV recording) is not sufficient to justify a warrantless arrest, the rule only requires that the accused perform some overt act that would indicate that he has committed, is actually committing, or is attempting to commit an offense.[70] Therefore, it does not matter that accused-appellant was previously identified only from a CCTV footage supposedly covering his previous criminal conduct because **he was seen** by PO2 Intud and PO2 Monilar **performing an *overt act* of drawing a gun** as he was about to enter LBC.

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[67] *People v. Ramos,* 264 Phil. 554, 569 (1990); citation omitted.

[68] *Pestilos, et al. v. Generoso, et al.,* 746 Phil. 301, 317 (2014).

[69] *People v. Calantiao,* 736 Phil. 661, 670 (2014); citation omitted.

[70] See *People v. Racho,* 640 Phil. 669, 678 (2010); citation omitted.

Further, the assessment of the credibility of witnesses is within the province of the trial court by virtue of its unique position to observe the crucial and often incommunicable evidence of the witnesses' deportment while testifying, something which is denied to the appellate court because of the nature and function of its office.[71] To be able to rebut a trial court's assessments and conclusions as to credibility, substantial reasons must be proffered by the accused.[72] Relatedly, when it is decisive of the guilt or innocence of the accused, the issue of credibility is determined by the conformity of the conflicting claims and recollections of the witnesses to common experience and to the observation of mankind as probable under the circumstances.[73]

Here, accused-appellant failed to rebut with affirmative evidence the testimonies of PO2 Intud and PO2 Monilar that he was caught in the act of drawing a gun as he was about to enter LBC. He never substantiated his claim, save for his self-serving account, that he was arrested without any reason. Moreover, the arresting officers' credibility was reinforced even more with their consistent corroborating statements under intense cross-examination. This reinforces the oft-repeated principle that trial courts are in the best position to weigh the evidence presented during trial and to ascertain the credibility of the police officers who testified.[74] Thus, the CA and the RTC properly gave more weight to the positive testimonies of the prosecution's witnesses over accused-appellant's defenses of denial and frame-up because these remained consistent even under the crucible of cross-examination.

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[71] *People v. Esugon,* 761 Phil. 300, 311 (2015); citation omitted.

[72] See *People v. Sanchez,* 681 Phil. 631, 635 (2012), citing: *People v. Laog,* 674 Phil. 444, 457 (2011); citations omitted.

[73] See *Medina, Jr. v. People,* 724 Phil. 226, 228 (2014).

[74] See *People v. Mercado,* 755 Phil. 863, 874 (2015); *People v. Ocdol, et al.,* 741 Phil. 701, 714 (2014); *People v. Bautista,* 665 Phil. 815, 831 (2011); citations omitted.

At any rate, the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error; and will not even negate the validity of the conviction of the accused.[75] The legality of an arrest affects only the jurisdiction of the court over the person of the accused.[76] Furthermore, "[i]t is much too late in the day to complain about the warrantless arrest after a valid information had been filed, the accused arraigned, trial commenced and completed, and a judgment of conviction rendered against him."[77] It has been ruled time and again that an accused is estopped from assailing any irregularity with regard to his arrest if he *fails* to raise this issue or to move for the quashal of the information against him on this ground *before* his arraignment.[78] Besides, only those pieces of evidence obtained after an unreasonable search and seizure are inadmissible in evidence for any purpose in any proceeding.[79]

In this case, accused-appellant failed to timely question the illegality of his arrest and to present evidence (or at least some reasonable explanation) to substantiate his alleged wrongful detention. This renders the warrantless arrest and the accompanying search valid; thus, affirming the RTC's jurisdiction over his person and making all the items, confiscated from accused-appellant, admissible in evidence. Hence, the CA did not err in affirming the RTC's validation of accused-appellant's warrantless arrest and incidental search.

Validity of the Amended Information

I. Amendment of an Information

No less than the Constitution guarantees the right of every person accused in a criminal prosecution to be informed of the

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[75] *Miclat, Jr. v. People,* 672 Phil. 191, 203 (2011); citation omitted.

[76] *People v. Nuevas, et al.,* 545 Phil. 356, 377 (2007).

[77] *People v. Emoy, et al.,* 395 Phil. 371, 384 (2000); citation omitted.

[78] *People v. Tan,* 649 Phil. 262, 277 (2010); citation omitted.

[79] *Comerciante v. People,* 764 Phil. 627, 633-634 (2015); citation omitted.

nature and cause of accusation against him/her.[80] In this regard, every element constituting the offense must be alleged in the information to enable the accused to suitably prepare his/her defense.[81] This is because an accused is presumed to have no independent knowledge of the facts that constitute the offense.[82] Hence, the right to be informed of the nature and cause of accusation **is *not* transgressed if the information *sufficiently alleges facts* and *omissions* constituting an offense** that includes the offense established to have been committed by the accused.[83]

Moreover, Sec. 14, Rule 110 of the Rules of Court provides that "[a] complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea[;] [a]fter the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused."[84] As deduced from the foregoing rule, there are two kinds of amendments to an information: (a) *substantial* amendments, and *(b) formal* amendments.

To date, there is no precise definition of what constitutes a substantial amendment;[85] although it was held that "it consists of the recital of facts constituting the offense charged and determinative of the jurisdiction of the court"[86]—all other matters are merely of form.[87] As to formal amendments, the Court

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[80] *Canceran v. People,* 762 Phil. 558, 566 (2015); citation omitted.

[81] *Andaya v. People,* 526 Phil. 480, 497 (2006); citation omitted.

[82] *Balitaan v. Court of First Instance of Batangas, et al.,* 201 Phil. 311, 323 (1982); citation omitted.

[83] *People v. Manansala,* 708 Phil. 66, 68 (2013); emphasis supplied.

[84] *Banal, III v. Judge Panganiban, et al.,* 511 Phil. 605, 613 (2005).

[85] *Dr. Mendez v. People, et al.,* 736 Phil. 181, 191 (2014).

[86] *Ricarze v. Court of Appeals, et al.,* 544 Phil. 237, 249 (2007); *Almeda v. Judge Villaluz, et al.,* 160 Phil. 750, 757 (1975); citation omitted.

[87] *Teehankee, Jr. v. Hon. Madayag, et al.,* 283 Phil. 956, 966; citation omitted.

first held in ***People v. Casey, et al.***[88] that an amendment is merely formal and *not* substantial *if:* (a) it does not change the nature of the crime alleged therein; (b) it does not expose the accused to a charge which could call for a higher penalty; (c) it does not affect the essence of the offense; or (d) it does not cause surprise or deprive the accused of an opportunity to meet the new averment. Moreover, the following have also been held to be mere formal amendments, *viz:* (a) new allegations which **relate only to the range of the penalty** that the court might impose in the event of conviction; (b) an amendment which does **not charge another offense** different or distinct from that charged in the original one; (c) additional allegations which **do not alter the prosecution's theory of the case so as to cause surprise to the accused** and affect the form of defense he has or will assume; (d) an amendment which **does not adversely affect any substantial right** of the accused; and (e) an amendment that **merely adds specifications to eliminate vagueness** in the information and not to introduce new and material facts, and merely **states with *additional precision* something which is *already contained*** in the original information and which **adds nothing essential for conviction** for the crime charged.[89]

Notwithstanding the contrast between substantial and formal amendments, substantial amendments to the information are even permissible as long as the requirements of due process—that the accusation be in due form and the accused be given notice and an opportunity to answer the charge—are complied with.[90] Therefore, the Court will have to determine and explain in the succeeding discussions whether the amendment to the subject information was formal or substantial and whether such amendment either complied with or violated the requirements of due process.

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[88] See *People v. Casey, et al.,* 190 Phil. 748, 759 (1981); citation omitted.

[89] *Leviste v. Hon. Alameda, et al.,* 640 Phil. 620, 642 (2010); emphases supplied.

[90] See *Buhat v. Court of Appeals, et al.,* 333 Phil. 562, 575 (1996); citations omitted.

II. Elements of Illegal Possession of Firearms, Explosives, Ammunitions or Incendiary Devices

The essential elements in the prosecution for the crime of illegal possession of firearms, which include explosives, ammunitions or incendiary devices,[91] are: (a) the existence of subject firearm, and (b) the fact that the accused who possessed or owned the same does not have the corresponding license for it.[92] Associated with the essential elements of the crime, the term "*corpus delicti*" means the "body or substance of the crime and, in its primary sense, refers to the fact that the crime has been actually committed."[93] Its elements are: (a) that a certain result has been proved *(e.g.,* a man has died); and (b) that some person is criminally responsible for the act.[94] In the crime of illegal possession of firearms, the *corpus delicti* is the accused's ***lack* of *license* or *permit* to possess or carry** the firearm, as possession itself is not prohibited by law.[95] To establish the *corpus delicti,* the prosecution has the burden of proving that the **firearm exists** and that the accused who owned or possessed it does not have the corresponding license or permit to possess or carry the same.[96] However, even if the existence of the firearm must be established, the firearm itself need not be presented as evidence for it may be established by testimony, even without the presentation of the said firearm.[97]

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[91] *Cf. Del Rosario v. People,* 410 Phil. 642, 660 (2001); citations omitted.

[92] *Jacaban v. People,* 756 Phil. 523, 531 (2015); citation omitted.

[93] *Zabala v. People,* 752 Phil. 59, 69 (2015).

[94] *People v. Quimzon,* 471 Phil. 182, 192 (2004); citation omitted.

[95] See: *Capangpangan v. People,* 563 Phil. 590, 598 (2007); citation omitted.

[96] *Sayco v. People,* 571 Phil. 73, 82-83 (2008); citation omitted.

[97] See *People v. Narvasa, et al.,* 359 Phil. 168, 179 (1998), citation omitted.

III. Propriety of the Amendments

Before delving into the propriety of amending the original information, the Court clarifies and takes discretionary[98] judicial notice[99] of the fact that different *models* of *detonating fuses* used in hand grenade assembly are available in the market. These detonating fuses include the following **models:** M204A1, M204**A**2, M206A2, M213, M228, and the C12 integral fuse (to date, there is *no known fuse assembly model* denominated as "M204**X**2").[100] It means that the marking denominated as "M204A2" on the fuse assembly of the subject grenade does not refer to the serial number—it pertains to the model number. This was explained by SPO2 Tingson during his cross-examination[101] by accused-appellant's counsel Atty. Arturo B. Jabines, III *(Atty. Jabines), viz.:*

[Atty. Jabines, III:]	Mr. Witness, you testified that you recognize the grenade as the same grenade received by you at the police station at Divisoria because of the markings RMI2, is that correct?
[SPO2 Tingson:]	Yes.
[Atty. Jabines, III:]	And no serial number of the grenade was recorded?
[SPO2 Tingson:]	All the **unexploded ordnance** [have] **no serial number,** the fuse assembly like the one mentioned by the police station *(sic)* that it was a[n] M204A2[;] it is the fuse assembly marking and not a serial number, (emphasis supplied)

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[98] The doctrine of judicial notice rests on the wisdom and discretion of the courts (See: *Spouses Latip v. Chua,* 619 Phil. 155, 164 (2009).

[99] Judicial notice is the cognizance of certain facts that judges may properly take and act on without proof because these facts are already known to them *(Republic v. Sandiganbayan, et al.,* 678 Phil. 358, 425 (2011); citation omitted).

[100] See: http://www.inetres.com/gp/military/infantry/grenade/hand.html (last visited: November 26, 2018).

[101] CA *rollo,* p. 41.

Having settled that the marking "M204A2" on the fuse assembly of the grenade is *not* a *serial number,* the Court addresses the question: Is the amendment of the hand grenade's *model,* as stated in the original information, *substantial*?

The Court answers in the negative.

Accused-appellant's bone of contention as to the markings on the hand grenade's fuse assembly is the discrepancy alleged in both the original and amended informations. Purportedly, this casts doubt on the source and negates the existence of the contraband. However, it is simply not enough to invalidate the amended information. A casual appreciation of the allegations in the original and amended informations immediately shows that accused-appellant had been carrying a hand grenade without a corresponding license; such effectively covering all the elements of the crime of illegal possession of an explosive device. It does not matter whether the model of the grenade's fuse assembly was inaccurately alleged in the original information. The same argument still supports the conclusion that the questioned amendment does not prejudice accused-appellant's rights; it does ***not:*** (a) charge another offense different or distinct from the charge of illegal possession of an explosive averred in the original information; (b) alter the prosecution's theory of the case that he was caught possessing a hand grenade without a license or permit so as to cause him surprise and affect the form of defense he has or will assume; (c) introduce new and material facts; and (d) add anything which was essential for conviction. In effect, **the assailed amendment which reflected the correct model of the subject hand grenade merely added precision to the factual allegations already contained in the original information.** Besides, a change of the subject marking from "M204**X**2" to "M204**A**2" is an obvious correction of *a clerical error*—one which is visible to the eye or *obvious to the understanding;* an error made by a clerk or a transcriber; or a *mistake in copying* or writing.[102] Accordingly, any amendment as to the discrepancy in the description of an element

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[102] *Republic v. Labrador,* 364 Phil. 934, 942 (1999); italics supplied.

alleged in the information is evidentiary in nature and only amounts to a mere formal amendment.

Even assuming that the model number on the hand grenade is among the elements of illegal possession of explosives, it may still be amended under the circumstances **because accused-appellant was *still afforded due process when he was apprised* in the information *that he was being indicted for illegally possessing a hand grenade;*** the model number, even the serial number, being immaterial. The allegations in the original and amended informations sufficiently cover the element of the contraband's existence as well as accused-appellant's lack of license to possess the same.

At this juncture, the Court stresses that the truth or falsity of the allegations in the information are threshed out during the trial. The matters contained in an information are allegations of ultimate facts which the prosecution has to prove beyond reasonable doubt to achieve a verdict of conviction. Conversely, an accused needs to rebut or at least equalize these matters by countervailing evidence in order to secure an acquittal. An accused cannot be allowed to seek an invalidation of the amended information, just because the information clarified one of the elements alleged inadvertently misstated by the prosecution in the original information. Hence, the RTC's act of permitting the amendment of the subject information, as affirmed by the CA, is permissible.

Admissibility of the Hand Grenade

I. Classifications of Object Evidence

Object evidence is classified into: (a) **actual, physical** or **"autoptic"**[103] **evidence:** those which have a direct relation or part in the fact or incident sought to be proven and those brought to the court for personal examination by the presiding

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[103] *Autoptic proference,* in legal parlance, simply means a tribunal's self-perception, or autopsy, of the thing itself *(Balingit v. Commission on Elections, et al.,* 544 Phil. 335, 347 (2007); citation omitted.

magistrate; and (b) **demonstrative evidence:** those which *represent* the actual or physical object (or event in the case of pictures or videos) being offered to support or draw an inference or to aid in comprehending the verbal testimony of a witness.[104] Further, actual evidence is subdivided into three categories: (a) those that have readily identifiable marks **(unique objects);** (b) those that are made readily identifiable **(objects *made* unique)** and (c) those with no identifying marks **(non-unique objects).**[105]

During the initial stage of evidence gathering, the *only* readily available types of actual evidence reasonably obtainable by law enforcers are unique objects and non-unique objects. On one hand, unique objects either: (a) *already exhibit identifiable visual or physical peculiarities* such as a particular paint job or an accidental scratch, dent, cut, chip, disfigurement or stain; or (b) *have a readily distinguishable mark* such as a unit-specific serial number in case of an industrially manufactured item. On the other hand, non-unique objects such as narcotic substances, industrial chemicals, and body fluids cannot be distinguished and are not readily identifiable; that is why they present an inherent problem of fungibility[106] or substitutability and contamination which adversely affects their relevance or probative value. This is the reason why non-unique objects have to be made unique by law enforcers upon retrieval or confiscation in order for these articles to be authenticated by a sponsoring witness so that trial and reviewing courts can determine their relevance or probative value.

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[104] See *Smith v. Ohio Oil Co., et al.,* 10 Ill. App.2d 67 (1956).

[105] Riano, W.B., *EVIDENCE (The Bar Lecture Series),* 2nd Ed. (2016), p. 107, citing: 29A Am. Jur., §§945- 947.

[106] The quality of being fungible depends upon the possibility of the property, because of its nature or the will of the parties, being substituted by others of the same kind, not having a distinct individuality *(BPI Family Bank v. Franco, et al.,* 563 Phil. 495, 506 (2007); citations omitted.

II. Authentication of Object Evidence

In its previous rulings, the Court had sought the guidance of U.S. courts in interpreting or explaining the rational basis underlying this jurisdiction's evidentiary principles. Some provisions of the Philippine Rules on Evidence *(Rules on Evidence)* were derived from or bear some semblance to some provisions of the Federal Rules of Evidence *(Federal Rules).* In this regard, Rule 902(a) of the Federal Rules pertaining to authentication and identification provides:

> (a) In General. To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

Admittedly, the practice of testimonial sponsorship of object evidence in the Federal Rules is not specifically mentioned in the Rules on Evidence. Nothing in the Rules on Evidence deals with the authentication of object evidence during the trial. Apart from the requirement of formal offer,[107] however, such practice is part and parcel of having an object evidence admitted, because authenticity is an inherent attribute of relevance—a component of admissibility.[108] The obvious reason is that an object offered in court as evidence but without having any part in the fact or event sought to be proven by the proponent is irrelevant because it has no "relation to the fact in issue as to induce a belief in its existence or nonexistence."[109]

Relatedly, the Court promulgated the Judicial Affidavit Rule[110] which mandates parties to file, not later than five days before pre-trial or preliminary conference, judicial affidavits executed by their witnesses which shall take the place of their direct

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[107] RULES OF COURT, Section 35, Rule 132.

[108] See *State of Arizona v. Lavers,* 168 Ariz. 376 (1991), citations omitted.

[109] See *Gumabon v. Philippine National Bank,* 791 Phil. 101, 118 (2016), citing: Section 4, Rule 128, Rules of Court.

[110] A.M. No. 12-8-8-SC (September 4, 2012).

testimonies.[111] Here, parties seeking to offer documentary and/or object evidence are now required to describe, authenticate, and make the same evidence form part of the witness' judicial affidavit under the said Rule.[112] Therefore, as a rule, object evidence now requires authentication or testimonial sponsorship before it may be admitted or considered by the court.

Historically, the Court has applied the "chain of custody" rule as a mode of authenticating illegal drug substances in order to determine its admissibility.[113] However, such rule has not yet been extended to other substances or objects for it is only a variation of the principle that real evidence must be authenticated prior to its admission into evidence.[114] At this point, it becomes necessary to point out that the *degree of fungibility* of *amorphous objects* without an inherent unique characteristic capable of scientific determination, *i.e.,* DNA testing, is *higher* than stably structured objects or those which retain their form because the likelihood of tracing the former objects' source is more difficult, if not impossible. Narcotic substances, for example, are relatively easy to source because they are readily available in small quantities thereby allowing the buyer to obtain them at lower cost or minimal effort. It makes these substances highly susceptible to being used by corrupt law enforcers to plant evidence on the person of a hapless and innocent victim for the purpose of extortion. Such is the reason why narcotic substances should undergo the tedious process of being authenticated in accordance with the chain of custody rule.

In this regard, the Court emphasizes that if the proffered evidence is unique, readily identifiable, and relatively resistant to change, that foundation need only consist of testimony by a witness with knowledge that the evidence is what the proponent

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[111] Section 2 of A.M. No. 12-8-8-SC.

[112] Section 8(c) of A.M. No. 12-8-8-SC.

[113] See *People v. Moner,* G.R. No. 202206, March 5, 2018.

[114] *People v. Lim,* G.R. No. 231898, September 4, 2018; citation omitted.

claims;[115] otherwise, the chain of custody rule has to be resorted to and complied with by the proponent to satisfy the evidentiary requirement of relevancy. And at all times, the ***source*** of amorphous as well as firmly structured **objects** being offered as evidence **must be tethered to and supported by a testimony.** Here, the determination whether a proper foundation has been laid for the introduction of an exhibit into evidence refits within the discretion of the trial court; and a higher court reviews a lower court's authentication ruling in a deferential manner, testing only for mistake of law or a clear abuse of discretion.[116] In other words, the credibility of authenticating witnesses is for the trier of fact to determine.[117]

In the case at hand, the chain of custody rule does not apply to an undetonated grenade *(an object made unique)*, for it is not amorphous and its form is relatively resistant to change. A witness of the prosecution need only identify the hand grenade, a structured object, based on personal knowledge that the same contraband or article is what it purports to be—that it came from the person of accused-appellant. Even assuming *arguendo* that the chain of custody rule applies to dispel supposed doubts as to the grenade's existence and source, the integrity and evidentiary value of the explosive had been sufficiently established by the prosecution. As aptly observed by the CA:

> As previously stated, PO2 Intud, SPO2 Radaza and SPO2 Tingson positively testified as to the integrity and evidentiary value of the grenade presented in court, marked as Exhibit "B-1." PO2 Intud testified that it is the same grenade confiscated from the accused-appellant at the time of his arrest. SPO2 Radaza testified that it is the same grenade turned over [to] him by PO2 Intud. SPO2 Tiongson testified that it is the same grenade turned over to him by SPO2 Radaza. Thus, there is no break in the chain of custody of the grenade confiscated from the accused-appellant.

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[115] 29A Am. Jur. 2d, *Evidence* § 945 (1994), p. 364; citation omitted.

[116] *Id*. at 365; citations omitted.

[117] *Id*. at 364-365; citations omitted.

As to the absence of the marking "RMI2" which was placed by PO2 Intud on the grenade marked as Exhibit "B-l", the same does not affect the evidentiary value of said object evidence. Said marking was placed by PO2 Intud on the grenade before it was turned over to the PNP[-] EOD for examination, as shown by the Acknowledgement Receipt dated 23 July 2014 prepared by SPO2 Radaza and duly received by SPO2 Tingson. However, after the examination conducted by the PNP[-]EOD where it was determined that the grenade had "Safety Pull Ring, Safety Pin, Safety Lever intact and containing COMP B (Co[m]position B) as Explosive Filler," the masking tape containing the marking "RMI2" was apparently removed and/or "overlapped" with another masking tape. As such, the Certification dated 28 July 2014 issued by SPO2 Tingson of the EOD Team no longer reflected the "RMI2" marking on the grenade. In any event, what is crucial is the testimony of SPO2 Tingson that the grenade marked as Exhibit "B-l" is the same grenade turned over to him by SPO2 Radaza.[118]

The above factual finding clearly shows that the source and existence of the subject grenade were authenticated by the prosecution's witness to be the very same explosive recovered from accused-appellant. SPO2 Radaza even testified that he saw PO2 Intud write his initials "RMI2" on the masking tape used to wrap the grenade and that the same initials were covered by another masking tape.[119] This makes accused-appellant's claim, that the apparent absence of the masking tape wrapping the hand grenade bearing the inscription "RMI2" makes "very doubtful" the *corpus delicti,*[120] an exercise in futility.

The Court also deems noteworthy that accused-appellant **never presented any evidence** which would effectively taint PO2 Intud's or any other prosecution witnesses' **credibility** with reasonable doubt. Bare and unsubstantiated allegations of ill motive or impropriety[121] have no probative value and cannot

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[118] *Rollo,* pp. 31-32; references omitted.

[119] CA *rollo,* p. 31.

[120] *Id.* at 28.

[121] *Id.* at 49.

(and will not) take the place of evidence.[122] In this instance, the presumption that the prosecution's witnesses have been regularly performing their official duty should be upheld absent any clear and convincing evidence of ill motive.[123]

Conclusion

In fine, the Court finds no reversible error in the CA's decision because: (a) the warrantless arrest as well as the incidental search on the person of accused-appellant is valid; (b) the amendment of the original information seeking the correction of a clerical error regarding the model of the illegally possessed grenade is merely evidentiary in nature and is not substantial to cause the invalidation of an amended information; and (c) the prosecution's witnesses have sufficiently laid down the testimonial foundations supporting the existence and confirming the source of the confiscated hand grenade.

WHEREFORE, in view of the foregoing, the Court **DISMISSES** the appeal of Herofil N. Olarte and **AFFIRMS** the April 6, 2017 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01501-MIN.

No costs.

SO ORDERED.

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

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[122] *LNS International Manpower Services v. Padua, Jr.,* 628 Phil. 223, 224 (2010).

[123] See: *People v. Alcala,* 739 Phil. 189, 198 (2014); *People v. Pagkalinawan,* 628 Phil. 101, 118-119 (2010).

FIRST DIVISION

[G.R. No. 237769. March 11, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDWIN LABADAN *y* MANMANO and RAQUEL SAGUM *y* MARTINEZ,** *accused-appellants.*

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS THAT MUST BE PROVED BY THE PROSECUTION TO SECURE A CONVICTION.—** The prosecution must prove the presence of the following elements to secure the conviction of a person accused of the crime of sale of prohibited drugs: (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. It is likewise essential for conviction that the drug subject of the sale be presented in court and its identity established with moral certainty through an unbroken chain of custody over the same. In addition, the prosecution must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*. Finally, the apprehending officers should be able to show their conformity with the proper procedure after the arrest of the accused.

2. **ID.; ID.; ID.; HOW TO ESTABLISH EVERY LINK IN THE CHAIN OF CUSTODY, BRIEFLY EXPLAINED; FOUR LINKS THAT SHOULD BE PRESENTED BY THE PROSECUTION, ENUMERATED.—** The chain of custody is established by testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence; in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received, and the condition in which it was delivered to the next link in the chain. These witnesses would

then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. To demonstrate that the rule on the chain of custody was complied with, the following links should be presented: *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.

3. ID.; ID.; ID.; ID.; THERE ARE GAPS IN THE CHAIN OF CUSTODY OF THE CONFISCATED DRUGS IN CASE AT BAR; MERE UNAVAILABILITY OF THE REQUIRED WITNESSES IS UNACCEPTABLE TO JUSTIFY NONCOMPLIANCE AS IT HARDLY CONSTITUTES AS PROOF OF "EARNEST EFFORTS" REQUIRED BY JURISPRUDENCE.— [There are] gaps in the stipulations made as to the testimony of PCI Julian[.] x x x There is a complete lack of description as to the handling of the specimen after PCI Julian's examination. Reading the stipulations, the prosecution seemingly found it fitting to end the same with the assurance that it was PCI Julian who retrieved the specimen before its presentation to the RTC; and that she would be able to identify it as the same specimen she examined in relation to accused-appellants' case. Notably, the stipulation in PCI Julian's testimony stated that she retrieved the specimen on December 11, 2013; whereas the preliminary conference was held on December 3, 2013, and the pre-trial on February 7, 2014. The records do not show when the specimen was actually presented to the RTC, and whether it was in her possession in the meantime. Neither shown are the precautions taken by PCI Julian, or whoever had possession of the specimen, to ensure its integrity prior to bringing it to the RTC's custody. There is, thus, a lack of information as to who had the specimen and how it was handled between the time of examination to the presentation of the specimen to the trial court, when it was

marked as Exh. "K". Such missing pieces of evidence should merit the acquittal of accused-appellants. x x x It was not proven that the police officers truly endeavored to procure the necessary witnesses pursuant to Sec. 21 of R.A. No. 9165. The marking and inventory at the barangay hall may have been justified because of the supposed ruckus caused by accused-appellants' friends and family, but the absence of a National Prosecution Service OR media representative is not. The only explanation offered by the prosecution - that there was none available - is simply unacceptable given the circumstances. It should also be emphasized that only PO3 Diomampo testified as to the efforts made by the team leader to procure witnesses. This hardly constitutes as proof of "earnest efforts" required by jurisprudence.

4. **ID.; ID.; ID.; ID.; THERE BEING NO EVIDENCE TO PERSUADE THE COURT THAT THE DRUG SAMPLE WAS NOT TAMPERED WITH, A CLOUD OF DOUBT SURROUNDS THE CONVICTION OF THE APPELLANTS, HENCE, THEY MUST BE EXONERATED.—** [T]he Court has repeatedly relied upon the presumption of regularity in the prosecution of cases involving prohibited drugs. Also, the presumption of regularity in the performance of official duty can be rebutted by contrary proof, being a mere presumption. More importantly, it is inferior to and cannot prevail over the constitutional presumption of innocence. Given the procedural lapses the police committed in handling the seized *shabu* and the obvious evidentiary gaps in the chain of its custody, the presumption of regularity in the performance of duty cannot apply. There being no proof, whether documentary or testimonial, to persuade the Court that the drug sample was not tampered with, a cloud of doubt surrounds the conviction of accused-appellants. Accordingly, they must be exonerated.

APPEARANCES OF COUNSEL

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

D E C I S I O N

GESMUNDO, *J.*:

This is an appeal from the September 7, 2017 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR HC No. 08440 affirming the July 1, 2016 Judgment[2] of the Regional Trial Court, Branch 79 of Quezon City (*RTC*), in Criminal Case No. R-QZN-13-05013-CR finding Edwin Labadan *y* Manmano (*Labadan*) and Raquel Sagum *y* Martinez (Sagum) (collectively referred to as accused-appellants) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (*R.A.*) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. They were each sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).

Antecedents

An information was filed against accused-appellants. The accusatory portion of the information states:

> That on or about the **11th day of November, 2013** in Quezon City, Philippines, the said accused, conspiring together, confederating with and mutually helping each other, without lawful authority, did, then and there, willfully and unlawfully sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport, or act as broker in the said transaction, **One (1) heat-sealed transparent plastic bag containing five point thirty nine (5.39)** grams of Methamphetamine hydrochloride or "Shabu," a dangerous drug.
>
> CONTRARY TO LAW.[3]

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[1] *Rollo*, pp. 2-15; penned by CA Associate Justice Ramon Paul L. Hernando, now a member of the Court, with Associate Justices Remedios A. Salazar-Fernando and Mario V. Lopez, concurring.

[2] CA *rollo*, pp. 47-55, penned by Presiding Judge Nadine Jessica Corazon J. Fama.

[3] Records, p. 1.

Upon arraignment, accused-appellants pleaded not guilty to the charge.[4] Trial on the merits followed.

The prosecution presented Police Officer 3 Joel Diomampo (*PO3 Diomampo*) and Police Officer 3 Napoleon Zamora (*PO3 Zamora*). Senior Police Officer 2 Jerry Abad's (*SPO2 Abad*) testimony was dispensed with, based on the following stipulations:

1. SPO2 Jeny Abad is the investigator assigned in this case;
2. during the investigation, the arresting officers presented to him the specimen subject of this case;
3. after the specimen was presented to him, he prepared the following documents:
   a. Request for Laboratory Examination;
   b. Request for Drug Test;
   c. Request for Physical Examination;
   d. Affidavit of Arrest of the accused;
   e. Arrest and Booking Sheet; and
   f. Referral Letter;
4. he can identify the accused as well as the specimen subject of this case;
5. he signed the Chain of Custody [Form];
6. he mechanically prepared the Inventory Receipt;
7. he has no personal knowledge as to the facts and circumstances surrounding the arrest of the accused; and
8. he has no personal knowledge as to the source of the specimen subject of his investigation.[5]

The parties also entered into stipulations on the testimony of Police Chief Inspector Jocelyn Belen Julian (*PCI Julian*), the forensic chemist, in lieu of her testimony in court on the following terms:

1. PCI Julian received a letter-request for laboratory examination dated November 19, 2013;
2. Attached to the letter-request was the specimen subject of the present case, which was one (1) piece heat-sealed transparent plastic sachet with markings "JD/RS 11-19-13";

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[4] *Id*. at 52-53.

[5] *Id*. at 108.

3. After PCI Julian received the letter-request, she conducted a qualitative examination of the specimen;
4. After the examination of the specimen:

   a. It gave a positive result to the test for [methylamphetamine] hydrochloride, a dangerous drug;
   b. PCI Julian issued Chemistry Report No. D-325-13;
   c. PCI Julian sealed the specimen subject of her examination, and surrendered the same to evidence custodian;

5. PCI Julian retrieved the specimen she examined on December 11, 2013 for the preliminary conference of this case;
6. PCI Julian can identify the plastic sachet subject of her examination;
7. She has no personal knowledge as to the facts and circumstances surrounding the arrest of the two (2) accused; and
8. PCI Julian has no personal knowledge as to the source of the specimen subject of her examination.[6]

PO3 Diomampo and PO3 Zamora testified that on November 11, 2013, at 3:30 p.m., a confidential informant (*informant*) went to Camp Karingal, Quezon City. He stated that he could facilitate a drug deal with accused-appellants for the purchase of ₱15,000.00 worth of drugs. Police Senior Inspector Roberto Razon (*PSI Razon*) instructed PO3 Diomampo and other police officers to conduct a buy-bust operation. A buy-bust team was formed, composed of PO3 Diomampo, PO3 Zamora, PO3 Miguel Cordero, PO3 Fernando Salonga, and others. PO3 Diomampo was assigned as poseur-buyer, with PO3 Zamora as back-up arresting officer. Two genuine ₱500.00 bills, marked as "JD" and twenty-eight (28) pieces of boodle money were prepared as buy-bust money.[7]

In the evening of that day, the buy-bust team, together with the informant, proceeded to accused-appellants' residence at 46 Elga Street, Barangay Tatalon, Quezon City. The informant spoke with Labadan and introduced PO3 Diomampo to the latter. PO3 Diomampo ordered ₱15,000.00 worth of methamphetamine

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[6] *Id*. at 76.

[7] TSN, November 18, 2014, pp. 3-5.

hydrochloride (*shabu*). Labadan asked for PO3 Diomampo's payment, but the latter wanted to see the drugs first. Labadan told Sagum, his live-in partner, to hand him the drugs. Sagum gave Labadan a plastic sachet containing a white crystalline substance. PO3 Diomampo, in exchange, gave the buy-bust money to Labadan. PO3 Diomampo then scratched his nape, the pre-arranged signal that the transaction had been consummated. The rest of the buy-bust team then rushed towards them and PO3 Zamora arrested accused-appellants. PO3 Zamora frisked Labadan and confiscated from him the plastic sachet containing white crystalline substance and boodle money. Thereafter, PO3 Diomampo marked the plastic sachet containing the white crystalline substance (*the specimen*) with "JD/RS 11/11/13" right at the area of arrest. The arrest caused a commotion in the area, with relatives and friends of accused-appellants shouting invectives at the police officers.[8]

The team proceeded to Tatalon Barangay Hall and conducted the inventory. Photographs were taken and the inventory receipt was signed by Barangay Kagawad Roderick Olaguer and PSI Razon in front of accused-appellants. No representative of the Department of Justice (DOJ) or the media witnessed the marking and inventory of the drug evidence. The buy-bust team tried to secure the presence of the necessary witnesses but no one was available.[9]

The buy bust team and accused-appellants then proceeded to Camp Karingal. All this time, PO3 Diomampo had possession of the specimen. Upon arrival at Camp Karingal, PO3 Diomampo turned over the specimen to SPO2 Abad and they both signed the chain of custody form. Abad prepared the requests for laboratory examination, physical examination, and drug test and delivered the specimen to the Crime Laboratory. PCI Julian, the forensic chemist, signed the chain of custody form upon PO3 Diomampo's turnover of the specimen to her.[10]

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[8] TSN, December 4, 2014, p. 5.

[9] TSN, February 12, 2015, pp. 5-7.

[10] *Supra* note 8 at 6.

Meanwhile, the defense presented accused-appellants as witnesses.

They related that they were inside their house at Barangay Tatalon, Quezon City, when two unknown men in civilian attire entered their house, accused them of selling illegal drugs, and searched them for illegal drugs. Afterwards, accused-appellants were boarded onto a vehicle parked outside and brought to a nipa hut at Camp Karingal. There, the men showed accused-appellants an unidentifiable object and placed it on top of a table. The policemen demanded money from them and asked them to point out other persons to take their place as prisoners, which they refused. Accused- appellants denied the accusation that they sold drugs.[11]

The RTC Ruling

The trial court found that all the elements provided in Sec. 5, R.A. No. 9165 were present in this case. The sale of drugs took place between accused- appellants and PO3 Diomampo, thus, accused-appellants were caught *in flagrante delicto*. Accused-appellants acted in concert showing the presence of conspiracy. The RTC ruled that the prosecution established the identity of the *corpus delicti* and that its integrity was preserved. PO3 Diomampo marked the item and kept the sachet in his possession until its inventory and subsequent turnover to SPO2 Abad. After the request for examination was prepared, the item was submitted to the crime laboratory. The RTC held that there was substantial compliance with Sec. 21, R.A. No. 9165, as the integrity of the drugs sold had been preserved. Meanwhile, the RTC did not give credence to the defense of denial as well as to the charge of extortion.[12]

The RTC disposed of the case, thus:

WHEREFORE, judgment is hereby rendered finding accused **EDWIN LABADAN *y* MANMANO** and **RAQUEL SAGUM *y***

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[11] TSN, March 17, 2016, p. 7.

[12] Records, p. 270.

MARTINEZ GUILTY BEYOND REASONABLE DOUBT of violation of Section 5, Article II, of Republic Act [No.] 9165, and they are hereby sentenced to suffer life imprisonment, and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00) each.

The Branch Clerk of Court is directed to immediately turn over to the Chief of PDEA Crime Laboratory, the subject drugs covered by Chemistry Report No. D-335-13, to be disposed of in strict conformity with the provisions of Republic Act No. 9165 and its implementing rules and regulations on the matter.

SO ORDERED.[13]

The CA Ruling

After examining the evidence, the CA held that the prosecution succeeded in proving the guilt of accused-appellants of the crime charged. PO3 Diomampo positively identified the accused-appellants as those who sold the illegal drug. His testimony was clear and straightforward, and was consistent with the physical evidence and stipulated facts. The inconsistencies pointed out by accused-appellants were minor details that could not diminish the witnesses' credibility, such being unrelated to the basic aspects of the crime.[14]

The CA also concluded that the integrity of the specimen was well preserved and the chain of custody was unbroken. The CA recounted all the steps taken by the police authorities to ensure that the sachet of *shabu* presented in court was the exact same item seized from accused-appellants during the buy-bust operation. The recovery and handling of the seized illegal drugs was consistent with the requirements of the rule on chain of custody. The absence of a representative from the media, the DOJ, and a duly elected official was also not considered as a fatal procedural lapse as the integrity and evidentiary value of the seized item were duly preserved. Finally, the claims of denial and extortion were not believed by the appellate court.[15] Thus, it sustained the RTC decision, *viz*:

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[13] CA *rollo*, pp. 54-55.

[14] *Rollo*, p. 11.

[15] *Id*. at 14.

ACCORDINGLY, the appeal is **DENIED**. The Decision dated July 1, 2016 of the Regional Trial Court, Branch 79 of Quezon City in Criminal Case No. R-QZN-13-05013-CR finding both accused-appellants Edwin Labadan *y* Manmano and Raquel Sagum y Martinez guilty beyond reasonable doubt of the crime of illegal sale of dangerous drugs in violation of Sec. 5, Art. II of Republic Act No. 9165 also known as the "Comprehensive Dangerous Drugs Act of 2002," as amended, is hereby **AFFIRMED**.

SO ORDERED.[16]

Hence, this appeal.

In compliance with the Court's April 25, 2018 Resolution,[17] accused-appellants filed a Manifestation in Lieu of an August 2, 2018 Supplemental Brief,[18] stating that they had adequately discussed all matters pertinent to their defense in the appellants' brief filed before the CA. The Office of the Solicitor General (*OSG*), representing the People of the Philippines, filed a Manifestation and Motion,[19] dated July 11, 2018, stating that it adopts the brief filed before the CA as a supplemental brief would only relay the same matters already taken up in the previous brief.

ISSUES

Accused-appellants submit to this Court the following Issues for resolution:

WHETHER THE RTC AND THE CA ERRED IN GIVING WEIGHT TO THE TESTIMONIES OF THE PROSECUTION WITNESSES DESPITE THEIR MATERIAL INCONSISTENCIES, THUS CASTING DOUBT UPON THEIR CREDIBILITY;

WHETHER THE RTC AND THE CA ERRED IN DISREGARDING ACCUSED-APPELLANTS' DEFENSE;

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[16] *Id*. at 15.

[17] *Id*. at 23-24.

[18] *Id*. at 34-36.

[19] *Id*. at 25-27.

WHETHER THE RTC AND THE CA ERRED IN FINDING ACCUSED-APPELLANTS GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE IDENTITY OF THE PROHIBITED DRUG AND TO PRESERVE ITS INTEGRITY AND EVIDENTIARY VALUE.[20]

Accused-appellants' Arguments

Accused-appellants present the following averments to support their appeal: that the prosecution witnesses' statements show material inconsistencies which corrode their credibility as witnesses; that these inconsistencies include differences in the time of arrest and when the inventory took place, and whether the pieces of evidence were shown or turned over to Abad; that the courts should have given credence to the testimonies of accused-appellants; that there was a gap in the chain of custody since SPO2 Abad claimed that the drug was merely presented to him; that the prosecution failed to establish the identity of the person who had custody over the specimen after the same was examined by PCI Julian; and that there was irregularity in the conduct of the inventory.[21]

The People's Arguments

The prosecution, through the OSG, claims that: accused-appellants, acting in conspiracy, were proven to have sold dangerous drugs to PO3 Diomampo, *i.e.*, the element of delivery of the thing sold was indubitably proven; the identity of the specimen constituting the *corpus delicti* seized from accused-appellants was proven to be the same specimen presented during the trial; the commotion caused by accused-appellants' friends and family justified why the inventory of the dangerous drugs seized from accused-appellants was not done at the place of the buy-bust operation; there was substantial compliance with Sec. 21 of R.A. No. 9165 when the inventory of the seized items was done at the barangay hall; and the identity of the

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[20] CA *rollo*, p. 32.

[21] *Id*. at 32-44.

person who had custody of the specimen was clearly and definitely established.[22]

THE COURT'S RULING

The Court finds the appeal impressed with merit.

As a preliminary point, the Court notes that in filing a notice of appeal under Rule 124, Sec. 13(c) of the Rules of Court, accused-appellants chose to avail of an appeal as a matter of right, thus, opening the entire case for review on any question.[23] The Court then is empowered to delve into the records and examine the case, including the findings of fact of the courts *a quo*.

Accused-appellants are charged with violation of Sec. 5, Art. II of R.A. No. 9165, to wit:

> 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.

The prosecution must prove the presence of the following elements to secure the conviction of a person accused of the crime of sale of prohibited drugs: (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. It is likewise essential for conviction that the drug subject of the sale be presented in court and its identity established with moral certainty through

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[22] *Id.* at 60-101.

[23] See *People of the Philippines v. Hilario*, G.R. No. 210610, January 11, 2018.

an unbroken chain of custody over the same. In addition, the prosecution must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*.[24] Finally, the apprehending officers should be able to show their conformity with the proper procedure after the arrest of the accused. Unfortunately, in this case, the Court is unconvinced that the prosecution was able to prove an unbroken chain of custody, as well as compliance with Sec. 21 of R.A. No. 9165.

There are gaps in the chain of custody.

The Court focuses on the third issue raised by accused-appellants – the failure of the prosecution to establish the identity and preserve the integrity and evidentiary value of the prohibited drug. In other words, accused-appellants question the prosecution's claim that the chain of custody as outlined by the law was followed.

The requirement that the prosecution provide evidence of a continuous narrative of who had custody of the confiscated drug is embodied in Sec. 21, R.A. No. 9165, as amended by R.A. No. 10640, *viz*:

SECTION 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated

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[24] *People of the Philippines v. Año*, G.R. No. 230070, March 14, 2018.

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 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;

(4) After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of the same, in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be

borne by the offender: *Provided*, That those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: *Provided, further*, That a representative sample, duly weighed and recorded is retained;

(5) The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction over the case. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board;

(6) The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and his/her presence shall not constitute an admission of guilt. In case the said offender or accused refuses or fails to appoint a representative after due notice in writing to the accused or his/her counsel within seventy-two (72) hours before the actual burning or destruction of the evidence in question, the Secretary of Justice shall appoint a member of the public attorney's office to represent the former;

(7) After the promulgation and judgment in the criminal case wherein the representative sample/s was presented as evidence in court, the trial prosecutor shall inform the Board of the final termination of the case and, in turn, shall request the court for leave to turn over the said representative sample/s to the PDEA for proper disposition and destruction within twenty-four (24) hours from receipt of the same; x x x. (emphasis supplied)

The chain of custody is established by testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence; in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received, and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[25]

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[25] *People of the Philippines v. Ubungen*, G.R. No. 225497, July 23, 2018.

To demonstrate that the rule on the chain of custody was complied with, the following links should be presented:

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.[26]

The following excerpts from the prosecution witnesses establish some of the facts required to conform with the rule, thus:

Q: Mr. witness, you stated during your initial direct-examination that you marked the plastic sachet at the area?
A: Yes, ma'am.

Q: And you already identified the plastic sachet, what happened after that, Mr. witness?
A: After the markings, we proceeded to the Barangay Hall for the conduct of the inventory, ma'am.

Q: And who were with you when you proceeded to the Barangay Hall, Mr. witness?
A: The team and the accused, ma'am.

Q: And where was the plastic sachet when you proceeded to the Barangay Hall?
A: It was in my possession, ma'am.

Q: And where is the Barangay Hall located?
A: Tatalon, Quezon City, ma'am.

Q: What did you do with the plastic sachet when you arrived at the Barangay Hall?
A: It was presented to the person who will witness for the conduct of the inventory, ma'am.

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[26] *People of the Philippines v. Guillergan*, 797 Phil. 775, 785 (2016).

x x x x x x x x x

Q: And could you please tell to this Honorable court whose signatures appears thereon?
A: This is my signature, the signature of the investigator and the signature of the witness, ma'am.

Q: And who was the witness?
A: Barangay Kagawad of Brgy. Tatalon, ma'am.

Q: Who is this SPO2 Jerry Abad?
A: Our investigator, ma'am.

x x x x x x x x x

Q: And where was the accused when this inventory was made?
A: He was inside in the Barangay Hall, ma'am.

Q: Did he also witness the making of the inventory?
A: Yes, ma'am.

x x x x x x x x x

Q: So, you said after the arrest and recovery, you proceeded to the Barangay Hall of Tatalon, so, aside from the inventory, what else were done at the Barangay Hall?
A: The taking of the photographs, ma'am.

Q: In the Barangay Hall?
A: Yes, ma'am.

Q: Who took the photographs, Mr. witness?
A: I can no longer remember, ma'am.

Q: Where were you when the photographs were taken?
A: I was present at the Barangay Hall, ma'am.

x x x x x x x x x

Q: And why did you not take pictures at the place of arrest and recovery?
A: Because there were friends and relatives of the suspects shouting invective words, ma'am.

Q: So, only the inventory and the taking of the pictures were done at the Barangay Hall?
A: Yes, ma'am.

x x x x x x x x x

Q: Who was in possession of the plastic sachet from the Barangay Hall to your office DAID?
A: It was in my possession, ma'am.

Q: So, what happened when you arrived at your office DAID?
A: I turned it over to the investigator, ma'am.

Q: And who was the investigator at that time?
A: SPO2 Jerry Abad, ma'am.

Q: What is your proof that you turned it over the plastic sachet to SPO2 Jerry Abad?
A: The Chain of Custody, ma'am.

x x x x x x x x x

Q: So, what happened after that, Mr. witness?
A: The investigator also made a request for the examination of the specimen, Request for the physical examination of the accused and request for drug test examination of the accused, ma'am.

Q: I am showing to you this Request for Drug Test Examination, are you referring to Exhibit "H"?
A: Yes, ma'am.

Q: And will you please tell the Honorable court the significance of the rubber stamp receipt appearing on the bottom portion of the document?
A: This is to prove that I was the one who delivered this to the crime lab together with the accused, ma'am.

x x x x x x x x x

Q: What happened after that, Mr. witness?
A: I submitted the specimen for examination and also the accused for drug test examination.

Q: And what was the result of the examination conducted on the specimen if you know?
A: The specimen and the urine sample, they are both positive for methamphetamine hydrochloride.

Q: Do you have the confirmatory result?
A: Only the initial laboratory report of the crime lab, ma'am.

Q: And attached to the record, Mr. witness is a turn Over of Confiscated/Seized Evidence, what is that all about?
A: This is to prove that I turned over the specimen to the investigator, ma'am.[27] (emphasis supplied)

The above statements demonstrate that PO3 Diomampo marked the sachet of *shabu* sold to him by accused-appellants upon their arrest; thus, the first link is sufficiently proved. The same can be said for the second link, as explained by the statement of turnover to SPO2 Abad. These same facts are backed up by the signatures on the chain of custody document.[28]

The chain of custody issue becomes problematic on the third and fourth links. PO3 Diomampo states that he gave the sample to the forensic chemist PCI Julian. As per the chain of custody document, SPO2 Abad handed the specimen to PO3 Diomampo again, which enabled the latter to hand it over to PCI Julian. The question arises, why did the investigating officer return the specimen to PO3 Diomampo? Further, as reflected in the document, there was an almost two-hour break – between 8:40 p.m. and 10:35 p.m. – before PO3 Diomampo gave the specimen back to PCI Julian. PO3 Diomampo had no explanation for this gap, nor made any remark on how the specimen was handled to guarantee that its integrity was uncompromised during this time. This is also against the protocol that the arresting officer should turn over the specimen to the forensic chemist.

On the fourth link, after PCI Julian examined the sample taken from accused-appellants to ensure it was indeed a prohibited drug, nary a statement was made detailing what happened after the examination. The stipulation stated that the specimen was turned over to the evidence custodian; however, the identity of the custodian was not revealed, nor did such person sign the chain of custody document. Any other detail after the turnover to PCI Julian was sorely missing in the document. Once more, the prosecution evidence gives rise to more questions than

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[27] *Supra* note 8 at 2-7.

[28] Records p. 231, Exh. "Q".

answers: To whom did PCI Julian hand over the specimen after examination? How was it handled by her? How was it handled by the evidence custodian? No answers were found to properly apprise the Court of the compliance with the chain of custody rule.

The Court, in acquitting the accused in the recent case of *People of the Philippines v. Angeles*,[29] held:

> Clearly, the third and fourth links in the chain of custody are sorely lacking. PO2 Saez's lone testimony leaves several questions unanswered. What happened to the drugs from the time Relos received it from PO2 Saez until it was eventually transmitted to the forensic chemist for examination? Were there other persons who came into contact with the drugs before the forensic chemist subjected it to examination? Who handed the drugs to the forensic chemist? How did Relos and the forensic chemist handle the drugs? Who ultimately transmitted the drugs seized from Angeles to the trial court to be used as evidence against him? The necessary details to prove the preservation of the integrity of the drugs recovered from Angeles remain a mystery. **All these are left open to the realm of possibilities such that the evidentiary value of drugs presented in court was unduly prejudiced; considering that it cannot be said with certainty that the drugs were never compromised or tampered with.**
>
> While it is true that the credible and positive testimony of a single prosecution witness is sufficient to warrant a conviction, PO2 Saez's testimony is not enough. **In the case at bar, the parties only stipulated the qualifications of the forensic chemist. Such stipulation is severely limited because it does not cover the manner as to how the specimen was handled before and after it came to the possession of the forensic chemist.** (citations omitted, emphasis supplied)

This case is akin to *People of the Philippines v. Balubal*,[30] where the Court acquitted the accused-appellants because of breaks in the chain of custody. The pertinent portions of the decision are as follows:

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[29] *People of the Philippines v. Angeles*, G.R. No. 218947, June 20, 2018.

[30] G.R. No. 234033, July 30, 2018.

Aside from the absence of a DOJ and media representatives, the prosecution also failed to establish the fourth link in the chain of custody. After the seized *shabu* was delivered by IO1 Gaayon to PSI Tuazon for laboratory analysis, no one testified on how the specimen was handled thereafter. It failed to disclose the identity of the police officer to whom custody of the seized *shabu* was given after the laboratory examination, and how it was handled and kept until it was presented in court.

In *People v. De Guzman*,[31] the Court discussed the importance of the unbroken link in the chain of custody. The prosecution's evidence must include testimony about every link in the chain, from the moment the item was seized to the time it is offered in court as evidence, such that every person who handled the evidence would acknowledge how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. The same witness 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 its possession. It is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused.

In this case, the testimony of the forensic chemist was dispensed with. In the March 20, 2014 order of the RTC it simply stated that PSI Tuazon received the specimen submitted by the PDEA agent for laboratory examination. The testimony of PSI Tuazon was admitted by counsel for the appellant as well as the existence and due execution of the Chemistry Report No. D-50-2013. Thus, with said admission by the defense, PSI Tuazon's testimony was dispensed with.

x x x x x x x x x

There was no concrete evidence as to whom the forensic chemist delivered the seized item before its presentation in court. From the time of the completion of the laboratory examination on June 4, 2013 up to the time the confiscated *shabu* was offered and marked as exhibit during the preliminary conference on November 19, 2013, it was not indicated in the record who was the custodian thereof. In the

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[31] G.R. No. 219955, February 5, 2018.

Chain of Custody Form, the name, designation and signature of the supposed evidence custodian were an left blank. This casts serious doubts on the handling of the confiscated *shabu* as it is not clear as to whom it was delivered to pending its presentation in court. This opens the possibility that integrity and evidentiary value of the seized drug may have been compromised.[32] (citation omitted, emphases supplied)

The gaps in the stipulations made as to the testimony of PCI Julian are no different from those in the above cases. There is a complete lack of description as to the handling of the specimen after PCI Julian's examination. Reading the stipulations, the prosecution seemingly found it fitting to end the same with the assurance that it was PCI Julian who retrieved the specimen before its presentation to the RTC; and that she would be able to identify it as the same specimen she examined in relation to accused-appellants' case. Notably, the stipulation in PCI Julian's testimony stated that she retrieved the specimen on December 11, 2013; whereas the preliminary conference was held on December 3, 2013, and the pre-trial on February 7, 2014.[33] The records do not show when the specimen was actually presented to the RTC, and whether it was in her possession in the meantime. Neither shown are the precautions taken by PCI Julian, or whoever had possession of the specimen, to ensure its integrity prior to bringing it to the RTC's custody. There is, thus, a lack of information as to who had the specimen and how it was handled between the time of examination to the presentation of the specimen to the trial court, when it was marked as Exh. "K". Such missing pieces of evidence should merit the acquittal of accused-appellants.

The police officers did not comply with the witness requirements in Sec. 21.

Apart from the missing links in the chain of custody, the circumstances surrounding the initial marking of the specimen

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[32] *People of the Philippines v. Balubal*, *supra* note 30.

[33] *See* records, pp. 75-76.

likewise bring to fore some questionable practices by the arresting officers. The records reflect that there was a deviation in the procedure provided in Sec. 21 of R.A. No. 9165. The marking and inventory of the specimen and other matter gathered from accused-appellants were made only in the presence of a barangay kagawad contrary to jurisprudence. Sec. 21 of R.A. No. 9165, as amended by R.A. No. 10640, requires the presence of "an elected public official and a representative of the National Prosecution Service or the media x x x." The Joint Affidavit of Arrest executed by PO3 Diomampo and PO3 Zamora narrates:

> That, on the process, the relatives and friends of the arrested suspects were started to get mad by shouting us invective words, hence, to avoid commotion we compelled to bring the arrested suspects and the pieces of evidence to the office of **Kagawad RODERICK E. OLAGUER** of Brgy. Tatalon, QC who witnessed the inventory of the seized/confiscated item, thereafter, we brought them to our Office for investigation and proper disposition[.][34]

PO3 Diomampo's testimony proved likewise, *viz*:

> Court: So, was there any Barangay Official who witnessed the marking of the specimen?
> A: I marked the evidence at the area, ma'am.
>
> Q: The marking was done without the presence of Barangay Kagawad?
> A: Yes, sir.
>
> Q: So, there is a clear violation of section 21 of RA 9165, right?
>
> Court: Your question calls for a conclusion.
>
> Q: When the photographs were taken, who were the persons who were present if you can recall, Mr. witness?
> A: I, the accused, BSDO and a Barangay Kagawad, sir.[35]

On re-direct, he also testified:

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[34] Records, p. 226; Joint Affidavit of Arrest, Exh. "B".

[35] TSN, February 12, 2015, pp. 5-6.

Q: Mr. witness, you said that there were no representatives from the Media, from the DOJ and from the elected Barangay Official when you marked the evidence?
A: Yes, ma'am.

Q: Why is that?
A: There were no available representatives from the Media and the DOJ at that time even we exerted efforts to secure their presence, ma'am.

Q: Why do you know that there were no available representatives from the Media and DOJ at that time, who made the call to them?
A: Our team leader, ma'am.

Q: And you mentioned that there was somebody who followed you at the Barangay Hall who was shouting who was that person?
A: According to them, they are the relatives of the accused.[36] (emphases supplied)

The latter point was confirmed by PO3 Zamora's testimony on cross-examination.[37]

Surely, the law provides that noncompliance with this requirement is possible under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, and shall not render void and invalid such seizures and custody over said items.[38] Here, assertions have been repeated that accused-appellants' friends and relatives were causing an uproar and so they had to quickly go to the barangay hall to conduct the inventory. PO3 Diomampo likewise insisted that, despite diligent efforts, the arresting team was unable to find a representative of the National Prosecution Service or the media.

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[36] *Id.* at 6-7.

[37] TSN, February 11, 2016, pp. 9-10.

[38] Sec. 21, Implementing Rules and Regulations of R.A. No. 9165, August 30, 2002.

In *People of the Philippines v. Alvarado*[39] (*People v. Alvarado*), only a barangay kagawad was present during the inventory and photographing of the seized items. The Court refused to accept the proposition of the Office of the Solicitor General to overlook the absence of the DOJ and the media representatives. The Court said:

> In this case, after the plastic sachets containing white crystalline substance were seized by the arresting officers, they were marked by PO2 Burgos with his initials and brought to the nearby house of Malou. It is there where an inventory of the seized items was done in the presence of appellants and *Kgd.* Azarcon, as shown in the pictures taken by PO2 Julaton. However, only a *barangay kagawad* was present during the inventory and photographing of the seized items.
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> Section 1 (A.1.6) of the Chain of Custody Implementing Rules and Regulations states that "[a] representative of the [National Prosecution Service] is anyone from its employees, while the media representative is any media practitioner. The elected public official is any incumbent public official regardless of the place where he/she is elected." The presence of these three (3) persons required by law can be ensured in a planned operation such as a buy-bust operation.
>
> **Here, the buy-bust operation was arranged and scheduled in advance. The police officers formed an apprehending team, coordinated with the Philippine Drug Enforcement Agency (PDEA), prepared the buy-bust money, and held a briefing. Yet, they failed to ensure that a DOJ representative and a media practitioner, would witness the inventory and photographing of the seized drugs.**
>
> Securing the presence of these persons is not impossible. Indeed, it is not enough for the apprehending officers to merely mark the seized pack of *shabu*; the buy-bust team must also conduct a physical inventory and take photographs of the confiscated item in the presence of these persons required by law. Relevantly, under the Revised PNP Manual on Anti-Illegal Drugs Operations and Investigation, on specific rules and procedures for planned operations such as a buy-bust operation, the designated Team Leader is required "to see to it that he has the contact numbers of representatives from

[39] G.R. No. 234048, April 23, 2018.

the DOJ, Media and any Local Elected Official in the area for inventory purposes as required under Section 21, Article II of R.A. No. 9165."

The OSG suggests that the absence of the DOJ and media representative may be overlooked, explaining that "this predicament is obviously beyond the control of the arresting team who had no choice but to proceed with the tasks at hand."

The Court cannot agree to such proposition.

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Indeed, the prosecution's unjustified non-compliance with the safeguards of the chain of custody constitutes a fatal procedural flaw that destroys the reliability of the *corpus delicti*. (citations omitted, emphasis supplied)

In the recent case of *People of the Philippines v. Lim*,[40] echoed in the Office of the Court Administrator Circular No. 210-18, the Court reiterated that it must be alleged and proved that the presence of witnesses to the physical inventory and photography of the illegal drug seized was not obtained due to reasons such as: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photography 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 officials 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. The prosecution should also show that an earnest effort to secure the attendance of the necessary witnesses was made.

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[40] *People of the Philippines v. Lim*, G.R. No. 231989, September 4, 2018.

It was not proven that the police officers truly endeavored to procure the necessary witnesses pursuant to Sec. 21 of R.A. No. 9165. The marking and inventory at the barangay hall may have been justified because of the supposed ruckus caused by accused-appellants' friends and family, but the absence of a National Prosecution Service OR media representative is not. The only explanation offered by the prosecution – that there was none available – is simply unacceptable given the circumstances. It should also be emphasized that only PO3 Diomampo testified as to the efforts made by the team leader to procure witnesses. This hardly constitutes as proof of "earnest efforts" required by jurisprudence.

Mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as ground for noncompliance. Police officers are ordinarily given sufficient time – from the moment they receive the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation. They have to convince the Court that they exerted earnest efforts to comply with the mandated procedure and that under the circumstances, their actions were reasonable.[41] In the case of *People v. Alvarado*, there being a planned operation, the team had sufficient time to procure the presence of either the media or the National Prosecution Service during the planning. A significant amount of time lapsed between the planning of the operation and its execution. The location of both Camp Karingal and accused-appellants' house is not so remote as to render the procurement of these other witnesses impossible.

In any case, even if the Court considered the inability of the police authorities to comply with the requirements of the law under the scope of "justifiable circumstances," because of explanation given in the joint affidavit and testimony, the prosecution's position still fails. The Court simply cannot readily accept that the chain of custody was complete and that the specimen from accused-appellants was handled pursuant to

[41] *People of the Philippines v. Ramos*, G.R. No. 233744, February 28, 2018.

the law and rules concerning drug cases. There was hardly any evidence alluding to efforts to secure the identity and integrity of the specimen throughout the whole process of arrest, inventory, examination, and safekeeping.

Indeed, the Court has repeatedly relied upon the presumption of regularity in the prosecution of cases involving prohibited drugs. Also, the presumption of regularity in the performance of official duty can be rebutted by contrary proof, being a mere presumption. More importantly, it is inferior to and cannot prevail over the constitutional presumption of innocence. Given the procedural lapses the police committed in handling the seized shabu and the obvious evidentiary gaps in the chain of its custody, the presumption of regularity in the performance of duty cannot apply.[42] There being no proof, whether documentary or testimonial, to persuade the Court that the drug sample was not tampered with, a cloud of doubt surrounds the conviction of accused-appellants. Accordingly, they must be exonerated.

WHEREFORE, the appeal is **GRANTED**. The September 7, 2017 Decision of the Court of Appeals in CA-G.R. CR HC No. 08440 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants Edwin Labadan *y* Manmano and Raquel Sagum *y* Martinez are **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause their immediate release, unless they are being lawfully held for any other reason.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to the Court, within five (5) days from receipt of this decision, the action he has taken. Copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drug Enforcement Agency, for their information.

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[42] *People of the Philippines v. Andrada*, G.R. No. 232299, June 20, 2018.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 240664. March 11, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JONATHAN MAYLON *y* ALVERO *alias* "JUN PUKE" and ARNEL ESTRADA *y* GLORIAN,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165, AS AMENDED (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE/POSSESSION OF DANGEROUS DRUGS, DISTINGUISHED; BOTH CRIMES ESTABLISHED IN CASE AT BAR.— The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment. On the other hand, the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug. Here, the courts *a quo* correctly found Maylon guilty of the crime of Illegal Sale of Dangerous Drugs, as the records clearly show that he was caught *in flagrante delicto* selling *shabu* to the poseur-buyer, PO3 Olveda, during a legitimate buy-bust operation conducted by the SAID-SOTG. Similarly, the courts *a quo* correctly ruled that both Maylon and Estrada committed the crime of Illegal Possession of Dangerous Drugs as they freely and consciously possessed plastic sachets containing *shabu* when they were arrested. Since there is no indication

that the trial court and the CA overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case, the Court finds no reason to deviate from their factual findings. In this regard, it should be noted that the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties.

2. **ID.; ID.; ID.; IN CASES INVOLVING DANGEROUS DRUGS, IT IS ESSENTIAL THAT THE IDENTITY OF THE DANGEROUS DRUG BE ESTABLISHED WITH MORAL CERTAINTY, CONSIDERING THAT THE DANGEROUS DRUG ITSELF FORMS AN INTEGRAL PART OF THE *CORPUS DELICTI* OF THE CRIME.—** In cases for Illegal Sale and/or 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.

3. **ID.; ID.; ID.; CHAIN OF CUSTODY RULE; TO ESTABLISH THE IDENTITY OF THE DANGEROUS DRUG WITH MORAL CERTAINTY, THE PROSECUTION MUST BE ABLE TO ACCOUNT FOR EACH LINK OF THE CHAIN OF CUSTODY FROM THE MOMENT THE DRUGS ARE SEIZED UP TO THEIR PRESENTATION IN COURT AS EVIDENCE OF THE CRIME; REQUIREMENTS.—** To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. In this regard, case law recognizes that "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team." Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.

4. ID.; ID.; ID.; ID.; THE LAW FURTHER REQUIRES THAT THE INVENTORY AND PHOTOGRAPHY OF THE CONFISCATED DRUGS 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 WITNESSES REQUIRED BEFORE AND AFTER AMENDMENT OF REPUBLIC ACT NO. 9165 BY REPUBLIC ACT NO. 10640.— The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640, "a representative from the media *and* the Department of Justice (DOJ), and any elected public official"; or (*b*) if **after** the amendment of RA 9165 by RA 10640, "[a]n elected public official and a representative of the National Prosecution Service *or* the media." The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated February 23, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09141, which affirmed the Decision[3] dated

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[1] See Compliance with Notice of Appeal dated March 19, 2018; *rollo*, pp. 20-22.

[2] *Id*. at 2-19. Penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Remedios A. Salazar-Fernando and Ma. Luisa Quijano-Padilla, concurring.

[3] CA *rollo*, pp. 53-62. Penned by Presiding Judge Armando C. Velasco.

September 16, 2016 of the Regional Trial Court of Marikina City, Branch 263 (RTC) in Criminal Case No. 2014-4405-07-D-MK, finding: (*a*) accused-appellants Jonathan Maylon *y* Alvero *alias* "Jun Puke" (Maylon) and Arnel Estrada *y* Glorian (Estrada; collectively, accused-appellants) guilty beyond Reasonable doubt of violating Section 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002"; and (*b*) Maylon guilty beyond reasonable doubt of violating Section 5 of the same Act.

The Facts

This case stemmed from three (3) separate Informations[5] filed before the RTC accusing Maylon of Illegal Sale and Possession of Dangerous Drugs and Estrada of Illegal Possession of Dangerous Drugs. The prosecution alleged that at around 1:25 in the afternoon of August 10, 2014, operatives of the Station Anti-Illegal Drugs Special Operation Task Group of Marikina City (SAID-SOTG) conducted a buy-bust operation against accused-appellants, during which Maylon allegedly sold one (1) plastic sachet containing 0.05 gram of white crystalline substance to PO3 Junar O. Olveda (PO3 Olveda). PO3 Olveda likewise saw Estrada receive a sachet of *shabu* from Maylon. Thereafter, police operatives arrested accused-appellants and were able to recover: (*a*) seven (7) plastic sachets containing a total of 0.28 gram of white crystalline substance from Maylon; and (*b*) another plastic sachet containing 0.05 gram of white

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

[5] The Information dated August 12, 2014 in Criminal Case No. 2014-4405-D-MK against Maylon was for Section 5, Article II of RA 9165 (Illegal Sale of Dangerous Drugs); records, pp. 2-3; while the Informations dated August 12, 2014 in Criminal Case Nos. 2014-4406-D-MK and 2014-4407-D-MK against Maylon and Estrada were for Section 11, Article II of RA 9165 (Illegal Possession of Drugs), respectively; records, pp. 32-33 and 61-62.

crystalline substance from Estrada.[6] They then immediately marked the seized items at the place of arrest. Afterwards, they brought accused-appellants and the seized items to the police station, where they conducted an inventory in the presence of Barangay Kagawad Teresita Publiko (Kagawad Publiko), Councilor Ronnie Acuña (Councilor Acuña), and media representative Cesar Barquilla (media representative Barquilla). Consequently, the seized items were brought to the crime laboratory, where, after examination, the contents thereof yielded positive for the presence of methamphetamine hydrochloride, or *shabu*.[7]

In their defense, accused-appellants claimed that at around 6:00 in the morning of August 10, 2014, Estrada was at a store near his house to buy coffee when police officers called and asked him to board the police mobile. When he inquired as to his violation/s, the police officers ignored him. He then called out to his mother but the police officers made him lie face down and forced him to board the vehicle. They then proceeded to the house of Maylon, where the latter, who was then sleeping, was arrested. Consequently, they were brought to the nearest barangay, where a plastic sachet was shown to them. Afterwards, they were brought to the police station for the filing of criminal charges.[8]

In a Decision[9] dated September 16, 2016, the RTC found accused-appellants guilty of the crimes respectively charged against them, and accordingly, sentenced them as follows: (*a*) for Illegal Sale of Dangerous Drugs against Maylon, life imprisonment and to pay a fine of ₱500,000.00; (*b*) for Illegal Possession of Dangerous Drugs against Maylon, imprisonment of twelve (12) years and one (1) day to twenty (20) years; and (*c*) for Illegal Possession of Dangerous Drugs against Estrada,

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[6] *Rollo*, pp. 5-7. See also Physical Science Report No. MCSO-D-086-14 dated August 10, 2014; records, p. 276.

[7] *Rollo*, pp. 6-7.

[8] *Id*. at 8.

[9] CA *rollo*, pp. 53-62.

imprisonment of twelve (12) years and one (1) day to twenty (20) years and to pay a fine of ₱300,000.00. It found that the prosecution was able to establish accused-appellants' guilt for the crimes charged. It likewise gave credence to the positive testimony of the police operatives which prevails over accused-appellants' self-serving and uncorroborated defense of denial.[10] Aggrieved, accused-appellants appealed[11] to the CA.

In a Decision[12] dated February 23, 2018, the CA affirmed with modification the RTC ruling, and accordingly, sentenced: (*a)* accused-appellants to each suffer the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to each pay a fine of ₱300,000.00 for Illegal Possession of Dangerous Drugs; and (*b*) Maylon to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 for Illegal Sale of Dangerous Drugs. It found that the prosecution was able to establish all the elements of the crimes charged, as well as the unbroken chain of custody in the handling of the seized items.[13]

Hence, this appeal seeking that accused-appellants' respective convictions be overturned.

The Court's Ruling

The appeal is without merit.

The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment. On the other hand, 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

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[10] *Id*. at 61.

[11] See Notice of Appeal dated November 18, 2016; *id*. at 11-12.

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

[13] *Id*. at 9-19.

drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.[14] Here, the courts *a quo* correctly found Maylon guilty of the crime of Illegal Sale of Dangerous Drugs, as the records clearly show that he was caught *in flagrante delicto* selling *shabu* to the poseur-buyer, PO3 Olveda, during a legitimate buy-bust operation conducted by the SAID-SOTG. Similarly, the courts *a quo* correctly ruled that both Maylon and Estrada committed the crime of Illegal Possession of Dangerous Drugs as they freely and consciously possessed plastic sachets containing *shabu* when they were arrested. Since there is no indication that the trial court and the CA overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case, the Court finds no reason to deviate from their factual findings. In this regard, it should be noted that the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties.[15]

Further, the Court notes that the buy-bust team had sufficiently complied with the chain of custody rule under Section 21, Article II of RA 9165.

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

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[14] 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).

[15] See *Cahulogan v. People*, G.R. No. 225695, March 21, 2018, citing *Peralta v. People*, G.R. No. 221991, August 30, 2017, further citing *People v. Matibag*, 151 Phil. 286, 293 (2015).

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

the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.[17]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[18] As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same.[19] 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."[20] Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible

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

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

[19] In this regard, case law recognizes that "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team." (*People v. Mamalumpon*, 161 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. Resureccion*, 618 Phil. 520, 532 [2009]) Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody. (See *People v. Tumulak*, 791 Phil. 148, 160-161 [2016]; and *People v. Rollo*, 757 Phil. 346, 357 [2015])

[20] *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resureccion*, 618 Phil. 520, 532 (2009).

in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.[21]

The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640, "a representative from the media *and* the Department of Justice (DOJ), and any elected public official";[22] or (*b*) if **after** the amendment of RA 9165 by RA 10640, "[a]n elected public official and a representative of the National Prosecution Service *or* the media."[23] The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."[24]

In this case, it is glaring from the records that after accused-appellants were arrested, the buy-bust team immediately took custody of the seized plastic sachets and marked them at the place of arrest. Thereafter, they went to the nearest police station where the inventory[25] and photography[26] of the seized plastic sachets were conducted in the presence of two (2) elected public officials (Kagawad Publiko and Councilor Acuña) and a media representative (media representative Barquilla). While such inventory and photography were not done at the place of arrest but at the police station, the same was warranted under

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[21] See *People v. Tumulak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

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

[23] Section 21 (1), Article II of RA 9165, as amended by RA 10640.

[24] See *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[25] See Inventory of Evidence; records, pp. 281 and 286.

[26] *Id*. at 282-283.

the circumstances. As testified by PO3 Olveda, they had to move to the nearest police station because the relatives of accused-appellants started to cause a commotion, *viz.*:

[Atty. Dela Cruz, Jr.]: Before you left the area, there was no danger in your life?

[PO3 Olveda]: Sir at that time of the inventory, some of his relatives – to avoid some commotion –

[Prosecutor Aga]: Your Honor, we would like to manifest that the witness was acting –

Court: *Anong ibig sabihin ng ganun, parang nanakal?*
[PO3 Olveda]: *Parang susugurin kami ng mga tao o kamag-anak kaya*, to avoid any commotion, we decided to continue the inventory at the nearest precinct.[27]

Moreover, it is well to note Associate Justice Alfredo Benjamin S. Caguioa's observations during deliberations that the buy-bust team had already secured the presence of an elected public official and a media representative even before they implemented the buy-bust operation, thereby confirming that the amended witnesses requirement under RA 10640 was duly complied with. The testimony of PO3 Virgilio S. Calanoga, Jr. (PO3 Calanoga, Jr.) regarding this matter is revelatory, to wit:

> [Atty. Dela Cruz, Jr.]: Now, how long a time did it take the media representative to arrive after the arrest?
> [PO3 Calanoga, Jr.]: The media representative – we are grouped of– he is with us when we came to that area, sir.
>
> Q: The media representative was with you in that operation?
> A: Yes, sir.
>
> Q: Who else was with you in that operation, apart from [the] media representative?
> A: Councilor Acuña, sir.
>
> Q: Councilor Acuña?
> A: Yes, sir.

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[27] TSN, June 18, 2015, p. 31.

Q: You are saying that Councilor Acuña and the media representative were part of [the buy-bust] operation and you are sure about [that]?
A: They are with us but they are not totally coming with us while we are conducting the operation, sir. They are just waiting for the operation to be finished.

Q: Who called the media representative and the councilor to be part or to join you in the operation against alias "Puke"?
A: The Chief of DAID – ah, Chief SAID, P/C Insp. Flores, sir.

Q: So, when you left your office here in Marikina, you were already with the media representative and Councilor Acuña, you will be there already. And of course, you are sure about that?
A: Yes, sir.[28]

Finally, PO3 Olveda and PO3 Calanoga, Jr. then personally delivered all the evidence seized to Police Chief Inspector Margarita M. Libres of the Eastern Police District Crime Laboratory who performed the necessary tests[29] thereon.[30]

In view of the foregoing, the Court holds that there is sufficient compliance with the chain of custody rule, and thus, the integrity and evidentiary value of the *corpus delicti* have been preserved. Perforce, accused-appellants' conviction must stand.

WHEREFORE, the appeal is **DISMISSED**. The Court **ADOPTS** the findings of fact and conclusions of law in the Decision dated February 23, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09141 and **AFFIRMS** said Decision finding accused-appellant Jonathan Maylon *y* Alvero **GUILTY** beyond reasonable doubt of the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, defined and penalized under Sections 5 and 11, Article II of Republic Act No. 9165, respectively, and accused-appellant Arnel Estrada *y* Glorian **GUILTY** beyond reasonable doubt of the crime of Illegal

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[28] TSN, August 19, 2015, pp. 14-15.

[29] Records, pp. 274-276.

[30] See Chain of Custody Forms both dated August 10, 2014; *id*. at 285 and 287.

Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of the same Act. Accordingly, they are hereby sentenced as follows: (*a*) in Criminal Case No. 2014-4405-D-MK for Illegal Sale of Dangerous Drugs, accused-appellant Jonathan Maylon *y* Alvero is sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00; (*b*) in Criminal Case No. 2014-4406-D-MK for Illegal Possession of Dangerous Drugs, accused-appellant Jonathan Maylon *y* Alvero is sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine of ₱300,000.00; and (*c*) in Criminal Case No. 2014-4407-D-MK for Illegal Possession of Dangerous Drugs, accused-appellant Arnel Estrada *y* Glorian is sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, and fourteen (14) years and eight (8) months, as maximum, and to pay a fine of ₱300,000.00.

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Caguioa, Reyes, J. Jr.,* and *Lazaro-Javier, JJ.,* concur.

SECOND DIVISION

[G.R. No. 241631. March 11, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RODEL TOMAS *y* ORPILLA,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS FOR SUCCESSFUL PROSECUTION OF A CHARGE THEREFOR.—** Three (3) elements must be shown to successfully prosecute a charge for illegal sale of dangerous drugs: first, the transaction or sale took place; second, the *corpus delicti* or the illicit drug was presented as evidence; and third, the buyer and the seller were identified.

2. **ID.; ID.; SECTION 21 (A) OF THE IMPLEMENTING RULES AND REGULATIONS; CONDITIONS FOR THE CONDUCT OF PHYSICAL INVENTORY AND TAKING OF PHOTOGRAPH OF SEIZED ITEMS; NOT ESTABLISHED IN CASE AT BAR.—** Section 21 points out the conditions for the conduct of the physical inventory and taking of photograph of the seized items such that: 1. it must be done immediately after seizure or confiscation; 2. it must be done in the presence of the following personalities: 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. it 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. The members of the apprehending team miserably failed to meet the above specifications. At the witness stand, both IO1 Binwag and IO1 Cabanilla admitted that they conducted the physical inventory and taking of photograph of the seized illegal drugs in their office at Camp Adduru, Tuguegarao City. When asked for the reason for departing from the rule, they simply averred that it was "the discretion" of their team leader "to avoid being compromised in the area." But the apprehending team did not elaborate how the conduct of the physical inventory and photographing at the place of seizure would unduly put its members or the buy-bust operation at risk. Neither did the team

clarify the dangers that immediate inventory and photographing entail. In the same breath, IO1 Binwag and/or IO1 Cabanilla, without rhyme or reason, did not mark the seized plastic sachets of suspected *shabu* at the place of arrest even if they could have easily done so. True, the conduct of the marking, physical inventory and photographing are not limited to the place of apprehension. In cases of warrantless seizure such as the one at bar, they may be performed at the nearest police station or nearest office of the apprehending officer. However, even if one were to consider the conduct of inventory and photographing at the PDEA Office acceptable, the apprehending team still veered away from the three-witness rule required by Section 21.

3. ID.; ID.; ID.; ID.; PRESENCE OF THREE INSULATING WITNESSES DURING PHYSICAL INVENTORY AND PHOTOGRAPHING OF THE SEIZED ITEMS IS AIMED AT ENSURING THE ESTABLISHMENT OF THE CHAIN OF CUSTODY AND REMOVING ANY SUSPICION OF SWITCHING, PLANTING, OR CONTAMINATION OF EVIDENCE; CASE AT BAR.— The prosecution admitted, that no DOJ representative was present during the physical inventory and photographing of the seized items. IO1 Cabanilla justified the absence of the DOJ representative stating that they tried to contact the DOJ but nobody arrived since the buy-bust operation fell on a Sunday, a non-working day. Equally worth noting is that Barangay Chairman Pagulayan did not actually witness the physical inventory of the seized items. x x x Time and again, the Court has stressed the significance of the presence of the three insulating witnesses during the physical inventory and photographing of the seized illegal drugs, that is, "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence." x x x The requirement of securing the presence of an elected public official, member of the DOJ, and member of the media is not a mere surplus that may be dispensed with by the apprehending team for it serves a vital purpose: to protect the accused against the possibility of planting, contamination, or loss of the seized drug. Barangay Chairman Pagulayan's

arrival at the PDEA Office at the time when the seized illegal drugs have been subjected to quantitative and qualitative examination defeated the very purpose of the three-witness rule under Section 21. This is not to mention the fact that the prosecution failed to satisfactorily show that the apprehending team exerted honest-to-goodness efforts to secure the presence of the DOJ representative during the buy-bust operation or, at the very least, during the actual physical inventory and taking of photographs at the PDEA Office.

4. ID.; ID.; ID.; ID.; LESS-STRINGENT COMPLIANCE WITH THE REQUIREMENTS OF SECTION 21 DOES NOT NECESSARILY RENDER VOID AND INVALID THE SEIZURE AND CUSTODY OVER THE SEIZED ITEMS PROVIDED THERE IS JUSTIFIABLE GROUND FOR NON-COMPLIANCE AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED; CASE AT BAR.— Less-stringent compliance with the requirements of Section 21 does not necessarily render void and invalid the seizure and custody over the seized items provided: 1) there is a justifiable ground for non-compliance; and 2) the integrity and evidentiary value of the seized items are properly preserved. As a saving mechanism and an exception to the strict compliance rule, the prosecution must be able to satisfy these twin requisites so as not to imperil the success of the prosecution's case. Here, the members of the apprehending team failed to proffer a justifiable and credible explanations for the following lapses: 1) failure to conduct the marking, physical inventory, and taking of photographs immediately at the place of apprehension and confiscation; 2) failure to secure the presence of the elected public official, DOJ representative, and member of the media at the place of arrest and seizure; 3) failure to secure the presence of the elected public official and DOJ representative at the time of the actual inventory and photographing of the seized illegal drugs at the PDEA Office. The reasons cited by the apprehending officers *i.e.*, that the area will be compromised; that the entrapment operation fell on a non-working day were not factual but rather tenuous and flimsy at best. They were never substantiated nor corroborated by evidence.

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 Rodel Tomas *y* Orpilla (Tomas) from the Decision[1] dated May 31, 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 07245, affirming the Decision[2] dated December 3, 2014 of the Regional Trial Court (RTC) Branch 5, Tuguegarao City, Cagayan, in Criminal Case No. 14122, finding Tomas guilty beyond reasonable doubt of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of Republic Act (R.A.) No. 9165,[3] otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

In an Information dated May 9, 2011, Tomas was charged with violation of Section 5, Article II of R.A. No. 9165.[4] The accusatory portion of the Information, reads:

That on May 8, 2011, in the City of Tuguegarao, Province of Cagayan, and within the jurisdiction of this Honorable Court, the accused RODEL TOMAS *y* ORPILLA alias "ERICK", without authority

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[1] Penned by Associate Justice Maria Elisa Sempio Diy, concurred in by Associate Justices Mariflor P. Punzalan Castillo and Florito S. Macalino; CA *rollo*, pp. 131-148.

[2] Penned by Judge Jezarene C. Aquino; CA *rollo*, pp. 51-60.

[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. APPROVED JUNE 7, 2002.

[4] CA *rollo*, pp. 131-132.

of law and without any permit to sell, transport, deliver and distribute dangerous drugs, did then and there, willfully, unlawfully, and feloniously, sell, and distribute two (2) heat-sealed transparent plastic sachets containing a total weight of 7.69 grams of METHAMPHETAMINE HYDROCHLORIDE, commonly known as "shabu," a dangerous drug, to IO1 BENJAMIN D. BINWAG, JR., who acted as a poseur buyer; that when the accused received the previously marked buy-bust money amounting to ₱62,000.00 consisting of two (2) pcs. genuine ₱1,000.00 peso-bill bearing serial Nos. AF343787 and CQ130665, and sixty (60) pcs. ₱1,000.00 peso-bill boodle money, which were placed in a white envelope from the said poseur buyer, accused in turn handed two (2) heat-sealed transparent plastic sachets containing the dangerous drugs wrapped in a printed paper to the said poseur buyer and this led to the apprehension and arrest of the accused and the recovery of the previously marked buy-bust money from his possession and control, and the confiscation of the dangerous drug at the Ground Floor of Brickstone Mall, Pengue-Ruyu, this city, by members of the Philippine Drug Enforcement Agency (PDEA), Regional Office No. 02, Camp Marcelo Adduru, Tuguegarao City, who formed the buy-bust team.

CONTRARY TO LAW.[5]

Trial ensued following Tomas' entry of a "not guilty" plea.

To establish its case, the prosecution presented Intelligence Officer 1 Benjamin D. Binwag, Jr. (IO1 Binwag), IO1 Juneclide D. Cabanilla (IO1 Cabanilla), Barangay Chairman Jimmy Pagulayan (Barangay Chairman Pagulayan), Police Senior Inspector Glenn Ly Tuazon (PSI Tuazon), and Investigating Agent 3 Allan Lloyd B. Leaño (IA3 Leaño). The defense, on the other hand, presented Tomas and Dr. Marcelina Mabatan-Ringor (Dr. Mabatan-Ringor).[6]

Version of the Prosecution

On May 8, 2011, at around 4:00 p.m., the Philippine Drug Enforcement Agency (PDEA) Regional Office No. 2 in Camp

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[5] *Id*. at 132.

[6] *Id*. at 7-8.

Adduru, Alimannao, Tuguegarao City received an information on the alleged illegal drug activity of a certain *alias* "Erick," later identified as Tomas. The confidential informant reported that Tomas was engaged in the illegal sale of *shabu* and was looking for prospective buyers. Acting on the tip, Regional Director III Juvenal Azurin directed IA3 Leaño to organize a team that will undertake the buy-bust operation. IA3 Leaño formed the buy-bust team and designated IO1 Binwag as the poseur-buyer, IO1 Cabanilla as immediate back-up agent, and agents Giovanni Alan and Rosenia Cabalza as support operators.[7]

During the briefing, IA3 Leaño instructed the informant to call Tomas and arrange the purchase of two (2) "*bulto*" of *shabu*. When the phone call was made, Tomas agreed to the transaction and told the informant to prepare the payment and wait for his text message. IO1 Binwag prepared two pieces of genuine ₱1,000.00 with serial Nos. AF343787 and CQ130665, and sixty (60) pieces of fake ₱1,000.00 as the boodle money to be used in the entrapment operation.[8]

At around 5:00 p.m., Tomas called the informant and told him that they would meet at the Happy Mobile Phone and Gadget Store at the ground floor of Brickstone Mall in Pengue-Ruyu, Tuguegarao City. The buy-bust team immediately rushed to the meeting place and positioned themselves nearby to observe while IO1 Binwag and the informant approached Tomas. The informant introduced IO1 Binwag to Tomas. When Tomas asked for the payment, IO1 Binwag handed him the white envelope containing the marked money. In exchange, Tomas gave IO1 Binwag two (2) heat-sealed plastic sachets of white crystalline substance wrapped in printed paper. IO1 Binwag scratched his head as a pre-arranged signal to his companions, introduced himself as a PDEA agent, and ordered Tomas to remain still. The members of the apprehending team arrived and arrested Tomas who tried to escape. Tomas was handcuffed and frisked by IO1 Cabanilla. The white envelope containing the marked

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[7] *Id*. at 92.

[8] *Id*. at 93.

money and one (1) Nokia cellphone were recovered from Tomas' possession. IA3 Leaño informed Tomas of his constitutional rights and the law he violated. Thereafter, the entrapment team brought Tomas and the seized plastic sachets containing white crystalline substance to their office at Camp Adduru.[9]

At the PDEA Office, the Booking Sheet/Arrest Report accomplished and signed by Tomas, IO1 Binwag, and IO1 Cabanilla.[10] The marking, physical inventory, and photographs of the confiscated plastic sachets were also done at the PDEA Office in the presence of Tomas, Barangay Chairman Pagulayan, and media representative Cayetano B. Tuddao. IA3 Leaño executed a Request for Laboratory Examination on Seized Evidence. IO1 Binwag submitted the request and the seized plastic sachets to the crime laboratory for analysis and examination.[11] They were received by Senior Police Officer 2 Elyson Talattad who handed the request and specimen to PSI Tuazon. After the conduct of the laboratory examination, PSI Tuazon certified that the specimen marked as "Exhibit A-1 BDB 05-8-11" weighing 3.39 grams and "Exhibit A-2 BAB 05-8-11" weighing 4.30 grams tested positive for methamphetamine hydrochloride, a dangerous drug. IA3 Leaño also prepared and signed a Request for Physical Examination requesting the Tuguegarao City People's General Hospital (TCPGH) to conduct a medical examination on Tomas. Based on the findings of Dr. Robin R. Zingapan, Medical Officer III, Tomas had no injury at the time he was examined.[12]

Version of the Defense

On May 8, 2011, at around 2:00 p.m., Tomas was in front of a pharmacy in Brickstone Mall to purchase medicine for his father when two (2) persons in civilian clothing suddenly held and pulled his hands to his back and placed him in handcuffs.

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[9] *Id*.

[10] *Id*. at 53.

[11] *Id*. at 54.

[12] *Id*. at 54; p. 93.

One of the men pushed him inside a white Toyota Revo and brought him to the Regional Command where he was mauled and forced to admit ownership of the plastic sachets of *shabu* which came from the shirt pocket of IO1 Binwag. Tomas claimed that his personal belongings were taken from him, which include cash in the amount of ₱26,000.00 and $25, and his sister's ATM card.[13]

The PDEA agents brought him to TCPGH for a check up but the physician who attended to him only took his blood pressure. This prompted him to seek the opinion of another doctor, Dr. Marcelina Mabatan-Ringor who issued a medical certificate with the following findings: "[1] contusion hematoma, 9x5 [cm.] lateral chest (L); [2] abrasion, 3 cm. infrascapular area (L); and [3] abrasion, 0.5 cm. medial aspect distal 3rd posterior forearm (R)."[14]

In a Decision dated December 3, 2014, the RTC found Tomas guilty beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165. The *fallo* states:

> WHEREFORE, the court renders judgment finding the accused, RODEL TOMAS y Orpilla, GUILTY beyond reasonable doubt of violating Sec. 5, 1st paragraph of Art. II, R.A. No. 9165 and sentences him, in accordance with law to suffer imprisonment of Life Imprisonment and to pay a fine in the amount of four hundred thousand (₱400,000.00) pesos.
>
> The confiscated drugs are hereby forfeited in favor of the government. The Clerk of Court is hereby ordered to turn over the confiscated drugs to the Philippine Drug Enforcement Agency (PDEA) for their disposition in accordance with law together with a copy of this judgment.
>
> SO ORDERED.[15]

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[13] *Id*. at 34.

[14] *Id*. at 35.

[15] *Id*. at 60.

The RTC found that all the elements for the illegal sale of dangerous drugs were fully established by the prosecution. It gave credence to the testimonies of IO1 Binwag and IO1 Cabanilla which have satisfactorily shown that there was a sale of illegal drugs that took place. It noted that Tomas never questioned the apprehending officers' compliance with the chain of custody rule.

Aggrieved, Tomas filed a Notice of Appeal on December 16, 2014 which was given due course by the RTC in its Order dated January 22, 2015.[16]

In its Decision dated May 31, 2017, the CA affirmed the findings of the RTC with modification in that the fine imposed on Tomas was increased to ₱500,000.00. It declared that the fact that the seized plastic sachets were marked at the Regional Office of PDEA does not deviate from the elements required in the preservation of the integrity of the seized drugs. It did not give weight to Tomas' defense of denial or frame-up which was never substantiated by clear and convincing evidence. It emphasized that Tomas never imputed evil motives on the part of the members of the apprehending team to falsely testify against him. Consequently, the presumption of regularity in the performance of duty must be upheld.

Hence, the present appeal.

In a Resolution[17] dated October 17, 2018, the Court noted the records forwarded by the CA and notified the parties that they may file their supplemental briefs.

On December 18, 2018, through a Manifestation (Re: Supplemental Brief),[18] the Office of the Solicitor General, on behalf of the People of the Philippines, stated that the office was not filing a supplemental brief as the Brief for the Appellee[19]

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[16] *Id*. at 138.

[17] *Rollo*, p. 25.

[18] *Id*. at 34-37.

[19] CA *rollo*, pp. 87-106.

dated December 7, 2015, filed with the CA, had sufficiently addressed the issues and arguments in appellant's brief.

The OSG maintains that the alleged failure to strictly comply with the requirements of the chain of custody under R.A. No. 9165 and its IRR does not necessarily render the seized items inadmissible nor does it impair its evidentiary weight. It asserted that the prosecution was able to establish every link in the chain of custody through the categorical and consistent account given by its witnesses in the handling of the confiscated illegal substance.

In turn, Tomas filed his Manifestation (in lieu of Supplemental Brief)[20] on January 28, 2019 indicating that he is adopting his appellant's brief[21] dated August 5, 2015, as his supplemental brief.

Tomas claims that his arrest was illegal and that the alleged seized items were inadmissible for being fruits of a poisonous tree. He specified the irregularities in the custody of the confiscated items, to wit: (1) the marking, photograph, and the inventory of the illegal drugs were not done immediately at the place of arrest; (2) no DOJ representative was present during the photograph and physical inventory; and (3) Barangay Chairman Pagulayan merely signed the Certificate of Inventory but did not witness the actual inventory of the seized items.

Our Ruling

The appeal is granted.

Three (3) elements must be shown to successfully prosecute a charge for illegal sale of dangerous drugs: first, the transaction or sale took place; second, the *corpus delicti* or the illicit drug was presented as evidence; and third, the buyer and the seller were identified.[22]

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[20] *Rollo*, pp. 40-42.

[21] CA *rollo*, pp. 28-49.

[22] *People v. Bartolini*, 791 Phil. 626, 633-634 (2016).

Acting as the poseur-buyer, IO1 Binwag positively identified Tomas as the person he caught *in flagrante delicto* selling plastic sachets containing white crystalline substance suspected to be *shabu* in an anti-narcotics operation conducted by his team in the afternoon of May 8, 2011 in Brickstone Mall in Tuguegarao City. Tomas sold the *shabu* to him and received the marked money he handed as payment thereof. Evidently, the first and third elements were duly established by the prosecution in this case. But whether the second element was satisfied requires us to examine the apprehending officers' compliance with the rule on chain of custody encapsulated in Section 21 of R.A. No. 9165, *viz.*:

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[.]

Later, Section 21 (a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 was issued prescribing the handling and disposition of seized dangerous drugs and a saving clause in case of non-conformity with the above rule:

(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)

Section 21 points out the conditions for the conduct of the physical inventory and taking of photograph of the seized items such that:

1. it must be done immediately after seizure or confiscation;

2. it must be done in the presence of the following personalities: 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. it 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.

The members of the apprehending team miserably failed to meet the above specifications.

At the witness stand, both IO1 Binwag and IO1 Cabanilla admitted that they conducted the physical inventory and taking of photograph of the seized illegal drugs in their office at Camp Adduru, Tuguegarao City.[23] When asked for the reason for departing from the rule, they simply averred that it was "the discretion" of their team leader "to avoid being compromised in the area." But the apprehending team did not elaborate how

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[23] CA *rollo*, pp. 38-39.

the conduct of the physical inventory and photographing at the place of seizure would unduly put its members or the buy-bust operation at risk. Neither did the team clarify the dangers that immediate inventory and photographing entail. In the same breath, IO1 Binwag and/or IO1 Cabanilla, without rhyme or reason, did not mark the seized plastic sachets of suspected *shabu* at the place of arrest even if they could have easily done so.

True, the conduct of the marking, physical inventory and photographing are not limited to the place of apprehension. In cases of warrantless seizure such as the one at bar, they may be performed at the nearest police station or nearest office of the apprehending officer. However, even if one were to consider the conduct of inventory and photographing at the PDEA Office acceptable, the apprehending team still veered away from the three-witness rule required by Section 21. The prosecution admitted, that no DOJ representative was present during the physical inventory and photographing of the seized items. IO1 Cabanilla justified the absence of the DOJ representative stating that they tried to contact the DOJ but nobody arrived since the buy-bust operation fell on a Sunday, a non-working day. Equally worth noting is that Barangay Chairman Pagulayan did not actually witness the physical inventory of the seized items. The account of Barangay Chairman Pagulayan was straightforward and unequivocal:

ATTY. CALEDA:
Q So, it was from the PDEA agent from whom you came to know about the suspect?

WITNESS:
A Kindly repeat your question?

INTERPRETER:

(Interpreting the question to the witness.)

WITNESS:
A Yes, sir.

ATTY. CALEDA: And because of the information given to you by the PDEA that is your sole basis in saying that he is the suspect in this case?

WITNESS: Yes, sir.

Q You also mentioned that you saw two sachets of shabu inside the PDEA office, am I correct?

A Yes, sir.

Q It was not a mere crystalline substance inside a plastic sachet, am I correct?

A Yes, sir.

Q You mean to say that upon arrival thereat, you already knew that those two plastic sachets were shabu?

A As I read the record on the report of the chemist, so that was already approved that that is a shabu.

Q You mean to say that at the time you saw the crystalline substance which you identified as shabu, there was already a laboratory report from the laboratory, is that correct?

A Yes, sir.

x x x x x x x x x

Q Now, again, Mr. Witness, when you arrived at the PDEA, you already saw on top of the table this peso bills, Nokia cell phone and these two sachets containing crystalline substance which you identified as shabu, is that correct?

A Yes, sir, in front of the suspect, sir.

Q And you also admit that prior to the placing of these evidences on top of the table, you were not yet inside the premises of the PDEA office?

A I was not yet there, sir.[24]

Time and again, the Court has stressed the significance of the presence of the three insulating witnesses during the physical inventory and photographing of the seized illegal drugs, that is, "to ensure the establishment of the chain of custody and remove

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[24] *Id*. at 39-42.

any suspicion of switching, planting, or contamination of evidence."[25] In *People v. Adobar*,[26] we have already put to rest the issue on when the presence of a representative from the media, the DOJ, and an elected public official must be obtained:

> 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.
>
> 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**

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[25] *People v. Corral y Batalla*, G.R. No. 233883, January 7, 2019.

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

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. Mendoza*, 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 in the original).

The requirement of securing the presence of an elected public official, member of the DOJ, and member of the media is not a mere surplus that may be dispensed with by the apprehending team for it serves a vital purpose: to protect the accused against the possibility of planting, contamination, or loss of the seized drug.[27] Barangay Chairman Pagulayan's arrival at the PDEA Office at the time when the seized illegal drugs have been subjected to quantitative and qualitative examination defeated the very purpose of the three-witness rule under Section 21. This is not to mention the fact that the prosecution failed to satisfactorily show that the apprehending team exerted honest-to-goodness efforts to secure the presence of the DOJ representative during the buy-bust operation or, at the very least, during the actual physical inventory and taking of photographs at the PDEA Office – an utter disregard of the Court's pronouncement in *People v. Ramos*:[28]

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[27] *People v. Callejo y Tadeja*, G.R. No. 227427, June 6, 2018.

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

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

Less-stringent compliance with the requirements of Section 21 does not necessarily render void and invalid the seizure and custody over the seized items provided: 1) there is a justifiable ground for non-compliance; and 2) the integrity and evidentiary value of the seized items are properly preserved.[29] As a saving mechanism and an exception to the strict compliance rule, the prosecution must be able to satisfy these twin requisites so as not to imperil the success of the prosecution's case.

Here, the members of the apprehending team failed to proffer a justifiable and credible explanations for the following lapses: 1) failure to conduct the marking, physical inventory, and taking of photographs immediately at the place of apprehension and confiscation; 2) failure to secure the presence of the elected

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[29] *People v. Año y Del Remedios*, G.R. No. 230070, March 14, 2018.

public official, DOJ representative, and member of the media at the place of arrest and seizure; 3) failure to secure the presence of the elected public official and DOJ representative at the time of the actual inventory and photographing of the seized illegal drugs at the PDEA Office. The reasons cited by the apprehending officers *i.e.*, that the area will be compromised; that the entrapment operation fell on a non-working day were not factual but rather tenuous and flimsy at best. They were never substantiated nor corroborated by evidence. In *People v. De Guzman*,[30] it was settled 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.[31] Clearly, the first requirement to trigger the saving clause is wanting.

The belated marking of the seized items at the PDEA Office without plausible explanation demonstrates outright that there exists a serious gap in the chain at its inception, the marking being the starting point in the link that each temporary custodian of the evidence will utilize as a reference point.[32] The possibility of alteration, substitution or tampering of the seized items, by accident or in any other manner, is not at all remote since they did not bear markings or labels when they were transported from the place of arrest and seizure to the PDEA Office as to render them readily identifiable. The members of the entrapment team did not recognize this procedural breach and, more importantly, outline the measures taken to preserve the identity of the seized items. Moreover, mere identification of the handlers of the seized items from the time they were recovered from Tomas' possession up to the time they were presented in court as evidence is sorely insufficient. The apprehending officers should have shown the manner in which the illegal drug was transferred in every link of the chain as well as the care and protection each custodian exercised in

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[30] 630 Phil. 637 (2010).

[31] *Id.* at 649.

[32] *People v. Sanchez y Calderon*, G.R. No. 221458, September 5, 2018.

order to erase confusion in the confiscation, handling, and examination of the seized items and eliminate doubts as to the authenticity of the illegal drugs presented in court. Instructive is the case of *Mallillin v. People*:[33]

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[34]

The second requisite of the saving clause is conspicuously absent.

In light of the above disquisitions, the identity of the object of the sale not having been adequately established, the Court resolves to acquit Tomas based on reasonable doubt.

WHEREFORE, premises considered, the Decision dated May 31, 2017 of the Court of Appeals in CA-G.R. CR HC No. 07245, dismissing the appeal and affirming the Decision dated December 3, 2014 of the Regional Trial Court, Branch 5, Tuguegarao City, convicting appellant **RODEL TOMAS *y* ORPILLA** of violation of Section 5 Article II of Republic Act No. 9165, is **REVERSED** and **SET ASIDE**. Appellant is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered **IMMEDIATELY RELEASED** from detention, unless he is confined for any other lawful cause. Let an entry of final judgment be issued immediately.

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[33] 576 Phil. 576 (2008).

[34] *Id*. at 587.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, for immediate implementation. Said Director is ordered to report to this Court within five (5) working days from receipt of this Decision the action he has taken.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 242860. March 11, 2019]

THE LAND TRANSPORTATION FRANCHISING AND REGULATORY BOARD (LTFRB) and the DEPARTMENT OF TRANSPORTATION (DOTR), *petitioners, vs.* **HON. CARLOS A. VALENZUELA, in his capacity as Presiding Judge of the Regional Trial Court of Mandaluyong City, Branch 213 and DBDOYC, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; DEFINED AS THE CAPRICIOUS AND WHIMSICAL EXERCISE OF JUDGMENT AS IS EQUIVALENT TO LACK OF JURISDICTION.— Case law states that "grave abuse of discretion arises when a lower court or tribunal patently violates the Constitution, the law or existing jurisprudence." According to its classic formulation: By grave abuse of discretion is meant capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion

of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

2. ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; REQUISITES IN THE ISSUANCE OF A WRIT THEREOF; EXISTENCE OF A CLEAR LEGAL RIGHT; WHEN PLAINTIFF'S RIGHT IS DOUBTFUL OR DISPUTED, A PRELIMINARY INJUNCTION IS NOT PROPER; CASE AT BAR.— The first and foremost requisite in the issuance of a writ of preliminary injunction is the **existence of a clear legal right**. The rationale therefor hews with the nature of these writs being mere provisional reliefs. x x x In *Spouses Nisce v. Equitable PCI Bank, Inc.*, the Court held that "[t]he plaintiff praying for a writ of preliminary injunction must x x x establish[, *inter alia*,] that he or she has a **present and unmistakable right** to be protected; x x x **[t]hus, where the plaintiff's right is doubtful or disputed, a preliminary injunction is not proper**. The possibility of irreparable damage without proof of an actual existing right is not a ground for a preliminary injunction." x x x At any rate, even if it is assumed that *Angkas*-accredited bikers are not treated as common carriers and hence, would not make DBDOYC fall under the "public service" definition, it does not necessarily mean that the business of holding out private motorcycles for hire is a legitimate commercial venture. Section 7 of RA 4136 states that: Section 7. *Registration Classification*. – Every motor vehicle shall be registered under one of the following described classifications: (a) private passenger automobiles; (b) private trucks; and (c) **private motorcycles**, scooters, or motor wheel attachments. Motor vehicles registered under these classifications **shall not be used for hire under any circumstances and shall not be used to solicit, accept, or be used to transport passengers or freight for pay**. x x x That being said, the Court therefore concludes that no clear and unmistakable right exists in DBDOYC's favor; hence, the RTC gravely abused its discretion in issuing the assailed injunctive writ. In the final analysis, the business of holding one's self out as a transportation service provider, whether done through online platforms or not, appears to be one which is imbued with public interest and thus, deserves appropriate regulations. With the safety of the public further in mind, and given that, at any rate, the above-said administrative issuances are presumed to be valid until and unless they are set aside, the nullification

of the assailed injunctive writ on the ground of grave abuse of discretion is in order.

3. MERCANTILE LAW; TRANSPORTATION LAWS; COMMONWEALTH ACT NO. 146 (PUBLIC SERVICE ACT); PUBLIC SERVICE; COVERS ANY PERSON WHO OWNS, OPERATES, MANAGES, OR CONTROLS IN THE PHILIPPINES, FOR HIRE OR COMPENSATION, WITH GENERAL OR LIMITED CLIENTELE, WHETHER PERMANENT, OCCASIONAL OR ACCIDENTAL, AND DONE FOR GENERAL BUSINESS PURPOSES, ANY COMMON CARRIER; CASE AT BAR.— As stated in the Public Service Act, the term "public service" covers any person who owns, operates, manages, or controls in the Philippines, for hire or compensation, with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, **any common carrier**. The Civil Code defines "common earners" in the following terms: Article 1732. Common carriers are persons, corporations, firms or associations **engaged in the business of carrying or transporting passengers or goods or both, by land**, water, or air **for compensation, offering their services to the public**. For its part, DBDOYC claims reprieve from the above-stated regulatory measures, claiming that it and its accredited drivers are not common carriers or transportation providers. It argues that "[its] technology [only] allows a biker willing to give a ride and a passenger willing to pay the set price to meet and contract with each other. Under this set-up, an *Angkas* biker does not offer his/her service to an indefinite public." Since the application "merely pairs an *Angkas* biker with a potential passenger under a fare scheme which [DBDOYC] fixes for both, [DBDOYC] may not compel an *Angkas* driver to pick up a potential passenger even after the latter confirms a booking because as between the biker and the passenger, there is but a purely private contractual arrangement." However, it seems that DBDOYC's proffered operations is not enough to extricate its business from the definition of common carriers, which, as mentioned, fall under the scope of the term "public service." As the DBDOYC itself describes, *Angkas* is a mobile application which seeks to "pair an available and willing *Angkas* biker with a potential passenger, who requested for a motorcycle ride, relying on geo-location technology." Accordingly, it appears that it is practically functioning as a booking agent, or at the very least, acts as a third-party liaison for its accredited bikers.

Irrespective of the application's limited market scope, *i.e.*, *Angkas* users, it remains that, on the one hand, these bikers offer transportation services to wiling public consumers, and on the other hand, these services may be readily accessed by anyone who chooses to download the *Angkas* app. In *De Guzman v. Court of Appeals*, the Court discussed the relation between Article 1732 of the Civil Code and Section 13 (b) of the Public Service Act, explaining that Article 1732 of the Civil Code does not distinguish between a carrier who offers its services to the general public and one who offers services or solicits business only from a narrow segment of the general population.

4. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; PROCEEDINGS THEREOF SEPARATE AND DISTINCT FROM THE MAIN CASE; CASE AT BAR.— Lest it be misunderstood, the pronounced grave abuse of discretion of the RTC exists only with respect to its issuance of the assailed injunctive writ. It is fundamental that preliminary injunction proceedings are separate and distinct from the main case. In *Buyco v. Baraquia*, the Court discussed the ancillary and provisional nature of these writs: A writ of preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It is merely a provisional remedy, adjunct to the main case subject to the latter's outcome. It is not a cause of action in itself. Being an ancillary or auxiliary remedy, it is available during the pendency of the action which may be resorted to by a litigant to preserve and protect certain rights and interests therein pending rendition, and for purposes of the ultimate effects, of a final judgment in the case. The writ is provisional because it constitutes a temporary measure availed of during the pendency of the action and it is ancillary because it is a mere incident in and is dependent upon the result of the main action. Under this limited scope, it is thus beyond the power of the Court to determine the ultimate rights and obligations of the parties, else it unduly prejudges the main case for declaratory relief which is still pending before the court *a quo*. While the Court acknowledges the contemporary relevance of the topic at hand, it remains self-aware of this case's procedural and jurisdictional parameters. Accordingly, the definitive resolution of the issue of regulating ride-booking or ride-sharing applications must await the proper case therefor.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioners.
Divina Law for respondent DBDOYC, Inc.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for *certiorari*[1] is the Order[2] dated August 20, 2018 (Assailed Order) rendered by public respondent Judge Carlos A. Valenzuela of the Regional Trial Court of Mandaluyong City, Branch 213 (RTC) in R-MND-18-01453-SC which directed the issuance of a writ of preliminary injunction in favor of private respondent DBDOYC, Inc. (DBDOYC) essentially enjoining petitioners the Land Transportation Franchising and Regulatory Board (LTFRB) and the Department of Transportation (DOTr; collectively, petitioners) from regulating DBDOYC's business operations conducted through the *Angkas* mobile application.

The Facts

On May 8, 2015, the Department of Transportation and Communications (DOTC), the predecessor of DOTr, issued Department Order No. (DO) 2015-11,[3] amending DO 97-1097,[4] which set the standard classifications for public transport conveyances to be used as basis for the issuance of a Certificate of Public Convenience (CPC)[5] for public utility vehicles (PUVs).

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[1] With Very Urgent Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction; *rollo*, pp. 3-57.

[2] *Id*. at 219-225.

[3] Entitled "FURTHER AMENDING DEPARTMENT ORDER NO. 97-1097 TO PROMOTE MOBILITY" (see *rollo*, pp. 226-231).

[4] Entitled "PROVIDING STANDARD CLASSIFICATION FOR ALL PUBLIC TRANSPORT CONVEYANCES," issued on September 29, 1997.

[5] See Section 15 of Commonwealth Act No. 146, entitled "AN ACT TO REORGANIZE THE PUBLIC SERVICE COMMISSION, PRESCRIBE

In recognition of technological innovations which allowed for the proliferation of new ways of delivering and offering public transportation, the DOTC, through DO 2015-11, created two (2) new classifications, namely, **Transportation Network Companies (TNC) and Transportation Network Vehicle Service (TNVS)**.[6]

Under DO 2015-11, a TNC is defined as an "**organization whether a corporation, partnership, sole proprietor, or other form, that provides pre-arranged transportation services for compensation using an online-enabled application or platform technology to connect passengers with drivers using their personal vehicles**."[7] Although DO 2015-11 made mention of TNVS, the term was not clearly defined until June 19, 2017, when the DOTr issued DO 2017-11[8] which set the rules and procedures on the issuance of franchises for public transport routes and services,[9] including TNCs and TNVS. Under DO 2017-11, TNVS is defined as "**a [PUV] accredited with a [TNC], which is granted authority or franchise by the LTFRB to run a public transport service**."[10] DO 2017-11 further provided in Item 2.2 thereof that "**[m]otorcycles x x x are likewise not allowed as public transport conveyance**."[11]

ITS POWERS AND DUTIES, DEFINE AND REGULATE PUBLIC SERVICES, PROVIDE AND FIX THE RATES AND QUOTA OF EXPENSES TO BE PAID BY THE SAME, AND FOR OTHER PURPOSES," otherwise known as the "PUBLIC SERVICE ACT" (November 7, 1936).

[6] See *rollo*, pp. 229-230.

[7] *Id.* at 229; emphasis supplied.

[8] Entitled "OMNIBUS GUIDELINES ON THE PLANNING AND IDENTIFICATION OF PUBLIC ROAD TRANSPORTATION SERVICES AND FRANCHISE ISSUANCE" (see *rollo*, pp. 232-249).

[9] *Rollo*, p. 232.

[10] See Item 1.34 of DO 2017-11 (*rollo*, p. 233); emphasis supplied.

[11] Item 2.2 of DO 2017-11 reads in full:

2.2 Hierarchy and Classification of Public Transportation Modes

Consequently, the LTFRB issued various memorandum circulars[12] to govern the issuance of the necessary CPC for a TNVS and the accreditation of a TNC. In its issuances, the LTFRB declared that a TNC is treated as a transport provider.[13]

> As a matter of policy, the modes of transportation shall follow the hierarchy of roads. Thus, higher capacity transportation modes shall have priority in terms of CPC allocation and transit right of way in trunk lines or main thoroughfares over lower capacity modes. Taxis, TNVS, tourist transport services, and shuttle services are excluded as they are considered door-to-door services and do not have specific routes. Thus, as a general rule, assigning higher capacity modes to routes currently traversed by lower capacity modes in the Local Public Transport Route Plan may be allowed, but not otherwise.
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> The operation of tricycles shall be in accordance with Joint Memorandum Circular No. 1, series of 2008 of the DILG and the DOTC, which states that tricycle operation should only be confined along city or municipal roads, not along national roads and is limited only to routes not traversed by higher modes of public transport. **Motorcycles and other farm implements such as the *kuliglig* are likewise not allowed as public transport conveyance**. Further basis of the provision of this mode should also be the LPTRP [(Local Public Transport Route Plan; No. 1.15)]. (Emphasis and underscoring supplied)

[12] These include: LTFRB Memorandum Circular No. 2015-015-A or the "RULES AND REGULATIONS TO GOVERN THE ACCREDITATION OF TRANSPORTATION NETWORK COMPANIES," issued on October 23, 2017 (see *rollo*, pp. 250-253); LTFRB Memorandum Circular No. 2015-016-A or the "TERMS AND CONDITIONS OF A CERTIFICATE OF TRANSPORTATION NETWORK COMPANY ACCREDITATION," issued on October 23, 2017 (see *rollo*, pp. 254-257); LTFRB Memorandum Circular No. 2015-017 or the "IMPLEMENTING GUIDELINES ON THE ACCEPTANCE OF APPLICATIONS FOR A CERTIFICATE OF PUBLIC CONVENIENCE TO OPERATE A TRANSPORTATION NETWORK VEHICLE SERVICE," issued on May 28, 2015 (see *rollo*, pp. 258-260); and LTFRB Memorandum Circular No. 2015-018-A or the "TERMS AND CONDITIONS OF A CERTIFICATE OF PUBLIC CONVENIENCE TO OPERATE A TRANSPORTATION NETWORK VEHICLE SERVICE," issued on October 23, 2017 (see *rollo*, pp. 261-263).

[13] See LTFRB Memorandum Circular No. 2015-015-A (see *rollo*, p. 250).

whose accountability commences from the acceptance by its TNVS while online.[14] On the other hand, the accountability of the TNVS, as a common carrier, attaches from the time the TNVS is online and offers its services to the riding public.[15]

Meanwhile, on May 26, 2016, DBDOYC registered its business with the Securities and Exchange Commission (SEC), and subsequently, in December 2016, launched "*Angkas*," an online and on-demand motorcycle-hailing mobile application (*Angkas* or *Angkas* app) that pairs drivers of motorcycles with potential passengers without, however, obtaining the mandatory certificate of TNC accreditation from the LTFRB. In this regard, DBDOYC accredited *Angkas* drivers and allowed them to offer their transport services to the public despite the absence of CPCs.[16]

Cognizant of the foregoing, the LTFRB issued a press release on January 27, 2017 informing the riding public that DBDOYC, which is considered as a TNC, cannot legally operate.[17] Despite such warning, however, DBDOYC continued to operate and offer its services to the riding public *sans* any effort to obtain a certificate of TNC accreditation.[18]

In response, DBDOYC, on July 4, 2018, filed a Petition for Declaratory Relief with Application for Temporary Restraining Order/Writ of Preliminary Injunction[19] against petitioners before the RTC alleging that:

(*a*) it is not a public transportation provider since *Angkas* app is a mere tool that connects the passenger and the motorcycle driver; (*b*) *Angkas* and its drivers are not engaged in the delivery

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[14] See LTFRB Memorandum Circular No. 2015-016-A (see *rollo*, p. 254).

[15] See LTFRB Memorandum Circular No. 2015-018-A (see *rollo*, p. 261).

[16] See *rollo*, pp. 13-14 and 604.

[17] See *id*. at 14.

[18] *Id*.

[19] Dated June 26, 2018. *Id*. at 86-123.

of a public service; (*c*) alternatively, should it be determined that it is performing a public service that requires the issuance of a certificate of accreditation and/or CPC, then DO 2017-11 should be declared invalid because it violates Section 7 of Republic Act No. (RA) 4136 or the "Land and Transportation Traffic Code,"[20] which does not prohibit motorcycles from being used as a PUV; and (*d*) neither the LTFRB nor the DOTr has jurisdiction to regulate motorcycles for hire.[21]

The RTC Proceedings and The Assailed Order

In an Order[22] dated July 13, 2018, the RTC issued a Temporary Restraining Order (TRO) finding DBDOYC's business not subject to any regulation nor prohibited under existing law. It added that since the use of DBDOYC's internet-based mobile application is not contrary to law, morals, good customs, public order, or public policy,[23] a clear and unmistakable right has been established in favor of DBDOYC such that if petitioners

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[20] Pertinent portions of Section 7 of RA 4136, entitled "AN ACT TO COMPILE THE LAWS RELATIVE TO LAND TRANSPORTATION AND TRAFFIC RULES, TO CREATE A LAND TRANSPORTATION COMMISSION AND FOR OTHER PURPOSES" (June 20, 1964), read:

> Section 7. *Registration Classification*. – Every motor vehicle shall be registered under one of the following described classifications:
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> (a) private passenger automobiles; (b) private trucks; and (c) private motorcycles, scooters, or motor wheel attachments. Motor vehicles registered under these classifications shall not be used for hire under any circumstances and shall not be used to solicit, accept, or be used to transport passengers or freight for pay.
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> For the purpose of this section, a vehicle habitually used to carry freight not belonging to the registered owner thereof, or passengers not related by consanguinity or affinity within the fourth civil degree to such owner, shall be conclusively presumed to be "for hire."
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[21] See *rollo*, pp. 97-120.

[22] *Id*. at 299-305.

[23] See *id*. at 303.

prohibit the operation of *Angkas*, the same would cause irreparable injury to the company.[24]

Proceedings were thereafter conducted relative to the application for a writ of preliminary injunction. Eventually, through the Assailed Order,[25] the RTC issued the said writ to enjoin petitioners and anyone acting on their behalf: (*a*) from interfering, whether directly or indirectly, with DBDOYC's operations; (*b*) from apprehending *Angkas* bikers who are in lawful pursuit of their trade or occupation based on *Angkas* mobile application; and (*c*) from performing any act/acts that will impede, obstruct, frustrate, or defeat DBDOYC's pursuit of its lawful business or trade as owner and operator of *Angkas*.[26]

In so ruling, the RTC found that DBDOYC has a clear and unmistakable right "to conduct its business based on its constitutional right to liberty," which includes "the right of an individual to x x x earn his livelihood by any lawful calling; [and] to pursue any [vocation] and essentially to do and perform anything unless otherwise prohibited by law."[27] In this light, the RTC concluded that DBDOYC has a right to enter into an independent contract with its *Angkas* riders as an application provider, further reiterating that DBDOYC's business is not yet subject to any regulation nor prohibited by any existing law, and that the *Angkas* biker's offer of transportation services to a potential passenger is a purely private arrangement using DBDOYC's application.[28] Thus, should petitioners prohibit DBDOYC from operating *Angkas*, an irreparable injury will result, thereby entitling it to the issuance of the injunctive relief prayed for.[29]

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[24] *Id.* at 304.

[25] Referring to the Order dated August 20, 2018; *id*. at 219-225.

[26] *Id.* at 224.

[27] *Id.* at 223.

[28] See *id*.

[29] See *id*. at 224.

Aggrieved, petitioners are now before the Court ascribing grave abuse of discretion on the part of the RTC in issuing the writ of preliminary injunction through the Assailed Order. Notably, in the present petition, petitioners sought the issuance of a TRO to enjoin the RTC from enforcing its injunctive writ, which the Court granted in a Resolution[30] dated December 5, 2018.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the RTC committed grave abuse of discretion amounting to lack or in excess of jurisdiction in issuing a writ of preliminary injunction in favor of DBDOYC and against petitioners.

The Court's Ruling

Preliminarily, despite the absence of the required prior motion for reconsideration,[31] the Court finds it proper to give due course to the petition in view of the public interest involved, and further, the urgent necessity of resolving this case so as not to prejudice the interests of the government.[32]

The petition is meritorious.

Case law states that "grave abuse of discretion arises when a lower court or tribunal patently violates the Constitution, the law or existing jurisprudence."[33] According to its classic formulation:

> By grave abuse of discretion is meant capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent

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[30] *Id*. at 502-503. See also TRO dated December 5, 2018; *id*. at 502-506.

[31] See *Malayang Manggagawa ng Stayfast Phils., Inc. v. National Labor Relations Commission*, 716 Phil. 500, 514 (2013).

[32] See *id*. at 514-515.

[33] *The Office of the Ombudsman v. Valencerina*, 739 Phil. 11, 24 (2014).

and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[34]

In ruling on whether or not the RTC gravely abused its discretion in this case, the Court turns to the basic principles governing the issuance of preliminary injunctive writs.

The first and foremost requisite in the issuance of a writ of preliminary injunction is the **existence of a clear legal right**. The rationale therefor hews with the nature of these writs being mere provisional reliefs. In *Department of Public Works and Highways v. City Advertising Ventures Corporation*,[35] the Court explained that a writ of preliminary injunction is issued to:

> [P]revent threatened or continuous irremediable injury to some of the parties *before their claims can be thoroughly studied and adjudicated*. Its sole aim is to preserve the *status quo* until the merits of the case can be heard fully[.] **Thus, it will be issued only upon a showing of a clear and unmistakable right that is violated.** Moreover, an urgent necessity for its issuance must be shown by the applicant.[36] (Emphasis and underscoring supplied)

In *Spouses Nisce v. Equitable PCI Bank, Inc.*,[37] the Court held that "[t]he plaintiff praying for a writ of preliminary injunction must x x x establish[, *inter alia*,] that he or she has a **present and unmistakable right** to be protected; x x x **[t]hus, where the plaintiff's right is doubtful or disputed, a preliminary injunction is not proper**. The possibility of irreparable damage without proof of an actual existing right is not a ground for a preliminary injunction."[38]

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[34] *Department of Public Works and Highways v. City Advertising Ventures Corporation*, 799 Phil. 47, 62 (2016).

[35] *Id*.

[36] *Id*.

[37] 545 Phil. 138 (2007).

[38] *Id*. at 160-161.

In this case, the RTC premised its issuance of the assailed injunctive writ on DBDOYC's purported clear and unmistakable legal right "to conduct its business based on its constitutional right to liberty."[39] Prescinding therefrom, the RTC concludes that DBDOYC has "the right to enter into an independent contract with its *Angkas* bikers as an [application] provider [without] initially requiring it to secure [a CPC]."[40]

As in all fundamental rights, the State has a legitimate interest in regulating these rights when their exercise clearly affects the public. To recount, "[p]olice power is the inherent power of the State to regulate or to restrain the use of liberty and property for public welfare."[41] Accordingly, the State "may interfere with personal liberty, property, lawful businesses and occupations to promote the general welfare [as long as] the interference [is] reasonable and not arbitrary."[42]

Here, it is petitioners' position that **DBDOYC is a transportation provider** and **its accredited drivers are common carriers** engaged in rendering **public service** which is subject to their regulation.[43] The regulatory measures against DBDOYC, as mentioned above, pertain to DOs 2015-11 and 2017-11, which have created new classifications of transportation services, namely TNC and TNVS, in light of modern innovations. These issuances may be traced to Commonwealth Act No. 146,[44]

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[39] *Rollo*, p. 223.

[40] *Id*.

[41] *Manila Memorial Park, Inc. v. Secretary of the Department of Social Welfare and Development*, 722 Phil. 538, 575 (2013).

[42] *Id*. at 575-576.

[43] *Rollo*, p. 31.

[44] Entitled "AN ACT TO REORGANIZE THE PUBLIC SERVICE COMMISSION, PRESCRIBE ITS POWERS AND DUTIES, DEFINE AND REGULATE PUBLIC SERVICES, PROVIDE AND FIX THE RATES AND QUOTA OF EXPENSES TO BE PAID BY THE SAME, AND FOR OTHER PURPOSES" (November 7, 1936).

otherwise known as the "Public Service Act," as amended.[45] Under Section 13 (b) thereof, a "public service" is defined as follows:

(b) The term "public service" includes every person that now or hereafter **may own, operate, manage, or control in the Philippines, for hire or compensation, with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, any common carrier**, railroad, street railway, traction railway, sub-way motor vehicle, either **for freight or passenger, or both with or without fixed route and whatever may be its classification**, freight or carrier service of any class, express service, steamboat or steamship line, pontines, ferries, and water craft, engaged in the transportation of passengers or freight or both, shipyard, marine railway, marine repair shop, wharf or dock, ice plant, ice-refrigeration plant, canal, irrigation system, gas electric light, heat and power, water supply and power, petroleum, sewerage system, wire or wireless communications system, wire or wireless broadcasting stations and other similar public services; *Provided, however*, That a person engaged in agriculture, not otherwise a public service, who owns a motor vehicle and uses it personally and/or enters into a special contract whereby said motor vehicle is offered for hire or compensation to a third party or third [parties] engaged in agriculture, not itself or themselves a public service, for operation by the latter for a limited time and for a specific purpose directly connected with the cultivation of his or their farm, the transportation, processing, and marketing of agricultural products of such third party or third parties shall not be considered as operating a public service for the purposes of this Act. (Emphases and underscoring supplied).

Section 15 of the same law requires that, except for certain exemptions, no public service shall operate in the Philippines without possessing a CPC.[46] In turn, the then DOTC (which

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[45] As Amended by RA 2677, entitled "AN ACT TO AMEND SECTIONS TWO, THREE, FOUR, TEN, THIRTEEN, AND FOURTEEN OF COMMONWEALTH ACT NUMBERED ONE HUNDRED FORTY-SIX, AS AMENDED OTHERWISE KNOWN AS THE PUBLIC SERVICE ACT, AND FOR OTHER PURPOSES" (June 18, 1960).

[46] Section 15 of CA 146 (as amended by Commonwealth Act No. 454, entitled "AN ACT TO AMEND VARIOUS SECTIONS OF COMMONWEALTH ACT NUMBERED ONE HUNDRED AND FORTY-

had supervision and control over the LTFRB that had assumed certain powers of the old Public Service Commission[47]) issued DO 97-1097 providing for the standard classifications of all PUVs before they can be issued a CPC. This department order was later amended by the above-stated DOs 2015-11 and 2017-11 and thereafter, the LTFRB issued various memorandum circulars governing the rules for TNC and TNVS accreditation, which rules DBDOYC purportedly failed to comply.

As stated in the Public Service Act, the term "public service" covers any person who owns, operates, manages, or controls in the Philippines, for hire or compensation, with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, **any common carrier**.[48] The Civil Code defines "common earners" in the following terms:

> Article 1732. Common carriers are persons, corporations, firms or associations **engaged in the business of carrying or transporting passengers or goods or both, by land**, water, or air **for compensation, offering their services to the public**. (Emphases supplied)

SIX, KNOWN AS THE PUBLIC SERVICE ACT" [June 8, 1939]) pertinently reads:

> Section 15. With the exception of those enumerated in the preceding section, **no public service shall operate in the Philippines without possessing a valid and subsisting certificate from the Public Service Commission, known as "certificate of public convenience," or "certificate of convenience and public necessity,"** as the case may be, to the effect that the operation of said service and the authorization to do business will promote the public interests in a proper and suitable manner.
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> x x x x x x x x x (Emphasis supplied)

[47] See Executive Order No. 202, entitled "CREATING THE LAND TRANSPORTATION FRANCHISING AND REGULATORY BOARD" (June 19, 1987).

[48] See Section 1 of RA 1270, entitled "AN ACT TO AMEND SECTION THIRTEEN OF COMMONWEALTH ACT NUMBERED ONE HUNDRED AND FORTY-SIX, OTHERWISE KNOWN AS THE PUBLIC SERVICE ACT, AS AMENDED BY COMMONWEALTH ACT NUMBERED FOUR HUNDRED AND FIFTY-FOUR" (June 14, 1955), Amending Section 13 of Commonwealth Act No. 146. See also Section 1 of RA 2677.

For its part, DBDOYC claims reprieve from the above-stated regulatory measures, claiming that it and its accredited drivers are not common carriers or transportation providers.[49] It argues that "[its] technology [only] allows a biker willing to give a ride and a passenger willing to pay the set price to meet and contract with each other. Under this set-up, an *Angkas* biker does not offer his/her service to an indefinite public."[50] Since the application "merely pairs an *Angkas* biker with a potential passenger under a fare scheme which [DBDOYC] fixes for both, [DBDOYC] may not compel an *Angkas* driver to pick up a potential passenger even after the latter confirms a booking because as between the biker and the passenger, there is but a purely private contractual arrangement."[51]

However, it seems that DBDOYC's proffered operations is not enough to extricate its business from the definition of common carriers, which, as mentioned, fall under the scope of the term "public service." As the DBDOYC itself describes, *Angkas* is a mobile application which seeks to "pair an available and willing *Angkas* biker with a potential passenger, who requested for a motorcycle ride, relying on geo-location technology."[52] Accordingly, it appears that it is practically functioning as a booking agent, or at the very least, acts as a third-party liaison for its accredited bikers. Irrespective of the application's limited market scope, *i.e.*, *Angkas* users, it remains that, on the one hand, these bikers offer transportation services to wiling public consumers, and on the other hand, these services may be readily accessed by anyone who chooses to download the *Angkas* app.

In *De Guzman v. Court of Appeals*,[53] the Court discussed the relation between Article 1732 of the Civil Code and

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[49] See Comment dated December 17, 2018; *rollo*, p. 635.

[50] *Id.* at 100; underscoring supplied.

[51] *Id*. at 100-101; underscoring supplied.

[52] *Id*. at 99.

[53] 250 Phil. 613 (1988).

Section 13 (b) of the Public Service Act, explaining that Article 1732 of the Civil Code does not distinguish between a carrier who offers its services to the general public and one who offers services or solicits business only from a narrow segment of the general population:

> The above article makes no distinction between one whose principal business activity is the carrying of persons or goods or both, and one who does such carrying only as an ancillary activity (in local idiom, as "a sideline"). **Article 1732 also carefully avoids making any distinction between a person or enterprise offering transportation service on a regular or scheduled basis and one offering such service on an occasional, episodic or unscheduled basis.** **Neither does Article 1732 distinguish between a carrier offering its services to the "general public," *i.e.*, the general community or population, and one who offers services or solicits business only from a narrow segment of the general population.** We think that Article [1732] deliberately refrained from making such distinctions.
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> So understood, **the concept of "common carrier" under Article 1732 may be seen to coincide neatly with the notion of "public service,"** under the Public Service Act (Commonwealth Act No. 1416, as amended) which at least partially supplements the law on common carriers set forth in the Civil Code. x x x.[54] (Emphases and underscoring supplied)

In this relation, DBDOYC posits that its accredited bikers are private carriers as they do not hold out their services generally to the public because they cannot just be hailed on the street as they only contract via the *Angkas* online front. However, the Court is hard-pressed to rule – at least at this point, and for the purpose of determining the validity of the writ of preliminary injunction – that these bikers are only private carriers who may publicly ply their trade without any regulation. As the Court observes, the genius behind the *Angkas* app is that it removes the inconvenience of having to physically hail for public transportation by creating a virtual system wherein practically the same activity may now be done at the tip of one's fingers. As it is the trend of modern technology, previously

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[54] *Id*. at 618-619.

cumbersome mundane activities, such as paying bills, ordering food, or reserving accommodations, can now be accomplished through a variety of online platforms. By DBDOYC's own description,[55] it seems to be that *Angkas* app is one of such platforms. As such, the fact that its drivers are not physically hailed on the street does not automatically render *Angkas*-accredited drivers as private carriers.

While DBDOYC further claims that another distinguishing factor of its business is that "[its] drivers may refuse at any time any legitimate demand for service by simply not going online or not logging in to the online platform,"[56] still when they do so log-in, they make their services publicly available. *In other words, when they put themselves online, their services are bound for indiscriminate public consumption.* Again, as also-mentioned above, Article 1732 defining a common carrier "[c]arefully avoids making any distinction between a person or enterprise offering transportation service on a regular or scheduled basis and one offering such service on an occasional, episodic or unscheduled basis."[57] This doctrinal statement seems to be the apt response to DBDOYC's assertion.

Moreover, based on the way the app works, it appears that there is really no contractual discretion **between the *Angkas* bikers and would-be passengers** because the app automatically pairs them up based on algorithmic procedures. Whether or not the parties once paired with each other have the choice to freely accept, reject, or modify the terms of their engagement based solely on their discretion is a matter which appears to have not yet been traversed in the proceedings below. Verily, the absence of any *true* choice on these material contractual points apparently contradicts the postulation that the *Angkas* app merely facilitates **a purely private arrangement between the biker and his passenger**.

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[55] See *rollo*, pp. 91 and 604.

[56] *Id.* at 642.

[57] *De Guzman v. Court of Appeals*, *supra* note 53, at 618.

At any rate, even if it is assumed that *Angkas*-accredited bikers are not treated as common carriers and hence, would not make DBDOYC fall under the "public service" definition, it does not necessarily mean that the business of holding out private motorcycles for hire is a legitimate commercial venture. Section 7 of RA 4136 states that:

> Section 7. *Registration Classification.* – Every motor vehicle shall be registered under one of the following described classifications:
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> (a) private passenger automobiles; (b) private trucks; and (c) **private motorcycles**, scooters, or motor wheel attachments. Motor vehicles registered under these classifications **shall not be used for hire under any circumstances and shall not be used to solicit, accept, or be used to transport passengers or freight for pay**.
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> (Emphases and underscoring supplied)

That being said, the Court therefore concludes that no clear and unmistakable right exists in DBDOYC's favor; hence, the RTC gravely abused its discretion in issuing the assailed injunctive writ. In the final analysis, the business of holding one's self out as a transportation service provider, whether done through online platforms or not, appears to be one which is imbued with public interest and thus, deserves appropriate regulations. With the safety of the public further in mind, and given that, at any rate, the above-said administrative issuances are presumed to be valid until and unless they are set aside,[58] the nullification of the assailed injunctive writ on the ground of grave abuse of discretion is in order.

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[58] "It is elementary that rules and regulations issued by administrative bodies to interpret the law which they are entrusted to enforce, have the force of law, and are entitled to great respect. Administrative issuances partake of the nature of a statute and have in their favor a presumption of legality. As such, courts cannot ignore administrative issuances especially when, as in this case, its validity was not put in issue. Unless an administrative order is declared invalid, courts have no option but to apply the same." (*Landbank of the Philippines v. Celada*, 515 Phil. 467, 479 [2006]).

Lest it be misunderstood, the pronounced grave abuse of discretion of the RTC exists only with respect to its issuance of the assailed injunctive writ. It is fundamental that preliminary injunction proceedings are separate and distinct from the main case. In *Buyco v. Baraquia*,[59] the Court discussed the ancillary and provisional nature of these writs:

> A writ of preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It is merely a provisional remedy, adjunct to the main case subject to the latter's outcome. It is not a cause of action in itself. Being an ancillary or auxiliary remedy, it is available during the pendency of the action which may be resorted to by a litigant to preserve and protect certain rights and interests therein pending rendition, and for purposes of the ultimate effects, of a final judgment in the case.
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> The writ is provisional because it constitutes a temporary measure availed of during the pendency of the action and it is ancillary because it is a mere incident in and is dependent upon the result of the main action.[60]

Under this limited scope, it is thus beyond the power of the Court to determine the ultimate rights and obligations of the parties, else it unduly prejudges the main case for declaratory relief which is still pending before the court *a quo*. While the Court acknowledges the contemporary relevance of the topic at hand, it remains self-aware of this case's procedural and jurisdictional parameters. Accordingly, the definitive resolution of the issue of regulating ride-booking or ride-sharing applications must await the proper case therefor.

As a final word, "[e]very court should remember that an injunction should not be granted lightly or precipitately because it is a limitation upon the freedom of the defendant's action. It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it, for no power

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[59] 623 Phil. 596 (2009).

[60] *Id*. at 600-601.

exists whose exercise is more delicate, which requires greater caution and deliberation, or is more dangerous in a doubtful case, than the issuance of an injunction."[61]

WHEREFORE, the petition is **GRANTED**. The Order dated August 20, 2018 issued by the Regional Trial Court of Mandaluyong City, Branch 213 (RTC) directing the issuance of a writ of preliminary injunction in R-MND-18-01453-SC is **ANNULLED** and **SET ASIDE**. The RTC is hereby **ORDERED** to conduct further proceedings, and thereafter, resolve R-MND-18-01453-SC with utmost dispatch.

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Caguioa, Reyes, J. Jr.*, and *Lazaro-Javier, JJ.*, concur.

SECOND DIVISION

[G.R. No. 243345. March 11, 2019]

JESUS CONCEPCION *y* TABOR *a.k.a.* "BAKLA/BONG," *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; AS AN ARBITER OF LAWS, THE SUPREME COURT IS NOT DUTY BOUND TO ANALYZE OR WEIGH ALL OVER AGAIN THE EVIDENCE ALREADY CONSIDERED

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[61] *Bank of the Philippine Islands v. Hontanosas, Jr.*, 737 Phil. 38, 59-60 (2014); citations omitted.

IN THE PROCEEDINGS BELOW.— Foremost, the Court notes that the petition directly raises questions of fact, which are outside the Court's scope of review in appeals by *certiorari* under Rule 45. As an arbiter of laws, the Court is not duty bound to analyze or weigh all over again the evidence already considered in the proceedings below. While the Court has entertained questions of fact in justifiable circumstances, Concepcion failed to show that the case falls within the allowable exceptions. Consequently, the factual findings of the lower courts are generally respected in the absence of a showing that facts or circumstances were overlooked and could therefore affect the outcome of the case, as in the instant Petition. Nonetheless, even if the foregoing rules were to be relaxed, the Court finds no reversible error committed by the CA in affirming Concepcion's conviction.

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165, AS AMENDED (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— In prosecuting a case for illegal possession of dangerous drugs, the following elements must concur: (1) the accused is in possession of an item or object, which is identified as a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug. Proceeding from the foregoing, the Court is fully satisfied that the prosecution was able to establish Concepcion's guilt beyond reasonable doubt for the said crime. The evidence adduced collectively established all elements necessary to produce a conviction. x x x In criminal cases, "proof beyond reasonable doubt" does not entail absolute certainty of the fact that the accused committed the crime, and neither does it exclude the possibility of error. What is only required is that degree of proof which, after a scrutiny of the facts, produces in an unprejudiced mind moral certainty of the culpability of the accused. The Court thus quotes with approval the following disquisition of the CA in this regard: As can be gleaned from the records, the prosecution presented both testimonial and documentary evidence supporting the conviction of the appellant. Beyond a reasonable doubt, it was duly established that appellant had illicit drugs in his possession during the implementation of the search warrant issued against him.

3. REMEDIAL LAW; EVIDENCE; PROOF BEYOND REASONABLE DOUBT; WHAT IS ONLY REQUIRED IS THAT DEGREE OF PROOF WHICH, AFTER A SCRUTINY OF THE FACTS, PRODUCES IN AN UNPREJUDICED MIND MORAL CERTAINTY OF THE CULPABILITY OF THE ACCUSED; CASE AT BAR.— As the records present, the prosecution has proven that there was compliance with Section 21 of the Implementing Rules and Regulations of RA 9165. It was also established that the integrity of the drugs seized from appellant was duly preserved. x x x All told, the Court is convinced that Concepcion was indeed guilty of illegal possession of dangerous drugs, thereby violating Section 11, Article II of R.A. No. 9165.

APPEARANCES OF COUNSEL

Public Attorney's Office petitioner.
The Solicitor General for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is an appeal by *certiorari* under Rule 45 of the Rules of Court[1] (Petition) questioning the Decision[2] dated April 30, 2018 and Resolution[3] dated November 14, 2018 of the Court of Appeals Former Ninth Division (CA) in CA-G.R. CR No. 39753. The Decision dated April 30, 2018 affirmed the Judgment[4] dated February 16, 2017 of the Regional Trial Court of Daet, Camarines Norte, Branch 41 (RTC), which convicted herein petitioner Jesus Concepcion *y* Tabor (Concepcion) for violation of Section 11, Article II of Republic

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[1] *Rollo*, pp. 13-31.

[2] *Id*. at 33-49. Penned by Associate Justice Danton Q. Bueser with Associate Justices Mariflor P. Punzalan Castillo and Henri Jean Paul B. Inting concurring.

[3] *Id*. at 51-53.

[4] *Id*. at 70-75. Penned by Presiding Judge Arniel A. Dating.

Act No. 9165[5] (R.A. No. 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

On December 17, 2012, an Information was filed against Concepcion, the accusatory portion of which reads:

> That on or about 4:30 in the morning of November 15, 2012, at Purok 1, Brgy. IV, Mantagbac, Municipality of Daet, Province of Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously have in his possession, custody and control twelve (12) pieces of small heat sealed transparent plastic sachets each containing white crystalline substance, with markings "RA-1 to RA-12" and marked as specimens A to L, respectively. The net weights are the following: A-0.06 gram; B-0.02 gram; C-0.05 gram; D-0.03 gram; E-0.06 gram; F-0.02 gram; G-0.03 gram; H-0.02 gram; I-0.03 gram; J-0.04 gram and K-0.05 gram; and L-0.01 gram; which after qualitative examination conducted on the above specimens gave positive result to the tests for the presence of methamphetamine hydrochloride, or shabu, a dangerous drug, having a total net weight of 0.42 gram, per Chemistry Report No. D-89-12, without authority of law.
>
> CONTRARY TO LAW.[6]

During his arraignment, Concepcion pleaded not guilty to the charge against him. Trial on the merits ensued.

The prosecution presented four (4) witnesses, namely: PCI Grace Tugas (PCI Tugas), IO2 Rodel Abina (IO2 Abina), SO2 Christopher Viana (SO2 Viana), and Dennis Lladoc (Lladoc). Only the testimony of Concepcion was presented by the defense.

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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" (2002).

[6] *Rollo*, pp. 34-35.

As gathered by the CA, the antecedent facts are as follows:

Witness PCI Tugas, the forensic chemist of the Camarines Norte Crime Laboratory, testified that on November 15, 2012, she received a request from IO2 Abina for the laboratory examination of the subject specimens. After the necessary examination of the content of the twelve (12) heat-sealed sachets, it was found that the submitted specimens are positive for the presence of methamphetamine hydrocholoride or *shabu*. She further confirmed that she had reduced her findings in the document denominated as Chemistry Report No. D-89-12.

Witness IO2 Abina, in turn, narrated that on November 15, 2012, he participated in the implementation of the search warrant dated November 14, 2012 issued against the appellant. Agent Magpantay, their team leader, designated him to be the searcher. He recounted that at around 4:30 a.m., after being given the go signal, he conducted the search for illegal drugs and was able to recover twelve (12) pieces of small heat-sealed plastic sachets containing crystalline substance that they suspected to be shabu. The plastic sachets were found inside the matchbox placed in a plastic Orocan or cabinet located just beside the bedroom door leading to the kitchen. The witness affirmed that during the conduct of the search, the barangay captain, DOJ representative Lladoc, Mr. Ricky Pera from the media, and one barangay kagawad and the appellant were present.

Witness IO2 Abina further testified that he put markings on each of the twelve (12) sachets with "RA1 11-15-12" to "RA12 11-15-12[.]" The inventory was then prepared. After the necessary documentation, he proceeded to the crime laboratory and submitted the request for laboratory examination together with the specimens. He also identified a series of photographs depicting the scenes during the implementation of the search warrant against the appellant, and the affidavit he executed in connection with this case.

SO2 Viana, in turn, testified that he was assigned as the arresting officer in the enforcement of the search warrant against the appellant on November 15, 2012. He personally saw it when IO2 Abina found the subject items inside the Orocan cabinet. After seeing the seizure of the suspected illicit drugs, he arrested the appellant, brought the latter to the Provincial Office, and then submitted him for medical examination. Like IO2 Abina, SO2 Viana identified the several photographs that were taken during the implementation of the search warrant and the affidavit of arrest that he had executed in connection

with this case. He also identified appellant in open court as the accused in the present case.

On the other hand, the testimony of witness Lladoc, a representative of the Department of Justice (DOJ), was stipulated upon by the public prosecutor and the defense. Both parties admitted that: (a) the witness is one of the witnesses in the conduct of the inventory seized from the appellant; and (b) said witness, as one of the witnesses in the preparation of the inventory process, had affixed his signature in the Certificate of Inventory marked as Exhibit "G[.]"

For the defense, the sole testimony of the appellant was presented in evidence. Appellant categorically denied the charges against him. He claimed that in the morning of November 15, 2012 at around 4:30 a.m., he was awakened by three (3) to four (4) male persons knocking at his door. Said men asked him why the lights in his house were switched off and instructed him to turn on the lights in his living room. He then switched on the light, after which the said unidentified men barged into his house. The door had been forcibly opened with a bolt cutter.

Continuing with his testimony, appellant recounted that said persons then conducted a search of the living room, the bedroom and the kitchen but found nothing. Thereafter, two (2) persons left and came back at around 6:00 o'clock in the morning, this time accompanied by other persons and a matchbox with plastic sachets. Supposedly, the plastic sachets had been found in his place. Appellant asserted that he never had a match inside his house. He further clarified that during the period when the two (2) persons had left, he remained inside his house with one of the three (3) persons guarding him. He also claimed that he had rented said house for about a month prior to his arrest.[7]

Ruling of the RTC

In a Judgment dated February 16, 2017, the RTC found Concepcion guilty beyond reasonable doubt for the crime charged:

WHEREFORE, under the foregoing considerations, the prosecution having proven the guilt of accused Jesus Concepcion y Tabor aka "Bakla/Bong" beyond reasonable doubt for having violated

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[7] *Id*. at 35-37.

Section 11, Article II of R.A. 9165, he is hereby sentenced to the indeterminate penalty of imprisonment from nineteen (19) years, eleven (11) months, twenty nine (29) days to twenty (20) years and to pay the fine of Three Hundred Thousand (Php300,000.00) Pesos.

The object pieces of evidence are confiscated in favor of the government to be disposed of in accordance with existing rules and regulations.

SO ORDERED.[8]

Aggrieved, Concepcion appealed his conviction to the CA.

Ruling of the CA

In a Decision dated April 30, 2018, the CA affirmed the RTC's findings but reduced the penalty imposed. The CA found that the minimum period imposed by the RTC was not in accordance with the Indeterminate Sentence Law. Thus:

While the imposition of the penalty of fine is proper, the minimum period imposed by the trial court upon the appellant defies the mandate of the Indeterminate Sentence Law. A difference of one day between the minimum and maximum periods essentially obliterates the purpose for which the Indeterminate Sentence Law is enacted. It bears to stress that the Indeterminate Sentence Law is a legal and social measure of compassion, and should be liberally interpreted in favor of the accused.

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WHEREFORE, the foregoing considered, the Judgment dated February 16, 2017 rendered by the RTC is hereby **AFFIRMED** with the **MODIFICATION** that the penalty of imprisonment imposed upon the appellant is **REDUCED** to twelve (12) years and one (1) day as minimum to fourteen (14) years as maximum.

SO ORDERED.[9]

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

[9] *Id*. at 46-48.

A motion for reconsideration[10] filed by Concepcion was denied by the CA in the Resolution dated November 14, 2018 for lack of merit.

Hence, this Petition.

Issue

The Petition presents the following issues for resolution:

(i) Whether the CA gravely erred in affirming Concepcion's conviction of Section 11, Article II of R.A. No. 9165 despite the inconsistencies between the testimonies of the prosecution witnesses and the affidavit of searcher;[11] and

(ii) Whether the CA gravely erred in affirming Concepcion's conviction of Section 11, Article II of R.A. No. 9165 notwithstanding the prosecution's failure to establish the chain of custody and integrity of the seized drugs allegedly possessed by Concepcion.[12]

The Court's Ruling

The Petition is denied.

Foremost, the Court notes that the petition directly raises questions of fact, which are outside the Court's scope of review in appeals by *certiorari* under Rule 45. As an arbiter of laws, the Court is not duty bound to analyze or weigh all over again the evidence already considered in the proceedings below. While the Court has entertained questions of fact in justifiable circumstances, Concepcion failed to show that the case falls within the allowable exceptions. Consequently, the factual findings of the lower courts are generally respected in the absence of a showing that facts or circumstances were overlooked and could therefore affect the outcome of the case, as in the instant

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[10] *Id*. at 95-102.

[11] *Id*. at 19.

[12] *Id*. at 20.

Petition. Nonetheless, even if the foregoing rules were to be relaxed, the Court finds no reversible error committed by the CA in affirming Concepcion's conviction.

The substantive issues being interrelated, the Court shall discuss the same jointly.

To recall, Concepcion's main defense consists of his claim that an inconsistency in the testimony of IO2 Abina, one of the police officers present in the search, places his conviction in doubt as it goes into the mandatory witness requirement under Section 21 of R.A. No. 9165.[13] In effect, Concepcion is implying that the prosecution failed to establish compliance with the three-witness rule mandated by R.A. No. 9165.[14] Concepcion is gravely mistaken.

In the first place, aside from the overwhelming documentary evidence establishing compliance with the procedure, the presence of Department of Justice (DOJ) representative Lladoc was already admitted by Concepcion when he stipulated on

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[13] Prior to its amendment by Republic Act No. 10640, otherwise known as "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" (JULY 15, 2014).

[14] 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[.]

such matter during trial.[15] Moreover, such discrepancy was sufficiently explained by the prosecution, as duly observed by the CA:

> Indeed, what the appellant perceives as glaring inconsistencies are unfounded, as they are inexistent. The fact that IO2 Abina's affidavit neglects to categorically mention the presence of DOJ representative Lladoc's (sic) during the search operation does not run counter to his testimony. **The perceived discrepancy neither affects the truth of the testimony of the prosecution witness nor discredits his positive identification of appellant. Besides, apart from the duly signed Certificate of Inventory and Certificate of Orderly Search, it had already been stipulated and admitted by the parties that Lladoc was indeed a witness in the conduct of the search and inventory of the confiscated drugs.** For this reason, such stipulation is already a judicial admission of the facts stipulated. Appellant is clearly beyond his bearings in disputing this judicially admitted fact. **What is more, photographs were offered in evidence to prove that the necessary witnesses, including Lladoc, had been present during the search operation.**[16] (Emphasis supplied)

Further, Concepcion casts doubt on the validity of the search conducted in that the implementation of the search warrant was documented to begin at 4:30 A.M. while the seizure of the drugs was made at around 6:30 A.M.[17] Such interval, Concepcion claims, gave the police officers an opportunity to fabricate evidence against him.[18] Again, the CA found the prosecution's explanation on this point sufficient when weighed against the speculative arguments of Concepcion:

> In the same vein, the supposed inconsistency regarding the exact time the search warrant was implemented is, if at all, minor and without consequence. As argued by the appellee, **the team had arrived at appellant's house to implement the search warrant at 4:30 a.m. The police officers did not immediately search the residence because they still had to wait for the barangay officials and the media**

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[15] *Rollo*, pp. 36-37.

[16] *Id*. at 40-41.

[17] *Id*. at 39.

[18] *Id*.

representatives. Thus, the search only began after around thirty (30) minutes to one (1) hour. This interval closely coincides with the time of discovery and seizure of the subject specimens as indicated on the Request for Laboratory Examination. Such minor inconsistency does not warrant the reversal of appellant's conviction.[19] (Emphasis supplied)

In prosecuting a case for illegal possession of dangerous drugs, the following elements must concur: (1) the accused is in possession of an item or object, which is identified as a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[20] Proceeding from the foregoing, the Court is fully satisfied that the prosecution was able to establish Concepcion's guilt beyond reasonable doubt for the said crime. The evidence adduced collectively established all elements necessary to produce a conviction.

Grasping at straws, Concepcion attempts to absolve himself from liability by claiming that the integrity of the *corpus delicti* was compromised in that the chain of custody of the seized drugs was broken.[21] Without more, such empty claims, being unsupported by the records, deserve scant consideration. On the contrary, the movement of the confiscated contraband from the point of seizure until its presentation in court was duly established by both testimonial and documentary evidence. The CA had already laid this issue to rest, as follows:

> x x x Contrary to what the appellant wants to portray, the chain of custody of the seized sachets of *shabu* was shown to be unbroken. Pursuant to protocol, the police officers enforced the search warrant cautiously and deliberately within legal bounds.
>
> First off, IO2 Abino, having initial custody and control of the specimens, made a physical inventory, took photographs and put markings "RA1 11/15/12" to "RA12 11/15/12" on the sachets at the scene of the crime immediately after seizure and confiscation. Second,

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[19] *Id*. at 41.

[20] *People v. Montevirgen*, 723 Phil. 534, 542 (2013).

[21] See *rollo*, p. 26.

the search conducted was witnessed by DOJ representative Lladoc, media representative Ricky Pera, the barangay captain and a barangay kagawad. These witnesses signed the Certificate of Inventory as well as the Certificate of Orderly Search. Photographs also prove[d] the presence of these witnesses during the search and inventory.

Mindful not to break the chain of custody, IO2 Abina brought all the confiscated items to the Camarines Norte Crime Laboratory. On the same day, IA1 Erwin Magpantay, their team leader, executed a request for a laboratory examination of the specimens. IO2 Abina thereafter turned over all the evidence to PSI Tugas, the forensic chemist, who dutifully conducted the laboratory examination on the white crystalline substance found inside the plastic sachets. After the examination, PSI Tugas reported that the subject specimens with markings "RA-1" to "RA 1-2" all tested positive for methamphetamine hydrochloride or shabu and indicated said findings in her Chemistry Report No. D-89-12. During trial, both IO2 Abina and PSI Tugas attested that the pieces of object evidence presented by the prosecution are the same specimens that they had seized, marked and tested. More importantly, contrary to the speculations of the appellant, PSI Tugas confirmed in open court that the Crime Laboratory retained possession of the specimens after such examination.[22]

As a final point, it does not go unnoticed that strict compliance with the mandatory procedure under R.A. No. 9165 was achieved by the apprehending officers; there was no record of any deviation from the requirements under the law. Hence, absent contrary proof to the facts established, Concepcion's conviction must follow. In criminal cases, "proof beyond reasonable doubt" does not entail absolute certainty of the fact that the accused committed the crime, and neither does it exclude the possibility of error.[23] What is only required is that degree of proof which, after a scrutiny of the facts, produces in an unprejudiced mind moral certainty of the culpability of the accused.[24]

The Court thus quotes with approval the following disquisition of the CA in this regard:

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[22] *Id*. at 43-44.

[23] *People of the Philippines v. Tropa*, 424 Phil. 783, 789 (2002).

[24] *People v. Casitas, Jr.*, 445 Phil. 407, 420 (2003).

As can be gleaned from the records, the prosecution presented both testimonial and documentary evidence supporting the conviction of the appellant. Beyond a reasonable doubt, it was duly established that appellant had illicit drugs in his possession during the implementation of the search warrant issued against him. **As established by the testimonies of police agents IO2 Abina and SO2 Viana, twelve (12) heat-sealed plastic sachets with crystalline substances were found inside appellant's cabinet.** Without dispute, said testimonies prove not only the guilt of the appellant but also the identity of the illegal drugs seized from him. The testimony of forensic chemist PCI Tugas, in turn, has clearly proven that the confiscated specimens are positive for the presence of methamphetamine hydrochloride or *shabu*, an identified dangerous drug. **Photographs and other documentary exhibits further show the strict compliance with the rules relative to the enforcement of the search warrant and in the preservation of the integrity and custody of the *corpus delicti*.**

x x x x x x x x x

As the records present, the prosecution has proven that there was compliance with Section 21 of the Implementing Rules and Regulations of RA 9165. It was also established that the integrity of the drugs seized from appellant was duly preserved. Contrary to what the appellant wants to portray, the chain of custody of the seized sachets of *shabu* was shown to be unbroken. Pursuant to protocol, the police officers enforced the search warrant cautiously and deliberately within legal bounds.[25] (Emphasis supplied)

All told, the Court is convinced that Concepcion was indeed guilty of illegal possession of dangerous drugs, thereby violating Section 11, Article II of R.A. No. 9165.

Conclusion

The authority to enforce the law does not come with the freedom to make optional what is mandatory; the law, if not enforced in full, is not enforced at all. The Court is thus hard-pressed to emphasize that it is when the perils of impunity are present that the law is most needed, even at the inconvenience of its enforcers.

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[25] *Rollo*, pp. 39-43.

On this score, too often has the Court been a last resort to those convicted despite fatal lapses affecting the very *corpus delicti* of the crime. This pattern culminated in the recent case of *People v. Lim*[26] where the Court, in recognition of the malignant culture of selective law enforcement, finally laid down a mandatory policy with respect to Section 21 of R.A. No. 9165.

This case, however, comes to the Court not as an opportunity for correction, but as a product of adherence to the rule of law; that in the context of dangerous drugs cases, this case puts to rest any attack on the reasonableness and practicality of the mandatory provisions of R.A. No. 9165. As sufficiently detailed above, the prosecution was able to demonstrate full compliance with the inventory and witness requirements, as well as establish the chain of custody of the seized substances. The Court thus commends the officers in charge for remaining steadfast in their mandate to enforce the law as it is, and not as they think it should be.

WHEREFORE, in view of the foregoing, the Petition is hereby **DENIED**. The Court **ADOPTS** the findings of fact and conclusions of law in the Decision dated April 30, 2018 of the Court of Appeals in CA-G.R. CR No. 39753 and **AFFIRMS** the said Decision finding petitioner Jesus Concepcion *y* Tabor *a.k.a.* "Bakla/Bong" **GUILTY** beyond reasonable doubt of the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of Republic Act No. 9165. Accordingly, he is hereby sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day as minimum to fourteen (14) years as maximum and a fine in the amount of Three Hundred Thousand Pesos (₱300,000.00).

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Perlas-Bernabe, Reyes, J. Jr.*, and *Lazaro-Javier, JJ.*, concur.

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

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— Sec. 3 of the same law provides for the order of removal of employees as follows: (a) Casual employees with less than five (5) years of government service; (b) Casual employees with five (5) years or more of government service; (c) Employees holding temporary appointments; and (d) Employees holding permanent appointments: Provided, that those in the same category as enumerated above, who are least qualified in terms of performance and merit shall be laid first, length of service notwithstanding. (*Id*.)

— Under Sec. 6 of R.A. No. 6656, a Placement Committee is created which would consist of two members appointed by the head of the department agency, a representative of the appointing authority, and two members duly elected by the employees holding positions in the first and second levels of the career service. (*Id*.)

ACTIONS

Filing fees — A case is deemed filed only upon the payment of the filing fee; the court acquires jurisdiction over the case only upon full payment of such prescribed filing fee; the computation of the correct amount of filing fees to be paid rests upon a determination of the nature of the action. (Empire Insurance, Inc. *vs*. Atty. Bacalla, Jr., G.R. No. 195215, Mar. 6, 2019) p. 462

— In a money claim or a claim involving property, the filing fee is computed in relation to the value of the money or property claimed; while in an action incapable of pecuniary estimation, the Rules prescribe a determinate amount as filing fees. (*Id*.)

Incapable of pecuniary estimation — Actions assailing the legality of a conveyance or for annulment of contract have been considered incapable of pecuniary estimation. (Empire Insurance, Inc. *vs*. Atty. Bacalla, Jr., G.R. No. 195215, Mar. 6, 2019) p. 462

— Jurisprudence has laid down the "primary objective" test to determine if an action is incapable of pecuniary estimation; in determining whether an action is one the

said lien; the clerk of court shall assess and collect the corresponding fees; however, the rule on after-judgment liens applies to instances of incorrectly assessed or paid filing fees, or where the court has discretion to fix the amount to be awarded. (*Id*.)

— Under Rule 141, Sec. 1 of the Rules of Court, filing fees must be paid in full at the time an initiatory pleading or application is filed; payment is indispensable for jurisdiction to vest in a court; the amount must be paid in full; in *Magaspi v.Ramolete* despite insufficient payment of filing fees, a complaint for recovery of ownership and possession was deemed docketed as there had been an honest difference of opinion as to the correct amount to be paid; payment of filing fees in full at the time the initiatory pleading or application is filed is still the general rule; exceptions that grant liberality for insufficient payment are strictly construed against the filing party; the filing party must show that there was no intention to defraud the government of the appropriate filing fees due it. (*Id*.)

ALIBI

Defense of — In order for the defense of alibi to prosper, it is not enough to prove that the accused-appellant was somewhere else when the offense was committed, but it must likewise be shown that he was so far away that it was not possible for him to have been physically present at the place of the crime or its immediate vicinity at the time of its commission; presence at another place at the time of the perpetration of the crime and physical impossibility to be at the crime scene must concur; physical impossibility refers to the distance between the place where the accused-appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places. (People *vs*. Ampo, G.R. No. 229938, Feb. 27, 2019) p. 97

ensues when either or both of these are occasioned by the public officer's manifest partiality, evident bad faith, or gross inexcusable negligence: there are two ways by which Sec. 3 (e) of R.A. No. 3019 may be violated; the first, by causing undue injury to any party, including the government, or the second, by giving any private party any unwarranted benefit, advantage or preference. (*Id*.)

— The third element identifies three (3) distinct modes of commission: manifest partiality, evident bad faith, and gross inexcusable negligence; these modes, as follows: "partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are; bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud; gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected; it is the omission of that care which even inattentive and thoughtless men never fail to take on their own property. (*Id*.)

APPEALS

Appeal in criminal cases — In the review of a criminal case, the Court is guided by the long-standing principle that factual findings of the trial court, especially when affirmed by the CA, deserve great weight and respect; here, the factual findings should not be disturbed on appeal since there are no facts or circumstances of weight and substance that were overlooked or misinterpreted or misapplied and would materially or substantially affect the disposition, result or outcome of the case. (People *vs*. Ampo, G.R. No. 229938, Feb. 27, 2019) p. 97

Appeal to the Court of Tax Appeals — The tax exemption expressly granted by the 1987 Constitution, the supreme

awards; *Fruehauf Electronics Philippines Corporation* declared that commercial arbitration tribunals are not quasi-judicial agencies, but "purely *ad hoc* bodies operating through contractual consent and as they intend to serve private, proprietary interests"; commercial arbitration tribunal is a "creature of contract" that becomes *functus officio* once the arbitral award attains finality; however, the jurisdiction of construction arbitration tribunals and voluntary arbitrators is vested by statute; this jurisdiction exists independently of the will of the contracting parties due to the public interest inherent in their respective spheres, thus: Voluntary Arbitrators resolve labor disputes and grievances arising from the interpretation of Collective Bargaining Agreements; these disputes were specifically excluded from the coverage of both the Arbitration Law and the ADR Law. (Metro Bottled Water Corp. *vs*. Andrada Construction & Dev't. Corp., Inc., G.R. No. 202430, Mar. 6, 2019) p. 514

Factual findings of administrative or quasi-judicial bodies – – Factual findings of administrative or quasi-judicial bodies, which are deemed to have acquired expertise in matters within their respective jurisdictions, are generally accorded not only respect but even finality, and bind the Court when supported by substantial evidence. (First Glory Phils. *vs*. Lumantao, G.R. No. 237166, Mar. 6, 2019) p. 742

— Settled is the rule that findings of fact of administrative agencies and quasi-judicial bodies, if supported by substantial evidence, are accorded not only respect but finality, especially when affirmed by the Court of Appeals. (Miranda *vs*. Social Security Commission, G.R. No. 238104, Feb. 27, 2019) p. 141

Factual findings of the lower courts — The Court, as has often been said, is not a trier of facts; in an appeal by *certiorari*, such as the instant case, We generally defer to the factual findings of lower courts and confine our review exclusively to the assigned errors of law; though this norm is by no means absolute, it bears to stress that any deviation therefrom is only ever taken under defined

— It is governed by Rule 57 of the Revised Rules of Court; the provisional remedy of attachment is available in order that the defendant may not dispose of his property attached, and thus secure the satisfaction of any judgment that may be secured by plaintiff from defendant; the purpose and function of an attachment or garnishment is two-fold; first, it seizes upon property of an alleged debtor in advance of final judgment and holds it subject to appropriation thus preventing the loss or dissipation of the property by fraud or otherwise, second, it subjects to the payment of a creditor's claim property of the debtor in those cases where personal service cannot be obtained upon the debtor. (*Id*.)

— The provisional remedy of preliminary attachment is harsh and rigorous for it exposes the debtor to humiliation and annoyance; the rules governing its issuance are, therefore, strictly construed against the applicant, such that if the requisites for its grant are not shown to be all present, the court shall refrain from issuing it, for, otherwise, the court which issues it acts in excess of its jurisdiction. (*Id*.)

ATTORNEYS

Disbarment — A member of the Bar may be penalized, even disbarred or suspended from his office as an attorney, for violation of the Lawyer's Oath and/or for breach of the ethics of the legal profession as embodied in the Code; for the practice of law is a profession, a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character. (Justice Lampas-Peralta *vs*. Atty. Ramon, A.C. No. 12415, Mar. 5, 2019) p. 277

— In consideration of the gravity of the consequences of the disbarment or suspension of a member of the bar, the Court has consistently held that a lawyer enjoys the presumption of innocence, and the burden of proof rests upon the complainant to satisfactorily prove the allegations in his complaint through substantial evidence. (*Id*.)

force, threat, or intimidation; b. When the offended party is deprived of reason or otherwise unconscious; c. By means of fraudulent machination or grave abuse of authority; or d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present; that said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and 4. That the offended party is a child, whether male or female, below 18 years of age. (People *vs.* Basa, Jr., G.R. No. 237349, Feb. 27, 2019) p. 111

Section 5(b) — In Criminal Case No. 04-0200 for Lascivious Conduct under Sec. 5 (b), Art. III of R.A. No. 7610, provides that the penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; in the absence of mitigating or aggravating circumstances, the maximum term of the sentence shall be taken from the medium period thereof; moreover, notwithstanding the fact that R.A. No. 7610 is a special law, Basa may still enjoy the benefits of the Indeterminate Sentence Law; penalty, civil indemnity, damages and fine, discussed. (People *vs.* Basa, Jr., G.R. No. 237349, Feb. 27, 2019) p. 111

— In *Dimakuta v. People*, the Court held that in instances where the lascivious conduct is covered by the definition under R.A. No. 7610, where the penalty is *reclusion temporal* medium, and the act is likewise covered by sexual assault under Art. 266-A, paragraph (2) of the RPC, which is punishable by *prisión mayor,* the offender should be liable for violation of Sec. 5(b), Art. III of R.A. No. 7610, where the law provides for the higher penalty of *reclusion temporal* medium, if the offended party is a child victim; but if the victim is at least eighteen (18) years of age, the offender should be liable under Art. 266-A, par. (2) of the RPC and not R.A. No. 7610, unless the victim is at least 18 years old and she is unable to fully take care of herself or protect herself

— If the proffered evidence is unique, readily identifiable, and relatively resistant to change, that foundation need only consist of testimony by a witness with knowledge that the evidence is what the proponent claims; otherwise, the chain of custody rule has to be resorted to and complied with by the proponent to satisfy the evidentiary requirement of relevancy; at all times, the source of amorphous as well as firmly structured objects being offered as evidence must be tethered to and supported by a testimony. (People *vs.* Olarte *y* Namuag, G.R. No. 233209, Mar. 11, 2019) p. 821

— Less-stringent compliance with the requirements of Sec. 21 does not necessarily render void and invalid the seizure and custody over the seized items provided: 1) there is a justifiable ground for non-compliance; and 2) the integrity and evidentiary value of the seized items are properly preserved; as a saving mechanism and an exception to the strict compliance rule, the prosecution must be able to satisfy these twin requisites so as not to imperil the success of the prosecution's case. (People *vs.* Tomas *y* Orpilla, G.R. No. 241631, Mar. 11, 2019) p. 897

— Sec. 21, Art. II of R.A. No. 9165 laid down the procedure that must be observed and followed by police officers in the seizure and custody of dangerous drugs; par. 1 not only provides the manner by which the seized drugs must be handled but likewise enumerates the persons who are required to be present during the inventory and taking of photographs. (People *vs.* Pantallano, G.R. No. 233800, Mar. 6, 2019) p. 720

— Sec. 21, Art. II of R.A. No. 9165 pertinently provides:(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

Service or the media." (People *vs*. Maylon *y* Alvero, G.R. No. 240664, Mar. 11, 2019) p. 886

— To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. (People *vs*. Maylon *y* Alvero, G.R. No. 240664, Mar. 11, 2019) p. 886

Illegal possession of dangerous drugs — In prosecuting a case for illegal possession of dangerous drugs, the following elements must concur: (1) the accused is in possession of an item or object, which is identified as a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug. (Concepcion *y* Tabor *vs*. People, G.R. No. 243345, Mar. 11, 2019) p. 937

(People *vs*. Pantallano, G.R. No. 233800, Mar. 6, 2019) p. 720

Illegal sale and possession of dangerous drugs — As regards illegal sale of dangerous drugs, the prosecution established: (i) the identity of the seller (appellant) and the buyer (PO3 Cayabyab), the object (a sachet of *shabu*) and consideration (500.00 marked money) of the sale as well as (ii) the delivery of the thing sold and the payment for the same; moreover, the *corpus delicti* was identified and presented in court as evidence; for indeed "the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the buy-bust money, as in this case, consummate the illegal transaction"; on the other hand, the elements of illegal possession of dangerous drugs were also proved here; no reason to disregard these findings and conclusion, there being no showing that the lower courts overlooked or misinterpreted any relevant matter that would influence the outcome of the case. (People *vs*. Angeles *y* Agbolos, G.R. No. 229099, Feb. 27, 2019) p. 71

R.A. No. 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor; what is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused. (People *vs*. Tomas *y* Orpilla, G.R. No. 241631, Mar. 11, 2019) p. 897

(People *vs*. Maylon *y* Alvero, G.R. No. 240664, Mar. 11, 2019) p. 886

(People *vs*. Labadan *y* Manmano, G.R. No. 237769, Mar. 11, 2019) p. 858

(People *vs*. Pantallano, G.R. No. 233800, Mar. 6, 2019) p. 720

(People *vs*. Vistro *y* Baysic, G.R. No. 225744, Mar. 6, 2019) p. 612

(People *vs*. Managat, Jr. *y* De Leon, G.R. No. 230615, Mar. 4, 2019) p. 243

(People *vs*. Sevilla, G.R. No. 227187, Mar. 4, 2019) p. 231

— In the crime of illegal sale of dangerous drugs, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money consummate the illegal transaction; what matters is the proof that the sale actually took place, coupled with the presentation in court of the prohibited drug, the *corpus delicti*, as evidence. (People *vs*. Magalong *y* Maramba, G.R. No. 231838, Mar. 4, 2019) p. 255

Illegal transportation of dangerous drugs — To sustain a conviction for the crime of illegal transportation of dangerous drugs, the transportation and the identity and integrity of the seized drugs must be proven beyond reasonable doubt; the illegal transportation of dangerous drugs is punished under Sec. 5 of the Comprehensive Dangerous Drugs Act: The essential element for the

CONSTRUCTION INDUSTRY ARBITRATION LAW (E.O. NO. 1008)

Construction Industry Arbitration Commission (CIAC) — It was created by Executive Order No. 1008, or the Construction Industry Arbitration Law, to have "original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. (Metro Bottled Water Corp. *vs*. Andrada Construction & Dev't. Corp., Inc., G.R. No. 202430, Mar. 6, 2019) p. 514

— The Construction Industry Arbitration Commission has since been categorized as a quasi-judicial agency in *Metro Construction, Inc. v. Chatham Properties, Inc*; to standardize appeals from quasi-judicial agencies, Rule 43 of the 1997 Rules of Civil Procedure provides that appeals may be taken to the Court of Appeals within the period and in the manner herein provided, whether the appeal involves questions of fact, of law, or mixed questions of fact and law; the Construction Industry Arbitration Commission is among the quasi-judicial agencies explicitly listed in the rule; Rule 43 must be read together with the Construction Industry Arbitration Law, which provides that appeals of arbitral awards must only raise questions of law. (*Id*.)

— The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual time and delays; maintenance and defects; payment, default of employer or contractor and changes in contract cost; excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines. (*Id*.)

extraordinary because its basis is not found in Rules 57 to 61 of the Rules of Court on Provisional Remedies but rather, under Secs. 5(g) and 6 of Rule 135 of the same Rules pertaining to the inherent power of every court "to amend and control its process and orders so as to make them conformable to law and justice;" as well as to issue "all auxiliary writs, processes and other means necessary" to carry its jurisdiction into effect. (Lorenzo Shipping Corp. *vs.* Villarin, G.R. No. 175727, Mar. 6, 2019) p. 412

— Provisional deposit orders can be seen as falling under two general categories; in the first category, the demandability of the money or other property to be deposited is not, or cannot because of the nature of the relief sought be contested by the party-depositor; in the second category, the party-depositor regularly receives money or other property from a non-party during the pendency of the case, and the court deems it proper to place such money or other property in *custodia legis* pending final determination of the party truly entitled to the same. (*Id.*)

— While deposit may not be included in the provisional remedies stated in Rules 57 to 61 of the Rules of Court, this does not mean, however, that its concept as a provisional remedy is non-existent; Rule 135 gives courts wide latitude in employing means to carry their jurisdiction into effect; this Court has upheld deposit orders issued by trial courts in cases involving actions for partition, recovery of possession, and even annulment of contract. (*Id.*)

CRIMINAL PROCEDURE

Amendment of information — As to formal amendments, the Court first held in *People v. Casey, et al.* that an amendment is merely formal and *not* substantial *if:* (a) it does not change the nature of the crime alleged therein; (b) it does not expose the accused to a charge which could call for a higher penalty; (c) it does not affect the essence of the offense; or (d) it does not cause surprise

the jurisprudential parameters of probable cause"; in such cases, consistent with the principle of checks and balances among the three (3) branches of government, a writ of certiorari may be issued to undo the prosecutor's iniquitous determination. (*Id*.)

DAMAGES

Liquidated damages — May be awarded if the contract provides for a monetary compensation in case of breach; the contractor must agree to pay the owner in case there is delay; thus, this provision must be embodied in the contract. (Metro Bottled Water Corp. *vs*. Andrada Construction & Dev't. Corp., Inc., G.R. No. 202430, Mar. 6, 2019) p. 514

ELECTIONS

Nuisance candidate — A nuisance candidate is thus defined as one who, based on the attendant circumstances, has no *bona fide* intention to run for the office for which the certificate of candidacy has been filed, his sole purpose being the reduction of the votes of a strong candidate, upon the expectation that ballots with only the surname of such candidate will be considered stray and not counted for either of them. (Zapanta *vs*. COMELEC, G.R. No. 233016, Mar. 5, 2019) p. 342

— How the votes of nuisance candidates in a multi-slot office should be treated; in a multi-slot office, such as membership of the Sangguniang Panlungsod, a registered voter may vote for more than one candidate; hence, it is possible that the legitimate candidate and nuisance candidate, having similar names, may both receive votes in one ballot; the Court agrees with the OSG that in that scenario, the vote cast for the nuisance candidate should no longer be credited to the legitimate candidate; otherwise, the latter shall receive two votes from one voter. (*Id*.)

— In a multi-slot office, the COMELEC must not merely apply a simple mathematical formula of adding the votes of the nuisance candidate to the legitimate candidate with the similar name; to apply such simple arithmetic

might lead to the double counting of votes because there may be ballots containing votes for both nuisance and legitimate candidates. (*Id*.)

— In a petition for disqualification of a nuisance candidate, the only real parties in interest are the alleged nuisance candidate, the affected legitimate candidate, whose names are similarly confusing; a real party-in-interest is the party who stands to be benefited or injured by the judgment in the suit or the party entitled to the avails of the suit. (*Id*.)

— Regardless of whether the nuisance petition is granted or not, the votes of the unaffected candidates shall be completely the same; they are mere silent observers in the nuisance case; as a mere observer, petitioner-intervenor is not required to be impleaded in the Nuisance Petition; hence, his right to due process could not have been violated. (*Id*.)

— The rationale behind the prohibition against nuisance candidates and the disqualification of candidates who have not evinced a *bona fide* intention to run for office is easy to divine; the State has a compelling interest to ensure that its electoral exercises are rational, objective, and orderly; towards this end, the State takes into account the practical considerations in conducting elections; inevitably, the greater the number of candidates, the greater the opportunities for logistical confusion, not to mention the increased allocation of time and resources in preparation for the election. (*Id*.)

— To ascertain that the votes for the nuisance candidate is accurately credited in favor of the legitimate candidate with the similar name, the COMELEC must also inspect the ballots; in those ballots that contain both votes for nuisance and legitimate candidate, only one count of vote must be credited to the legitimate candidate. (*Id*.)

EMPLOYMENT, TERMINATION OF

Backwages — Backwages are not granted to dismissed employees who participated in an illegal strike even if they are

later reinstated; jurisprudential law, however, recognizes several exceptions to the "no backwages rule," to wit: when the employees were illegally locked to thus compel them to stage a strike; when the employer is guilty of the grossest form of ULP; when the employer committed discrimination in the rehiring of strikers refusing to readmit those against whom there were pending criminal cases while admitting non-strikers who were also criminally charged in court; or when the workers who staged a voluntary ULP strike offered to return to work unconditionally but the employer refused to reinstate them. (Bigg's Inc. *vs.* Boncacas, G.R. No. 200487, Mar. 6, 2019) p. 478

Breach of trust — Fraud as a just ground for dismissal is provided under par. (d) of Art. 297 (formerly 282) of the Labor Code; thus: (d) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative; the following are thus the requisites in order to validate this ground: First, there must be an act, omission, or concealment; second, the act, omission or concealment involves a breach of legal duty, trust, or confidence justly reposed; third, it must be committed against the employer or his/her representative; and fourth, it must be in connection with the employee's work. (First Glory Phils. *vs.* Lumantao, G.R. No. 237166, Mar. 6, 2019) p. 742

Illegal dismissal — The employer has the burden of proving that the termination was for a valid or authorized cause; however, there are cases wherein the facts and the evidence do not establish *prima facie* that the employee was dismissed from employment; it is likewise incumbent upon the employees that they should first establish by substantial and competent evidence the fact of their dismissal from employment; fair evidentiary rule dictates that before employers are burdened to prove that they did not commit illegal dismissal, it is incumbent upon the employee to first establish by substantial evidence the fact of his or her dismissal. (Bognot *vs.* Pinic Int'l. (Trading) Corp., G.R. No. 212471, Mar. 11, 2019) p. 771

Retirement benefits and separation pay — Retirement benefits and separation pay are not mutually exclusive; retirement benefits are a form of reward for an employee's loyalty and service to an employer and are earned under existing laws, CBAs, employment contracts and company policies; on the other hand, separation pay is that amount which an employee receives at the time of his severance from employment, designed to provide the employee with the wherewithal during the period that he is looking for another employment and is recoverable only in instances enumerated under Arts. 283 and 284 of the Labor Code or in illegal dismissal cases when reinstatement is not feasible. (Abanto *vs*. Board of Directors of the Dev't. Bank of the Phils., G.R. No. 207281, March 5, 2019) pp. 296-299

Separation pay — Separation pay is awarded in lieu of reinstatement; the circumstances were enumerated in *Escario*: (*a*) when reinstatement can no longer be effected in view of the passage of a long period of time or because of the realities of the situation; (*b*) reinstatement is inimical to the employer's interest; (*c*) reinstatement is no longer feasible; (*d*) reinstatement does not serve the best interests of the parties involved; (*e*) the employer is prejudiced by the workers' continued employment; (*f*) facts that make execution unjust or inequitable have supervened; or (*g*) strained relations between the employer and employee. (Bigg's Inc. *vs*. Boncacas, G.R. No. 200487, Mar. 6, 2019) p. 478

EVIDENCE

Disputable presumptions — Even the presumption as to regularity in the performance by police officers of their official duties cannot prevail when there has been a clear and deliberate disregard of procedural safeguards by the police officers themselves. (People *vs*. Pantallano, G.R. No. 233800, Mar. 6, 2019) p. 720

Factual findings of the trial court — It is a general principle of law that factual findings of the trial court are not disturbed on appeal unless the court *a quo* is perceived

Presumption of innocence — It cannot be gainsaid that it is mandated by no less than the Constitution that an accused in a criminal case shall be presumed innocent until the contrary is proved; the prosecution bears the burden to overcome such presumption; if the prosecution fails to discharge this burden, the accused deserves a judgment of acquittal; on the other hand, if the existence of proof beyond reasonable doubt is established by the prosecution, the accused gets a guilty verdict; in order to merit conviction, the prosecution must rely on the strength of its own evidence and not on the weakness of evidence presented by the defense. (People *vs*. Pantallano, G.R. No. 233800, Mar. 6, 2019) p. 720

HUMAN RELATIONS

Unjust enrichment — Even in cases where parties enter into contracts which do not strictly conform to standard formalities or to the typifying provisions of nominate contracts, when one renders services to another, the latter must compensate the former for the reasonable value of the services rendered; this amount shall be fixed by a court; where one has rendered services to another, and these services are accepted by the latter, in the absence of proof that the service was rendered gratuitously, it is but just that he should pay a reasonable remuneration therefore because it is a well-known principle of law, that no one should be permitted to enrich himself to the damage of another. (Metro Bottled Water Corp. *vs*. Andrada Construction & Dev't. Corp., Inc., G.R. No. 202430, Mar. 6, 2019) p. 514

— Every person who, through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him; unjust enrichment refers to the result or effect of failure to make remuneration of, or for property or benefits received under circumstances that give rise to legal or equitable obligation to account for them; to be entitled to remuneration, one must confer benefit by mistake, fraud,

— The essential elements in the prosecution for the crime of illegal possession of firearms, which include explosives, ammunitions or incendiary devices, are: (a) the existence of subject firearm, and (b) the fact that the accused who possessed or owned the same does not have the corresponding license for it. (*Id*.)

INJUNCTION

Preliminary injunction — A writ of preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts; it is merely a provisional remedy, adjunct to the main case subject to the latter's outcome; it is not a cause of action in itself; being an ancillary or auxiliary remedy, it is available during the pendency of the action which may be resorted to by a litigant to preserve and protect certain rights and interests therein pending rendition, and for purposes of the ultimate effects, of a final judgment in the case. (Land Transportation Franchising and Regulatory Board (LTFRB) *vs.* Judge Valenzuela, G.R. No. 242860, Mar. 11, 2019) p. 917

— Jurisprudence has laid down the following requisites for the valid grant of preliminary injunctive relief: (a) that the right to be protected exists *prima facie*; (b) that the act sought to be enjoined is violative of that right; and (c) that there is an urgent and paramount necessity for the writ to prevent serious damage. (Empire Insurance, Inc. *vs.* Atty. Bacalla, Jr., G.R. No. 195215, Mar. 6, 2019) p. 462

— The evidence required to justify the issuance of the writ need not be conclusive or complete; and only a sampling of evidence intended merely to give the court an idea of the justification for the preliminary injunction is required; there must be proof of an ostensible right to the final relief prayed for in the complaint; ultimately, the grant of preliminary injunctive relief rests upon the sufficiency, of the allegations made in support thereof. (*Id*.)

JUDICIAL AFFIDAVIT RULE

Application of — Judicial Affidavit Rule which mandates parties to file, not later than five days before pre-trial or preliminary conference, judicial affidavits executed by their witnesses which shall take the place of their direct testimonies. (People *vs*. Olarte *y* Namuag, G.R. No. 233209, Mar. 11, 2019) p. 821

JURISDICTION

Lack of jurisdiction over the subject matter — The general rule is that the issue of jurisdiction may be raised at any stage of the proceedings, even on appeal, and is not lost by waiver or by estoppels; a party is only estopped from raising the issue when it does so in an unjustly belated manner especially when it actively participated during trial; a party may be estopped from questioning the lack of jurisdiction due to insufficient payment of filing or docket fees, if the objection is not timely raised. (Heirs of Renato P. Dragon *vs*. Mla. Banking Corp., G.R. No. 205068, Mar. 6, 2019) p. 553

LABOR RELATIONS

Cooling-off period — In a strike due to bargaining deadlocks, the union must file a notice of strike or lockout with the regional branch of the NCMB at least 30 days before the intended date of the strike and serve a copy of the notice on the employer; this is the so-called "cooling-off period" when the parties may enter into compromise agreements to prevent the strike. (Bigg's Inc. *vs*. Boncacas, G.R. No. 200487, Mar. 6, 2019) p. 478

— The cooling-off period is not merely a period during which the union and the employer must simply wait; the purpose of the cooling-off period is to allow the parties to negotiate and seek a peaceful settlement of their dispute to prevent the actual conduct of the strike; in other words, there must be genuine efforts to amicably resolve the dispute. (*Id*.)

the employer in case of probationary employment, it shall be sufficient that a written notice is served the employee within a reasonable time from the effective date of termination. (*Id*.)

— The employer is mandated to comply with two requirements when dealing with a probationary employee, *viz*: (1) the employer must communicate the regularization standards to the probationary employee; and (2) the employer must make such communication at the time of the probationary employee's engagement; if the employer fails to abide by any of the aforementioned obligations, the employee is deemed as a regular, and not a probationary employee. (*Id*.)

— The essence of a probationary period of employment lies primordially in the purpose or objective of both the employer and the employee during such period; while the employer observes the fitness, propriety, and efficiency of a probationary employee, in order to ascertain whether or not such person is qualified for regularization, the latter seeks to prove to the former that he or she has the qualifications and proficiency to meet the reasonable standards for permanent employment. (*Id*.)

— The services of a probationary employee may be terminated for any of the following: (1) a just cause; (2) an authorized cause; and (3) when he or she fails to qualify as a regular employee in accordance with the reasonable standards prescribed by the employer. (*Id*.)

Strikes — As defined under Art. 219 (formerly Art. 212) (o) of the Labor Code, a strike means any temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute. (Bigg's Inc. *vs*. Boncacas, G.R. No. 200487, Mar. 6, 2019) p. 478

— For union members, what is required is that they knowingly participated in the commission of illegal acts during the strike for there to be sufficient ground for termination of employment; for union officers, however,

sale; a contract conveying conjugal properties entered into by the husband without the wife's consent may be annulled entirely. (Malabanan *vs*. Malabanan, Jr., G.R. No. 187225, Mar. 6, 2019) p. 438

— Under the Civil Code, property acquired during marriage is presumed to be conjugal; there is no need to prove that the money used to purchase a property came from the conjugal fund; what must be established is that the property was acquired during marriage; only through clear, categorical, and convincing proof to the contrary will it be considered the paraphernal property of one (1) of the spouses. (*Id*.)

MURDER

Elements — Murder is defined and penalized under Art. 248 of the RPC, as amended by R.A. No. 7659; to successfully prosecute the crime, the following elements must be established: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Art. 248 of the RPC; and (4) that the killing is not parricide or infanticide; established in this case; the prosecution has proven appellant's guilt beyond reasonable doubt. (People *vs*. Ampo, G.R. No. 229938, Feb. 27, 2019) p. 97

(People *vs*. Acabo, G.R. No. 229823. Feb. 27, 2019) p. 84

Penalty and damages — The prescribed penalty for Murder under Art. 248 of the RPC is *reclusion perpetua* to death; there being no aggravating or mitigating circumstance in the commission of the offense (except for treachery which was used to qualify the killing), the RTC correctly imposed the penalty of *reclusion perpetua*, together with the accessory penalty provided by law; consistent with *People v. Jugueta*, explained. (People *vs*. Ampo, G.R. No. 229938, Feb. 27, 2019) p. 97

— The trial court correctly imposed upon appellant, as affirmed by the CA, the penalty of *reclusion perpetua*;

approve the ruling of the CTA; Increases in the amount fixed in the policy by virtue of the automatic increase clause necessarily altered or affected the subject policies, and therefore, created or granted existing policyholders new and additional rights; this finding is in consonance with the Court's resolution in *Lincoln.* (*Id*.)

Minimum Corporate Income Tax — Of particular importance to the case at bar is Sec. 27(E) of the NIRC, which provides for the imposition of MCIT; the provision allows the government to collect from corporations MCIT equivalent to 2% of "gross income" in lieu of the 30% of " gross income" basic income tax for domestic corporations, whenever the former is higher; it must be borne in mind, however, that although both rates of taxes are applied to "gross income" as tax base, the definition of "gross income," for purposes of MCIT and basic corporate income tax, varies; under Sec. 27(E)(4) above-quoted, "gross income" as used in determining MClT means "gross receipts less sales returns, allowances, discounts and cost of services''; this definition is much more limited in terms of inclusions, exclusions, and deductions, compared to the definition of "gross income" for purposes for computing basic corporate tax under Secs. 32 and 34 of the NIRC. (Mla. Bankers' Life Insurance Corp. *vs.* Commissioner of Internal Revenue, G.R. Nos. 199729-30, Feb. 27, 2019) p. 1

— Sec. 123 of the NIRC serves as basis for the imposition of premium taxes; without the availability of RMC 4-2003, we can only evaluate the deductibility of premium taxes *(i.e.* whether or not they constitute cost of services) based solely on the wording of Sec. 27(E)(4); as per the provision, "cost of services" means all direct costs and expenses necessarily incurred to provide the services required by the customers and clients, including (A) salaries and employee benefits of personnel, consultants and specialists directly rendering the service and (B) cost of facilities directly utilized in providing the service such as depreciation or rental of equipment used and cost of supplies; one of the express requirements for

deductibility is that the claimed deduction should be a *direct* cost or expense. A cost or expense is deemed ‘’direct” when it is readily attributable to the production of the goods or for the rendition of the service; Measured against this standard, it is then easy to discern that premium taxes, though payable by MBLIC, are *not* direct costs within the contemplation of the phrase “cost of services,” incurred as they are *after* the sale of service had already transpired; this cannot therefore be considered as the equivalent of raw materials, labor, and manufacturing cost of deductible “cost of sales” in the sale of goods; the CTR’s contention – that premium taxes are not deductions from gross receipts when determining the MCIT, but from “gross income” in calculating corporate taxes – should therefore be given due credence. (*Id*.)

— The issue pertaining to MBLIC’s deficiency MCIT assessment stemmed from its alleged excessive claim of deductible “cost of services,” resulting in the CIR’s perceived understatement of the MCIT due; specifically, the CIR argues that premium taxes on insurance and DSTs cannot be considered as deductible from gross receipts since they are not among those identified under RMC 4-2003 as costs of services; well-entrenched is the rule that statutes, including administrative rules and regulations, operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication; in the present case, there is no indication that the revenue regulation may operate retroactively; the deductibility of premium taxes and DSTs from gross receipts ought to be measured against the standard set under Sec. 27(E)(4) of the NIRC itself. (*Id*.)

2004 NOTARIAL RULES

Application of — A CTC is not considered as competent evidence of identity as it does not bear a photograph and a signature of the individual concerned, as required in Rule II, Sec. 12 of the Notarial Rules; the Notarial Rules

clearly mandate that before notarizing a document, the notary public should require the presence of the very person who executed the same; thus, he or she certifies that it was the same person who executed and personally appeared before him to attest to the contents and truth of what were stated therein; the presence of the parties to the deed is necessary to enable the notary public to verify the genuineness of the signature. (Ko *vs*. Atty. Uy-Lampasa [Formerly CBD Case No. 12-3604], A.C. No. 11584, Mar. 6, 2019) p. 386

Rules on — The requirement for the parties to personally appear before the notary public in the notarization of documents; the purpose of the requirement of personal appearance by the acknowledging party before the notary public is to enable the latter to verify the genuineness of the signature of the former. (Sps. Zialcita *vs*. Atty. Latras, A.C. No. 7169, Mar. 11, 2019) p. 764

NOTARY PUBLIC

Duties — A notary public must observe the highest degree of care in complying with the basic requirements in the performance of his or her duties in order to preserve the confidence of the public in the integrity of the notarial system. (Ko *vs*. Atty. Uy-Lampasa [Formerly CBD Case No. 12-3604], A.C. No. 11584, Mar. 6, 2019) p. 386

OBLIGATIONS, EXTINGUISHMENT OF

Novation — Novation is the extinguishment of an obligation by its modification and replacement by a subsequent one; an obligation is modified in any of the following ways: (a) by changing its object or principal conditions, (b) by *substituting the person of the debtor*, or (c) by subrogating a third person in the rights of the creditor; novation is, thus, a juridical act of dual function – for as it extinguishes an obligation, it also creates a new one in lieu of the old. (Food Fest Land, Inc. *vs*. Siapno, G.R. No. 226088, Feb. 27, 2019) p. 55

temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. (Mawanay *vs*. Phil. Transmarine Carriers, Inc., G.R. No. 228684, Mar. 6, 2019) p. 665

— The determination of the rights of a seafarer for disability compensation, when covered by the 240-day rule, requires a balance in application by Philippine law, the parties' contractual obligations under the POEA-SEC and/or Collective Bargaining Agreement, and the pertinent medical findings of the seafarer's condition by his own physician and the company-designated physician. (*Id*.)

— While it is true that the provisions of the POEA-SEC must be construed logically and liberally in favor of Filipino seamen in pursuit of their employment on board ocean-going vessels consistent with the State's policy to afford full protection to labor, it does not mean that the Court should automatically rule in favor of the seafarer; the provisions of the POEA-SEC must be weighed in accordance with the prescribed laws, procedure, and provisions of contract freely agreed upon by the parties, and with utmost regard as well of the rights of the employers. (*Id*.)

Permanent and total disability benefits — Guidelines that govern seafarers' claims for permanent and total disability benefits, to wit: 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him; 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total; 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.*, seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended

PROPERTY

Possession — Possessor of real estate property is presumed to have title thereto unless the adverse claimant establishes a better right; under Art. 541 of the Civil Code, one who possesses in the concept of an owner has in his favor the legal presumption that he possesses with a just title, and he cannot be obliged to show or prove it; Art. 433 of the Civil Code provides that actual possession under a claim of ownership raises a disputable presumption of ownership. (Espinas-Lanuza *vs*. Luna, Jr., G.R. No. 229775, Mar. 11, 2019) p. 796

PUBLIC OFFICERS AND EMPLOYEES

Public Sector Labor Management Council (PLSMC) — PSLMC Resolution No. 4, Series of 2002, authorizes the grant of the CNA Incentive, the primary purpose of which is to recognize the joint efforts of labor and management in the achievement of planned targets, programs and services approved in the budget of the agency at a lesser cost. (Dubongco *vs*. Commission on Audit, G.R. No. 237813, Mar. 5, 2019) p. 367

PUBLIC SERVICE ACT (C.A. NO. 146)

Public service — The term "public service" covers any person who owns, operates, manages, or controls in the Philippines, for hire or compensation, with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, any common carrier. (Land Transportation Franchising and Regulatory Board (LTFRB) *vs*. Judge Valenzuela, G.R. No. 242860, Mar. 11, 2019) p. 917

RAPE

Elements — With respect to Criminal Case No. 04-0201, the Court affirms the rulings of the courts below finding that the prosecution was also able to prove, beyond reasonable doubt, all the elements of the crime of rape under Art. 266-A, par. (1), in relation to R.A. No. 7610; the RTC aptly found that the prosecution sufficiently

mentioned are present; it is penalized with *reclusion perpetua* as provided under Art. 266-B of the Revised Penal Code, as amended by R.A. No. 8353; on the other hand, Sec. 5(b), Art. III of R.A. No. 7610 on child prostitution and other sexual abuse, the essential elements are: (a) the accused commits the act of sexual intercourse or lascivious conduct; (b) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and, (c) the child whether male or female, is below 18 years of age; the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*, except that the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; without the Certificate of Live Birth and other means by which AAA's age as alleged in the Information could have been ascertained beyond doubt, the crime committed is Simple Rape. (People *vs*. Mabalo *y* Bacani, G.R. No. 238839, Feb. 27, 2019) p. 173

SALES

Innocent purchaser for value — A person is a buyer in good faith or an "innocent purchaser for value" when he or she purchases and pays the fair price for a property, absent any notice that another has a right over it; if the property is covered by a certificate of title, the buyer may rely on it and is not obliged to go beyond its four (4) corners. (Malabanan *vs*. Malabanan, Jr., G.R. No. 187225, Mar. 6, 2019) p. 438

— This rule shall not apply when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry or when the purchaser has knowledge of a defect or the lack of title in his vendor or of sufficient facts to induce a reasonably prudent man to inquire into the status of the title of the property in litigation; to justify good faith in merely relying on the certificate of title, the following must be present: first, the seller is the registered owner of the land; second, the latter is in possession thereof;

element of a contract of partition; since registration serves as constructive notice to third persons, an oral partition by the heirs is valid if no creditors, are affected; even the requirement of a written memorandum under the statute of frauds does not apply to partitions effected by the heirs where no creditors are involved considering that such transaction is not a conveyance of property resulting in change of ownership but merely a designation and segregation of that part which belongs to each heir. (Espinas-Lanuza *vs*. Luna, Jr., G.R. No. 229775, Mar. 11, 2019) p. 796

TAX EXEMPTION

Non-stock, non-profit educational institutions — In several cases, this Court has ruled that a non-profit institution will not be considered profit driven simply because of generating profits; reason behind this was explained by this Court in its earlier ruling in *Jesus Sacred Heart College v. Collector of Internal Revenue*, to wit: Needless to say, every responsible organization must be so run as to, at least insure its existence, by operating within the limits of its own resources, especially its regular income; in other words, it should always strive, whenever possible, to have a surplus; furthermore, a simple reading of the Constitution would show that Art. XIV, Sec. 4 (3) does not require that the revenues and income must have also been earned from educational activities or activities related to the purposes of an educational institution; the phrase "all revenues" is unqualified by any reference to the source of revenues; thus, so long as the revenues and income are used actually, directly and exclusively for educational purposes, then said revenues and income shall be exempt from taxes and duties. (La Sallian Educational Innovators Foundation (De La Salle Univ.-College of St. Benilde) Inc. *vs.* Commissioner of Internal Revenue, G.R. No. 202792, Feb. 27, 2019) p. 32

— No less than the 1987 Constitution expressly exempt all revenues and assets of non-stock, non-profit educational institutions from taxes provided that they are actually,

machinery and equipment are actually, directly and exclusively used by local water districts and government-owned and controlled corporations; and (b) the local water districts and government-owned and controlled corporations claiming exemption must be engaged in the supply and distribution of Water and/or the generation and transmission of electric power. (*Id*.)

TEVES RETIREMENT LAW (R.A. NO. 4968)

Early retirement incentive plan — Even if the Court were to classify the ERIP IV not as a valid early retirement incentive plan but as a prohibited supplementary retirement plan, the same should not have been disallowed by the COA on the basis of the Teves Retirement Law; there is an irreconcilable inconsistency between the Teves Retirement Law and the DBP Charter because while the former prohibits supplementary retirement plans, the latter expressly authorizes supplementary retirement plans; the DBP Charter prevails over the Teves Retirement Law not only because it is a later law but also because it is a special law; it is a rule in statutory construction that a special law prevails over a general law, regardless of the laws' respective dates of passage. (Abanto *vs*. Board of Directors of the Dev't. Bank of the Phils., G.R. No. 207281, March 5, 2019) pp. 296-299

—— In determining whether a retirement plan is indeed an early retirement incentive plan (as opposed to a prohibited supplementary retirement plan), the primary consideration is the objective. (*Id*.)

TREACHERY

As a qualifying circumstance —— Par. 16, Art. 14 of the RPC defines treachery as the employment of means, methods, or forms in the execution of the crime against a person which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make; the essence of treachery is the sudden attack by the aggressor without the slightest provocation on the part of the unsuspecting

— A trust not created by any words, either expressly or impliedly, evincing a direct intention to create a trust but by the construction of equity in order to satisfy the demands of justice and prevent unjust enrichment; it does not arise by agreement or intention but by operation of law against one who, by fraud, duress, or abuse of confidence obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold. (Lorenzo Shipping Corp. *vs*. Villarin, G.R. No. 175727, Mar. 6, 2019) p. 412

— In a constructive trust, there is neither a promise nor any fiduciary relation to speak of and the so-called trustee neither accepts any trust nor intends holding the property for the beneficiary. (*Id*.)

VENUE

Venue of personal actions — Sec. 2, Rule 4 of the Rules sets forth the general rule regarding the venue of personal actions; the exceptions are provided in Sec. 4, Rule 4. (Pillars Property Corp. *vs*. Century Communities Corp., G.R. No. 201021, Mar. 4, 2019) p. 187

WITNESSES

Credibility of — AAA's failure to shout or immediately report the incident does not necessarily belie her claims because as the appellate court held, a rape victim's actions are oftentimes overwhelmed by extreme psychological terror that numbs her into silence and submissiveness; the fact that the medico-legal report shows no evident sign of injuries is of no moment since laceration of the hymen, even if considered a telling evidence of sexual assault, is not always essential to establish the consummation of the crime of rape; indeed, when the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon the Court, unless there is a clear showing that they were reached arbitrarily or it appears from the records that certain facts of weight, substance, or value are overlooked, misapprehended or misappreciated by the lower court which, if properly

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